

**The author(s) shown below used Federal funds provided by the U.S. Department of Justice and prepared the following final report:**

<b>Document Title:</b>	<b>Final Report Law Enforcement and Criminal Justice Under Public Law 280</b>
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<b>Document No.:</b>	<b>222585</b>
<b>Date Received:</b>	<b>May 2008</b>
<b>Award Number:</b>	<b>2001-IJ-CX-0031</b>

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# **FINAL REPORT**

## **LAW ENFORCEMENT AND CRIMINAL JUSTICE UNDER PUBLIC LAW 280**

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November 1, 2007

Carole Goldberg and Duane Champagne are affiliates of the University of California, Los Angeles's Native Nations Law and Policy Center; Heather Valdez Singleton is an affiliate of the Tribal Law and Policy Institute. This research was supported under award number: 2001-IJ-CX-0031 from the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. All points of view expressed in this paper are those of the authors and do not necessarily represent those of the U.S. Department of Justice, the University of California, Los Angeles, or the Tribal Law and Policy Institute.

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## ACKNOWLEDGMENTS

A study of this scope and complexity could not have been completed without the contributions of many dedicated individuals. We are especially grateful to Winnie Reed, our Program Officer at the National Institute of Justice (NIJ), who has believed in this project throughout and never discouraged us as we expanded it beyond the original plans.

Heather Valdez Singleton, our Project Director, was the engine that enabled the project to move forward. NIJ support for the research derived from a strategic planning session that NIJ held in 1998 to determine the most important directions for research on crime in Indian country. Heather Valdez Singleton and Carole Goldberg produced a paper for that session, which NIJ later published as “Public Law 280 and Law Enforcement in Indian Country — Research Priorities,” December 2005. After UCLA was awarded the project and Heather became its Director, she made certain that all administrative and ethical requirements were met, arranged all the permissions and logistics for research trips, collected data and relevant published sources, and conducted many of the individual interviews with reservation residents, as well as with law enforcement and criminal justice personnel. When she left the Project Director position to continue her studies at the John F. Kennedy School of Government at Harvard, she wrote up results of our research on retrocession for her thesis; some of that work is incorporated into Chapter 13 of this Report.

Other researchers and students made significant contributions to the study. Linda Deacon, an independent statistician, performed the statistical analysis of our quantitative data. We enlisted Prof. Donald Green, University of Wisconsin-Milwaukee, and Jerry Gardner, Executive Director of the Tribal Law & Policy Institute, to conduct some of the interviews, as well as former students Michele Fahley, Cynthia Morales, Elton Naswood, Sal Perez, Mark Vezzola, and Lambert Yazzie. Former student Jay Shapiro provided invaluable research assistance for several of the chapters. And we also wish to thank the Justice Research and Statistics Association for providing us with extremely helpful statistical data, as well as the UCLA American Indian Studies Center for providing books as gifts to our interviewees.

Finally, in addition to the financial support we received from NIJ, we also benefited from summer research support granted by our respective deans. Duane Champagne wants to express his gratitude to former UCLA Dean of Social Sciences Scott Waugh, and Carole Goldberg wants to express hers to former UCLA School of Law Dean Jonathan Varat and current Dean Michael Schill.

## EXECUTIVE SUMMARY

Congress enacted Public Law 280 (PL 280) in 1953, eliminating most federal-Bureau of Indian Affairs (BIA) Indian country criminal jurisdiction in five (later six) states and mandating state criminal jurisdiction in Indian country in those same states. Public Law 280 also allowed all other states to assume criminal jurisdiction in Indian country. Between 1953 and 1968, Public Law 280 operated to transfer criminal jurisdiction without tribal consent. Amendments to Public Law 280 in 1968 made future state criminal jurisdiction subject to Indian consent and authorized states to return, or retrocede, their jurisdiction back to the federal government.

Although Public Law 280, as well as similar laws applicable to individual tribes and states, have drastically altered the criminal justice system for 23% of the reservation-based Indian population and more than 70% of all federally recognized tribes, the law has never before been the subject of systematic research. The purpose of this study has been to achieve a more systematic and comprehensive understanding of Public Law 280, especially the availability and effectiveness of state/county law enforcement and criminal justice, the extent to which tribal justice systems have been inhibited by the presence of state/county jurisdiction, and the effectiveness of cooperative agreements and retrocession in ameliorating any problems presented by Public Law 280.

This study gathered qualitative and quantitative data from 17 confidential reservation sites — 12 subject to state/county jurisdiction under Public Law 280, four operating under the more typical federal/tribal criminal jurisdiction regime, and one, a “straddler” with some territory in a state covered by Public Law 280 and the remainder in a different state. Confidential interviews were conducted with more than 350 reservation residents, law enforcement officials, and criminal justice personnel. In addition, the study collected law enforcement and criminal justice funding data from the Department of the Interior and the Department of Justice, and conducted several case studies of cooperative agreements and the retrocession process based on published sources. Framing our inquiry have been hypotheses drawn from prior research, suggesting that effective police and justice systems in Indian country depend on the degree of accountability of law enforcement and criminal justice to tribal populations, as well as the adequacy of resources to provide policing and court services.

Analysis of the qualitative and quantitative data indicates that reservation residents in Public Law 280 jurisdictions typically rate the availability and quality of law enforcement and criminal justice lower than reservation residents in non-Public Law 280 jurisdictions. A striking pattern is that reservation residents and state/county law enforcement in Public Law 280 jurisdictions differ substantially in their evaluations of state/county law enforcement, with reservation residents consistently providing less favorable assessments. In contrast, reservation residents and federal/tribal law enforcement in non-Public Law 280 jurisdictions typically provide more consistent or similar evaluations.

On the question of availability, state or county police serving Public Law 280 reservations are rated by Public Law 280 reservation residents as less available, slower in

response time, less prone to equally attend to minor or serious calls, provide less beneficial patrolling services, less willing to act without authority, more frequently decline services owing to remoteness, and are located farther away than federal-BIA and tribal police on non-Public Law 280 reservations.

To assess the quality or effectiveness of law enforcement and criminal justice systems under Public Law 280, we looked at knowledge of Public Law 280, cultural awareness and sensitivity, communication with community members, fairness of treatment, thoroughness of investigations, community willingness to report crimes to police, and responsiveness to community priorities. Again, we found that reservation residents in Public Law 280 jurisdictions rated police and court services lower than the counterparts in non-Public Law 280 jurisdictions, or that reservation residents and police in Public Law 280 jurisdictions diverged more in their assessments of service quality than reservation residents and police in non-Public Law 280 jurisdictions. We also found that, within each type of jurisdiction, tribal police generally received higher evaluations from reservation residents than either state/county or federal-BIA police. Tribal courts nonetheless receive criticism from reservation residents, mainly because of a lack of checks and balances that give protection against family, community, and tribal government politics.

With respect to funding for tribal law enforcement and criminal justice, federal funding data from the Department of the Interior indicate that Public Law 280 tribes are receiving far less than tribes subject to federal-BIA and tribal jurisdiction. Although data were difficult to obtain from the BIA, we did determine that for FY 1998, non-straddler<sup>1</sup> mandatory Public Law 280 tribes received less than 20% per capita of what non-Public Law 280 tribes received. And while Department of Justice funding per capita is much more equitable between Public Law 280 and non-Public Law 280 tribes, the percentage of Public Law 280 tribes receiving no funding at all is much higher. Tribes in Public Law 280 jurisdictions are not receiving sufficient support to mount their own police and justice systems, even though reservation residents are more satisfied with services from tribal agencies where they exist.

Seven of the 11 Public Law 280 tribes in this study had cooperative agreements with their local law enforcement agencies. Although such agreements ameliorate some of the problems associated with Public Law 280, largely through expansion of resources available for law enforcement, reservation residents are less satisfied with them than are state/county law enforcement personnel. Most serious concerns expressed by reservation residents are impact on tribal sovereignty and the continued application of law enforcement and criminal justice systems that fail to respect tribal cultures and public safety priorities.

A large majority of reservation residents in the Public Law 280 tribes in this study would support retrocession of state jurisdiction, at least if federal-BIA support were available to establish and/or develop tribal law enforcement and criminal justice systems. For the retroceded tribes in this study and discussed in published sources, retrocession has been a positive

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<sup>1</sup> "Non-straddler" refers to tribes whose territory lies entirely within a Public Law 280 state.

experience. Public safety has been improved, and community well-being has grown due to enhanced sovereignty and tribal creation of justice systems that match community values and conceptions of justice. Greater community confidence in the criminal justice system has translated into increased reporting of crime, greater cooperation with criminal investigations, and greater compliance with community-imposed sanctions.

Recommendations based on this study are:

- 1) More training for police and court personnel serving Public Law 280 jurisdictions;
- 2) Increased public information for tribal community members in Public Law 280 jurisdictions;
- 3) Enhanced communication and cultural understanding between state/county law enforcement agencies and courts with tribal communities;
- 4) Make state/county law enforcement and criminal justice more accessible to tribal communities;
- 5) Increase accountability of state/county law enforcement and criminal justice to tribal communities;
- 6) Establish federal-BIA and state/county crime data collection systems that indicate Indian country location;
- 7) More community-based policing and police responsiveness to the most serious and frequently occurring crimes in Public Law 280 and non-Public Law 280 jurisdictions;
- 8) Greater funding for tribal law enforcement and courts in Public Law 280 jurisdictions;
- 9) Introduce incentives and support for the development of tribal-state cooperative law enforcement agreements;
- 10) Enactment of federal legislation authorizing tribally initiated retrocession of Public Law 280 jurisdiction;
- 11) Fund further research, including additional case studies and nationally representative samples containing more Public Law 280 and non-Public Law 280 community comparisons.

## CHAPTER 1

### Introduction and Background

#### Purpose of the Study

Public Law 280 structures law enforcement and criminal justice for 23% of the reservation-based tribal population and 51% of all tribes in the lower 48 states, and potentially affects all Alaska Natives and their tribes or villages.<sup>1</sup> Although this law was enacted just over 50 years ago, very little systematic, empirical research has been conducted to determine its effectiveness or its reception among the communities it addresses. Yet, anecdotal evidence from Congressional hearings, government reports, and tribal organizations suggests discontent with this law, both within Indian country and among some state and local law enforcement and criminal justice officials. Themes evident in the statements of tribal officials include:

- Infringement of tribal sovereignty;
- Failure of state law enforcement to respond to Indian country crimes or to respond in a timely fashion;
- Failure of federal officials to support concurrent tribal law enforcement authority;
- A consequent absence of effective law enforcement altogether, leading to misbehavior and self-help remedies that jeopardize public safety;
- Discriminatory, harsh, and culturally insensitive treatment from state authorities when they do attend to Indian country crimes;
- Confusion about which government is responsible and should be contacted when criminal activity has occurred or presents a threat.

Tribal concerns about Public Law 280 have some counterparts in criticisms leveled at the statute by state and local law enforcement agencies. Typically these charges focus on the absence of federal funding for state law enforcement services within Indian country or on difficulties in carrying out state law enforcement obligations because of uncertainty about the scope of state jurisdiction and officers' unfamiliarity with tribal communities.

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| <sup>1</sup> For the text of Public Law 83-280, see Appendix J, and for frequently asked questions and answers about Public Law 280, see Appendix K. The special jurisdictional situation in Alaska is discussed at pages 7-8, *infra*.

Amid federal concerns about rising crime rates in Indian country and rising victimization rates among Indians, the National Institute of Justice funded this research to advance understanding of this law and its impact from the point of view of tribal members, as well as state and local officials. In particular, we proposed to address five questions: 1) Are crime rates higher or lower in Indian country in PL 280 states versus Indian country in non PL 280 states and elsewhere in PL 280 states? 2) Is law enforcement more or less available or well funded in PL 280 states versus non PL 280 states and elsewhere in PL 280 states? 3) What is the quality of law enforcement and criminal justice under PL 280 in terms of cultural awareness and sensitivity, fairness of treatment, responsiveness to community priorities, thoroughness of investigations, etc.? 4) Does the presence of state law enforcement and criminal justice inhibit or impair tribal legal development? 5) How effective have cooperative agreements, concurrent jurisdiction, and retrocession efforts been to alleviate problems associated with PL 280? This study also aims to develop recommendations for policy changes that would improve law enforcement and criminal justice on the reservations affected by Public Law 280.

## History and Legal Background

Before Congress adopted Public Law 280 in 1953, the arrangement of criminal jurisdiction in Indian country<sup>2</sup> was complex but relatively uniform across reservations. Except for a few scattered reservations in the Midwest and the reservations in New York state, Indian country criminal jurisdiction was largely a matter for the federal government and the tribes themselves, with states limited to jurisdiction over crimes between non-Indians and victimless crimes by non-Indians. Indeed, the Supreme Court had pronounced that states lack criminal jurisdiction over criminal matters involving Indians within reservations unless Congress authorized such state authority; and before 1953, Congress had taken no such action for reservations as a whole.

In the pre-Public Law 280 era, the federal government's criminal jurisdiction fell into three main categories: 1) a wide range of federal and state-defined offenses, major and minor, committed by an Indian against a non-Indian, or vice versa; 2) specified major offenses committed by one Indian against another; 3) designated crimes focused on the federal trust responsibility, including liquor control and hunting and fishing on tribal lands, whether committed by an Indian or non-Indian. Tribal jurisdiction encompassed all criminal activity and was *exclusive* as to less serious crimes committed by one Indian against another or crimes by Indians that were victimless. Only later did federal law restrict tribal criminal jurisdiction by limiting the punishments that could be

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| <sup>2</sup> The term "Indian country" is codified at 18 U.S.C. § 1151 and means "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

imposed and denying tribal criminal authority over non-Indians.<sup>3</sup>

Under this legal regime for Indian country, the substantial exclusion of state criminal jurisdiction reflected constitutional and treaty-based principles establishing a special government-to-government trust relationship between the United States and the tribes. These principles, in turn, reflected the reality that states' interests in governing power and resource control have often conflicted bitterly with tribes' claims to governance and territory. Tribes have feared that state jurisdiction would prevent them from defining norms and administering justice according to evolving tribal traditions, and would expose tribal members to indifferent or hostile law enforcement institutions.

With the passage of Public Law 280 in 1953, Congress for the first time injected state criminal jurisdiction into Indian country on a large scale. The act authorized state criminal jurisdiction over Indians and non-Indians on reservations in six named states with significant numbers of federally recognized tribes — Alaska (added when it became a state), California, Minnesota, Nebraska, Oregon, and Wisconsin. A few tribes in these states were specifically excluded as a result of their strong and effective lobbying.<sup>4</sup> The act also allowed all other states to opt for similar jurisdiction, and several did so. At the same time, it withdrew the first two categories of federal criminal jurisdiction listed above — crimes between Indians and non-Indians, and major crimes involving only Indians. Public Law 280 did not eliminate or limit tribal criminal jurisdiction,<sup>5</sup> although the Department of the Interior often used it as a justification for denying funding support to tribes in the affected states for law enforcement and criminal justice.

For tribes in those affected states, Public Law 280 meant that state or county law enforcement replaced the Bureau of Indian Affairs police, and state criminal trials largely replaced those carried out by the federal government. Perhaps even more important than this change of criminal jurisdiction “partners” from federal to state, however, was the fact that the reach of non-tribal law enforcement and criminal justice on reservations grew longer. Before Public Law 280 — and for non-Public Law 280 tribes to this day — the more commonplace minor crimes committed by Indians, such as driving under the influence and misdemeanor assaults, were *exclusively* the responsibility of the tribes. With the adoption of Public Law 280, such offenses could be penalized under state as well as tribal criminal law.

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<sup>3</sup> See 25 U.S.C. § 1302 (Indian Civil Rights Act, limiting tribal punishments to one year in jail and a \$5,000 fine for each offense); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

<sup>4</sup> The excluded tribes were Red Lake in Minnesota, Warm Springs in Oregon, and Menominee in Wisconsin.

<sup>5</sup> See Vanessa J. Jimenez & Soo C. Song, Concurrent Tribal and State Jurisdiction under Public Law 280, 47 Am. U.L. Rev. 1627 (1998).

The Criminal Resource Manual produced by the U.S. Department of Justice for U.S. Attorneys provides a useful chart depicting the differences between federal, tribal, and state criminal jurisdiction without and with Public Law 280:<sup>6</sup>

A. *Where jurisdiction has not been conferred on the state*

Offender	Victim	Jurisdiction
Non-Indian	Non-Indian	State jurisdiction is exclusive of federal and tribal jurisdiction.
Non-Indian	Indian	Federal jurisdiction under 18 U.S.C. § 1152 is exclusive of state and tribal jurisdiction.
Indian	Non-Indian	If listed in 18 U.S.C. § 1153, there is federal jurisdiction, exclusive of the state, but probably not of the tribe. If the listed offense is not otherwise defined and punished by federal law applicable in the special maritime and territorial jurisdiction of the United States, state law is assimilated. If not listed in 18 U.S.C. § 1153, there is federal jurisdiction, exclusive of the state, but not of the tribe, under 18 U.S.C. § 1152. If the offense is not defined and punished by a statute applicable within the special maritime and territorial jurisdiction of the United States, state law is assimilated under 18 U.S.C. § 13.
Indian	Indian	If the offense is listed in 18 U.S.C. § 1153, there is federal jurisdiction, exclusive of the state, but probably not of the tribe. If the listed offense is not otherwise defined and punished by federal law applicable in the special maritime and territorial jurisdiction of the United States, state law is assimilated. See section 1153(b). If not listed in 18 U.S.C. § 1153, tribal jurisdiction is exclusive.
Non-Indian	Victimless	State jurisdiction is exclusive, although federal jurisdiction may attach if an impact on individual Indian or tribal interest is clear.
Indian	Victimless	There may be both federal and tribal jurisdiction.

Figure 1.1

<sup>6</sup> U.S. Department of Justice, Criminal Resource Manual at 689, available at [http://www.usdoj.gov/usao/eousa/foia\\_reading\\_room/usam/title9/crm00689.htm](http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/crm00689.htm).



**B. Where jurisdiction has been conferred by Public Law 280, 18 U.S.C. § 1162**

Offender	Victim	Jurisdiction
Non-Indian	Non-Indian	State jurisdiction is exclusive of federal and tribal jurisdiction.
Non-Indian	Indian	"Mandatory" state has jurisdiction exclusive of federal and tribal jurisdiction. "Option" state and federal government have jurisdiction. There is no tribal jurisdiction.
Indian	Non-Indian	"Mandatory" state has jurisdiction exclusive of federal government but not necessarily of the tribe. "Option" state has concurrent jurisdiction with the federal courts.
Indian	Indian	"Mandatory" state has jurisdiction exclusive of federal government but not necessarily of the tribe. "Option" state has concurrent jurisdiction with tribal courts for all offenses, and concurrent jurisdiction with the federal courts for those listed in 18 U.S.C. § 1153.
Non-Indian	Victimless	State jurisdiction is exclusive, although federal jurisdiction may attach in an option state if impact on individual Indian or tribal interest is clear.
Indian	Victimless	There may be concurrent state, tribal, and in an option state, federal jurisdiction. There is no state regulatory jurisdiction.

Figure 1.2

Congress engineered this significant shift and expansion of outside law enforcement responsibility on reservations for a variety of reasons. After World War II, reducing the size of the federal budget was one of President Eisenhower's major priorities. The Bureau of Indian Affairs was seen as a good candidate for budget cuts because the ideology of the time favored assimilation and formal equality. Transferring reservation populations from federal to state jurisdiction would foster cultural integration of Native people as individuals and eliminate special treatment. Policy makers and legislators further justified Public Law 280 by pointing to what they called "lawlessness" on reservations in certain states, and therefore the need for a more pervasive police presence by way of state jurisdiction. While additional federal law enforcement activity or support for strengthening tribal law enforcement might have accomplished the same goal, either of these alternative responses would have been more costly for the federal government.

Public Law 280 represents a particular set of solutions to two significant problems in law enforcement and criminal justice policy: Which political body should direct the conduct of law enforcement and criminal justice (what we will call the control/

accountability question), and which resources should be available to support those systems (what we will call the resource question). On the question of control/accountability, Public Law 280 opted for greater control at the state and local government level, and less control at the tribal and federal level. The near elimination of exclusive tribal authority over a range of less serious offenses by tribal members is the most obvious manifestation of reduced tribal control. But the switch from BIA law enforcement to state also meant that tribes traded a federal police force that included many Indian officers (due to the BIA's Indian preference laws), for county police forces operating under local sheriffs and with fewer Indian officers. Shifting to state jurisdiction often opened the possibility for greater electoral control over law enforcement and criminal justice officials, as federal police and United States Attorneys are appointed, while local sheriffs, district attorneys, and even judges may be elected officials. Effective political control at the county level has typically eluded tribal communities, however, at least until the advent of tribal gaming for tribes in some Public Law 280 states opened the possibility of considerable campaign contributions. Occasionally the county populations in Public Law 280 states are mostly Indian; more often, however, Indians are a minority in their county electorates, leaving them without effective political control over their sheriffs, district attorneys, and judges. The switch to state jurisdiction also meant a decline in potential tribal control over law enforcement because tribes under Public Law 280 could not take advantage of the 1975 Indian Self-Determination Act to contract with the BIA for the administration of their own law enforcement services.<sup>7</sup>

Had tribes expressed a preference for the state jurisdiction system, it could be argued that the shift to increased outside authority at the state level was an indirect expression of tribal control. One of the striking features of Public Law 280, however, is the fact of its adoption and implementation without the consent of the affected tribes. In some instances, the introduction of state jurisdiction violated specific treaty promises. Although President Eisenhower expressed qualms about the absence of a tribal consent provision when he signed the measure into law, his misgivings did not impel him to veto the legislation. However, 15 years later, in 1968, Congress amended Public Law 280 to require that any *future* assertion of state jurisdiction under its terms may occur only after a positive vote by the affected tribe. State jurisdiction already in place was left

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<sup>7</sup> Beginning in the mid-1990's, some tribes in Public Law 280 states realized that they could still contract to carry out the limited federal law enforcement functions that remained on their reservations. These functions include enforcement of special federal laws criminalizing liquor, trespass, gaming, and other criminal offenses focused on Indian country. See, e.g., 18 U.S.C. § 1165 (trespass for purposes of hunting and fishing in violation of tribal law). Although these federal contracts rarely involved funding for the major operating expenses of a tribal police department, they did confer federal peace officer status on the tribal police officers who carried out the contract functions. And this federal peace officer status, in turn, provided the predicate for state peace officer status, something tribal law enforcement officers have often sought in Public Law 280 states, where it's advantageous to be able to arrest offenders, especially non-Indians, for violation of state law.

undisturbed, however, regardless of tribal preferences. Interestingly, not a single tribe has consented to state jurisdiction since that time.<sup>8</sup>

On the question of resources to support law enforcement and criminal justice on reservations, Public Law 280 did not supply an easy answer. A notable feature of the law is the absence of any federal funding support for the states' new law enforcement and criminal justice duties. Indeed, one could describe Public Law 280 as an early version of an unfunded federal mandate. While this failure to authorize or appropriate federal funds for Public Law 280 states is understandable given Congress' goal of reducing the federal budget, it left local governments in a difficult situation. Because reservation trust lands are exempt from state and local property taxes, and tribal members living and earning income on reservations are exempt from state income and sales taxes, some of the most important sources of funding for local law enforcement and criminal justice on reservations were unavailable. Moreover, as noted above, the Department of the Interior largely failed to include tribes in Public Law 280 states in its growing support for tribal police and courts during the 1970s and 1980s, leaving Public Law 280 states unable to rely on tribal agencies to shoulder the financial responsibility.

Congress did provide some relief for states 15 years later, in the 1968 amendments to Public Law 280. Under those amendments, a state (but not a tribe) could initiate the return, or retrocession, of its jurisdiction back to the federal government. This return could be full or partial, as to geography or offenses; and the federal government could choose whether or not to accept the state's offer. Since that time, retrocession has taken place affecting tribes in both the named, or "mandatory," Public Law 280 states, as well as tribes in the optional states, affecting more than 25 tribes (see Chapter 13 of this Report). In at least some situations we have studied, resource concerns were significant factors in the decision to retrocede jurisdiction.

## The Reach of Public Law 280 Today

### Affected Tribes

Today, Public Law 280 structures law enforcement and criminal justice for 23% of the reservation-based tribal population in the lower 48 states and all the Alaskan Natives. Another way of measuring its impact is that 51% of all federally recognized tribes in the lower 48 states and 70% of all recognized tribes (including Alaska Native villages) are affected by Public Law 280. Further details are necessary to understand the precise reach of Public Law 280 today. For purposes of this Report, we divide tribes into the following categories:

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<sup>8</sup> Although no consent has occurred within the framework of Public law 280, some tribes have consented to state jurisdiction since 1968 as part of restoration to federal jurisdiction, initial federal recognition, or a land claims settlement act. Examples include the Mashantucket Pequot in Connecticut and the Ysleta del Sur Pueblo in Texas. See Nell Newton et al., Cohen's Handbook of Federal Indian Law § 6.04[4][c] (LexisNexis, 2005 ed.).

- **PL 280 (mandatory or optional)** — tribes subject to the full array of state criminal jurisdiction allowable under Public Law 280, either because they are in states named in the act (“mandatory” states) or because their state opted into Public Law 280 (“optional” states);
- **PL 280 Partial (optional state)** — tribes in optional states, where the states chose to assert less than full criminal jurisdiction;
- **PL 280 Limited Territory** — tribes in Alaska, a named (mandatory) state under Public Law 280, which do not have reservations and, therefore, are covered by Public Law 280 only with respect to trust allotments or similar lands that may be located within their territory;
- **Excluded** — tribes located in states named in Public Law 280 but specifically excluded from coverage under the legislation;
- **Retroceded** — tribes once covered by Public Law 280, either because they were in one of the named (mandatory) states or because their state opted into Public Law 280, but which subsequently were removed from Public Law 280 jurisdiction through the state’s retrocession, or return, of that jurisdiction to the federal government;
- **Retroceded Partial** — tribes once covered by Public Law 280, either because they were in one of the named (mandatory) states or because their state opted into Public Law 280, but which subsequently were removed from *some but not all* Public Law 280 jurisdiction through the state’s retrocession, or return, of that jurisdiction to the federal government;
- **Non-PL 280** — tribes never covered by Public Law 280.

The status of tribes in the six mandatory states named in Public Law 280 for purposes of criminal jurisdiction is as follows:

- **Alaska (229 tribes — 1 PL 280, 228 PL 280 Limited Territory):** None of the state’s original Public Law 280 jurisdiction has been retroceded, and no tribes were excluded from the statute at the outset. Public Law 280, however, applies only within “Indian country,” and the United States Supreme Court has held that the Alaska Native Claims Settlement Act of 1972 eliminated much of the Indian country in Alaska when it abolished all but one of the reservations. Except for that one reservation, the Metlakatla Indian Community, only scattered Native

town-sites<sup>9</sup> and trust allotments<sup>10</sup> remain as Indian country in Alaska. As a consequence, most Alaska Native village lands are subject to state jurisdiction, not because of Public Law 280 but because they are not Indian country at all. For the Metlakatla Indian Community, Congress has underscored what is true for all tribes under Public Law 280 — that tribal jurisdiction is concurrent or shared. Because Congress has gone out of its way to emphasize Metlakatla’s jurisdiction, and perhaps also because Metlakatla is a relatively isolated island, the BIA has been unusually supportive of that Tribe’s law enforcement and criminal justice systems.

- **California (106 tribes — all PL 280):** None of the state’s original Public Law 280 jurisdiction has been retroceded, and no tribes were excluded from the statute at the outset.
- **Minnesota (13 tribes — 1 excluded, 1 retroceded, 11 PL 280):** One tribe — Red Lake Band of Chippewa — was excluded from Public Law 280 at the outset. Another tribe — Nett Lake Band of Chippewa (Bois Fort Reservation) — was the subject of retrocession in 1975.
- **Nebraska (5 tribes — 2 retroceded, 1 retroceded partial, 2 PL 280, 1 no Indian country):** Three tribes have been the subject of retrocession, the Omaha in 1970, the Winnebago in 1986, and the Santee Sioux in 2006. The Omaha retrocession was partial, leaving under state jurisdiction offenses involving the operation of motor vehicles on public roads or highways within the reservation. Of the remaining two tribes, one is subject to Public Law 280 and the other does not currently have any land base that would constitute Indian country for purposes of Public Law 280.
- **Oregon (9 tribes — 1 excluded, 1 retroceded, 7 PL 280):** One tribe — Warm Springs — was excluded from Public Law 280 at the outset. One other tribe — the Umatilla — was the subject of retrocession in 1981.
- **Wisconsin (11 tribes — 1 excluded, 10 PL 280):** One tribe — Menominee — was excluded from Public law 280 at the outset. Subsequently the Tribe was terminated; when it was later restored to federal recognition, the state retroceded its Public Law 280 jurisdiction.

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| <sup>9</sup> The Bureau of Indian Affairs Realty Office in Juneau, Alaska, has over 4,000 restricted lots on record.

| <sup>10</sup> Many thousands of allotments exist throughout Alaska, each parcel being 160 acres in size. Before allotments were ceased for all but veterans in 1971, approximately 10,000 applications had been filed for over 16,000 parcels. Another 3,250 applications are still pending. Statement of Henri Bisson, State Director, Alaska State Office, Bureau of Land Management, U.S. Department of the Interior before the Senate Energy & Natural Resources Committee, Subcommittee on Public Lands & Forests, Anchorage, Alaska, Field Hearing on S. 1466, Alaska Land Transfer Acceleration Act of 2003 and other bills, August 6, 2003.

The status of tribes in the five states that successfully opted for Public Law 280 jurisdiction<sup>11</sup> is as follows:

- **Florida (2 tribes, all PL 280):** Florida opted for Public Law 280 jurisdiction in 1962. One of the two tribes, the Seminole, has four separate reservations.
- **Idaho (4 tribes, all PL 280 partial):** In 1973, Idaho opted for Public Law 280 jurisdiction as to seven named subject areas only — compulsory school attendance; juvenile delinquency and youth rehabilitation; dependent, neglected, and abused children; insanity and mental illness; public assistance; domestic relations; and the operation and management of motor vehicles upon highways and roads maintained by the county or state. Some of these subject areas, such as domestic relations, do not implicate criminal jurisdiction. In addition, a 1976 decision of the United States Supreme Court indicates that some of these subject areas may not be permissible bases for state jurisdiction under Public Law 280 because they are regulatory in nature rather than criminal (see p. 11-12, *infra*). In the end, the main criminal jurisdiction that Idaho exercises through Public Law 280 is jurisdiction over child abuse, criminal traffic offenses, and acts by juveniles that would be criminal if committed by adults.
- **Montana (7 tribes, 6 non-PL 280, 1 retroceded partial):** In 1963, Montana opted for state jurisdiction over any tribe that consented. Only one tribe consented — the Confederated Salish and Kootenai Tribes. In 1995, the state retroceded jurisdiction over felonies back to the federal government for the Confederated Salish and Kootenai Tribes.
- **Nevada (16 tribes, all retroceded):** Nevada opted for state jurisdiction under Public Law 280 in 1967. In 1975 it retroceded jurisdiction over all but one of the tribes, and in 1988 it retroceded jurisdiction over the remaining tribe.
- **Washington (29 tribes, 4 PL 280, 18 PL 280 partial, 7 retroceded partial):** In 1957, Washington opted for state jurisdiction under Public Law 280 for any tribe that would give its consent. Ten tribes provided resolutions of consent under the terms of this act. In 1963, Washington amended this law to assert state jurisdiction, regardless of tribal consent, over all non-trust lands on reservations, over non-Indians on reservations, and over eight subject areas: compulsory school attendance; public assistance; domestic relations; mental illness; juvenile delinquency; adoptions; dependency matters; and operation of vehicles on public roads. The 1963 amendment also provided that Indians on trust lands could become subject to full, state criminal jurisdiction under Public Law 280 with tribal consent. Some of the eight subject areas, such as domestic relations, do not implicate criminal jurisdiction. In addition, a 1976 decision of the United States Supreme Court indicates that some of these subject areas may not be permissible bases for state jurisdiction under Public Law 280 because they are regulatory in

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<sup>11</sup> In some states, such as Arizona, South Dakota, and North Dakota, assertions of state jurisdiction under Public Law 280 have been invalidated by courts. In one state, Utah, the assertion of state jurisdiction was conditioned on tribal consent, and no tribe has provided its consent.

nature rather than criminal (see pp. 11-12, *infra*). Thus, where Washington's Public Law 280 jurisdiction is limited to these eight subjects, state criminal jurisdiction is confined to child abuse, criminal traffic offenses, and acts by juveniles that would be criminal if committed by adults. Over the years, the state of Washington has retroceded its criminal jurisdiction over seven tribes in the state, including six of those that originally consented to full Public Law 280 jurisdiction. In most instances, however, this retrocession does not affect the state's jurisdiction over the eight compulsory subject areas, such as juvenile offenses. The tribes that have been the subject of retrocession are Tulalip (2000), Chehalis (1989), Quileute (1989), Swinomish (1989), Colville (1987), Suquamish (1972), and Quinault (1969).

With a few exceptions, the pattern of Public Law 280 jurisdiction is not uniform within states, even in the states originally named in the statute. The variations within states regarding control/accountability over law enforcement and criminal justice, as well as the variations in funding patterns for these functions, have made it possible for this research project to carry out some potentially useful comparisons (see Chapter 3 of this Report).

### Legal Limitations on State Criminal Jurisdiction

Public Law 280 incorporated some limitations on the reach of state jurisdiction. A thorough airing of the complex legal questions spawned by these limitations is beyond the domain of this Report.<sup>12</sup> However, insofar as those complexities may bear on the quality of law enforcement and criminal justice in Public Law 280 states, they warrant mention and brief description. For example, these limitations dictate which government — state, tribal, or federal — has control over and financial responsibility for criminal matters in Indian country. Furthermore, because of the withdrawal of federal responsibility and most federal support for tribal law enforcement and criminal justice in states affected by Public Law 280, gaps in state law enforcement authority raise the specter of potentially dangerous jurisdictional gaps and vacuums. The legal uncertainties and jurisdictional gaps created by these limitations have sometimes generated conflict between tribal and state authorities, and sometimes have provided the incentive for cooperative measures. The most relevant legal issues are:

- **Only statewide, not local, criminal laws are enforceable.** According to the federal courts, Public Law 280 authorizes enforcement of statewide criminal laws only, not county or city laws. Thus, matters that may typically be within the purview of local law, such as dog control, fall outside Public Law 280's grant of

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<sup>12</sup> For a more complete discussion of these questions, see Carole Goldberg-Ambrose and Timothy Carr Seward, *Planting Tail Feathers: Tribal Survival and Public Law 280* (UCLA American Indian Studies Center 1997); Nell Newton et al., *Cohen's Handbook of Federal Indian Law* § 6.04 (LexisNexis, 2005 ed.).

state jurisdiction. County and local law enforcement officers, however, are typically the agents empowered to enforce statewide criminal laws.

- **Only state criminal laws, not regulatory laws, are enforceable.** While this limitation is not expressly stated in Public Law 280, the United States Supreme Court has issued several opinions articulating this restraint on the exercise of state power. Determining which state laws are criminal and which ones regulatory has not been easy for courts or police, however. Some of the areas where confusion has been greatest involve traffic offenses, fireworks, and illegal dumping.
- **States may not use their Public Law 280 criminal jurisdiction to alter the status of trust lands or to restrict federally protected hunting and fishing rights.** These restrictions on states' Public Law 280 jurisdiction derive from express exceptions in the statute itself. While the most obvious implication for criminal jurisdiction is the restriction on enforcement of some state criminal laws relating to hunting and fishing, other significant consequences are that states have no jurisdiction to effect evictions from trust property as a means of excluding disruptive individuals or to penalize activities that pollute trust land, such as illegal dumping.

### Coexistence of State and Tribal Law Enforcement and Criminal Justice

As noted above, Public Law 280 does not supplant tribal jurisdiction. In practice, however, the frequent denial of federal funding support for tribal law enforcement and criminal justice in Public Law 280 states has retarded the development of those agencies as compared with similar institutions in non-Public Law 280, excluded, or retroceded tribes. With the arrival of tribal gaming in the 1990s, a growing number of tribes in Public Law 280 states have been using their own funds to establish tribal police forces. New sources of support from the U.S. Department of Justice (US DOJ), such as COPS grants for community-oriented policing, have also enabled tribes in Public Law 280 states to create their own forces. While most of these tribes use their officers to enforce state rather than tribal criminal codes, the emergence of tribal police on reservations in Public Law 280 states represents a significant potential increase in the resources available for reservation law enforcement and opens the possibility of tribal control and accountability. The growing prevalence of tribal courts also has made it possible for PL 280 tribes that are not currently exercising criminal jurisdiction to envision assuming that responsibility. This growth in tribal law enforcement and criminal justice capability also raises coordination issues where state and tribal authority overlap.

We have attempted to measure the prevalence of tribal law enforcement agencies in Public Law 280 states. According to the Bureau of Justice Statistics (BJS) report, *Tribal Law Enforcement 2000*, there were 171 tribal law enforcement agencies in operation in that year. Of the top 20 agencies ranked by number of sworn personnel, only three were in Public Law 280 states. Two of these tribal agencies were in Florida, an optional state. The third tribe was in Washington, another optional state, and was subject



only to partial state jurisdiction under Public Law 280. A more complete account of the presence of tribal law enforcement agencies where Public Law 280 applies can be gleaned by combining reports from the Bureau of Justice Statistics' 1996 Law Enforcement Management and Administration Statistics (LEMAS) Directory and BIA Law Enforcement Program Report Surveys from 1997 to 1999. Those reports show a total of 167 tribal law enforcement agencies nationwide, close to the *Law Enforcement 2000* figure of 171. Of those agencies, 29 are connected with tribes that are subject to Public Law 280 because of their location in mandatory Public Law 280 states: 10 in Alaska, 4 in California, 1 in Nebraska, 3 in Oregon, 5 in Minnesota, and 7 in Wisconsin. These numbers may understate the prevalence of tribal police agencies in the mandatory states as of 2004, particularly in Alaska and California. US DOJ funding under the COPS program from 2000 to 2002 shows 16 Alaska tribes or Native villages, 7 California tribes<sup>13</sup> and 1 Nebraska tribe receiving such grants that are not included in the BJS/BIA lists from a few years earlier. Thus, a more accurate current total for tribal police departments where state jurisdiction operates in mandatory Public Law 280 states would be 26 in Alaska, 11 in California, 2 in Nebraska, 3 in Oregon, 5 in Minnesota, and 7 in Wisconsin, and a more accurate total figure for tribal police departments would be 191, adding the 16 tribes from Alaska, the 7 tribes from California, and the 1 tribe from Nebraska to the 167 figure.

A more recent survey, the Census of Tribal Justice Agencies in Indian Country, 2002, published by the Bureau of Justice Statistics, provides another measure of the prevalence of policing agencies in PL 280 jurisdictions. Although the BJS document improperly labeled some tribes as subject to PL 280, the raw data enabled us to compute the percentage of reporting tribal police agencies from PL 280 jurisdictions. Of the 165 responding tribes with at least one sworn officer not including Alaska, 23, or 14%, were from mandatory PL 280 jurisdictions and had not been excluded or retroceded. That included 7 from California, 5 from Minnesota, 1 from Nebraska, 4 from Oregon, and 6 from Wisconsin. Another 22, or 13%, were from optional PL 280 jurisdictions and had not retroceded, including 1 from Florida, 18 from Washington, and 3 from Idaho. Washington and Idaho, notably, are only partial PL 280 jurisdictions.

Most of the policing agencies in PL 280 tribes date from the 1980s and 1990s, and the full potential for overlapping tribal and state police under PL 280 has yet to be realized.<sup>14</sup> Law enforcement agencies are still not as prevalent in PL 280 states as elsewhere in Indian country. Focusing on the lower 48 states, we can arrive at a figure for the representation of tribes currently subject to state jurisdiction in mandatory Public

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<sup>13</sup> The California Tribal Police Chief's Association, formed in 2003, had nine members as of the fall, 2004. Christine Mahr, "Judge OKs Tribal Suit Venue Change," *The Desert Sun*, October 6, 2004, p. 4B.

<sup>14</sup> A number of PL 280 tribes in mandatory states are currently planning to establish police departments. See, e.g., Yvette McGeshick, "The Tribal Law Enforcement Committee," *Potawatomi Traveling Times*, April 1, 2003, (describing Forest County Potawatomi (WI) Tribe's plans to establish a tribal police department within the next 18-24 months).

Law 280 states among tribal police departments nationwide. The PL 280 tribes in mandatory states, apart from Alaska, account for 40% of all tribes in the lower 48 states, yet they represent only 14-16% of all tribal police departments. Putting it another way, only 21% of PL 280 tribes in mandatory states outside Alaska have police departments. In contrast, 74% of all remaining tribes in the lower 48 states, including those in the optional Public Law 280 states, have tribal police departments. The PL 280 tribes in optional states, with 78% having tribal police departments,<sup>15</sup> are far closer to the non-PL 280 tribes in terms of having tribal law enforcement agencies because most of the tribes in the optional states are not fully subject to state criminal jurisdiction (see pp. 8-11, *supra*). Only 11.5% of all Alaska Native villages have tribal police departments; however, the limited nature of their criminal jurisdiction is likely a factor in this lower level of development.

To keep these figures and comparisons in perspective, however, it's important to note that fully one-half of all California reservations, as well as a few in Oregon and Minnesota, have total populations under 100, making them unlikely candidates for police agencies. Some of these tribes do operate police departments nonetheless, because their gaming facilities draw in large numbers of outside customers. And others might be able to mount police departments in collaboration with nearby tribes. Even excluding all reservations with populations under 100 from the calculations, however, it's still true that tribes in mandatory PL 280 states are underrepresented among tribal police forces. Instead of 40% of all tribes, they would be 30% of tribes with reservation populations over 100; but these PL 280 tribes in mandatory states apart from Alaska still mount only 19% of all tribal police departments for reservations with populations over 100. Stated another way, 35% of all PL 280 tribes with reservation populations greater than 100 in mandatory states other than Alaska have tribal police departments. By comparison, 80% of all other tribes in the lower 48 states with reservation populations greater than 100 have tribal police departments. Thus, while overlapping authority between tribal and state or local law enforcement is significant in the mandatory PL 280 states, there is considerable room for growth, and the trend appears to be in that direction.

Criminal justice capability among PL 280 tribes has grown more slowly than law enforcement, but is on the rise as well. According to 2001 BIA data, all 10 Wisconsin PL 280 tribes have tribal courts; all 7 Oregon PL 280 tribes have tribal courts; all 9 Minnesota PL 280 tribes have tribal courts; the sole remaining PL 280 tribe in Nebraska has a tribal court; and 4 of 107 tribes in California have tribal courts, along with 9 other California tribes that have formed an intertribal court. Very few of these courts, among them the Siletz Tribe of Oregon, the Metlakatla Indian Community in Alaska, and the Mille Lacs Band of Chippewa in Minnesota, hear adult criminal matters — and when they do, it's common for the courts to impose only monetary penalties or restitution,

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<sup>15</sup> These tribes include 2 in Florida, 3 in Idaho, 1 in Montana, and 22 in Washington. Interestingly, the Washington forces include agencies in the four tribes that still have full Public Law 280 jurisdiction.

because these tribes rarely have detention facilities. Traffic, hunting and fishing, liquor control, environmental control, and juvenile jurisdiction are more common, as in the case of the Hoopa Valley Tribe of California; however, even these kinds of measures are not universal. Sometimes courts of PL 280 tribes in mandatory states, such as the Coos, Lower Umpqua, and Siuslaw Tribe of Oregon, are authorized to exercise criminal jurisdiction when enforcing the types of ordinances or codes listed above.

Federal funding through the U.S. Department of Justice is making court development projects more common in the mandatory Public Law 280 states, signaling the possibility of greater overlap with respect to criminal jurisdiction, as well. Such overlap is already a reality in juvenile, traffic, and numerous regulatory areas. Managing this overlapping law enforcement authority and criminal jurisdiction in Public Law 280 states is a substantial challenge and opportunity, with significant implications for issues of control/accountability and resources for law enforcement and criminal justice in those states. The experiences of particular PL 280 tribes and their local counties are detailed in Chapter 12 of this Report. Here, we highlight some of the legal issues that frame these experiences.

First, the double jeopardy protections of the United States Constitution and the Indian Civil Rights Act, which prevent multiple prosecutions for the same offense, do not apply when those prosecutions are carried out by separate sovereigns. Thus, prosecutions of the same individual for the same offense by both tribe and state are permissible under federal law. The laws of several of the mandatory Public Law 280 states specifically deny their governments the power to prosecute where another government has prosecuted that individual for the same crime, however. Section 609.045 of Minnesota Statutes Annotated states that if an act or omission involving the same facts and legal elements has already been the subject of a conviction or acquittal by “another jurisdiction,” prosecution under Minnesota law is barred. Similar laws exist in Alaska and<sup>16</sup> Wisconsin,<sup>17</sup> but not in Nevada and Oregon. Moreover, the Alaska Court of Appeals has held that its double jeopardy prohibition precludes prosecution in state court after prosecution for the same crime in tribal court.<sup>18</sup> Should Minnesota and Wisconsin courts follow suit in interpreting their state double jeopardy prohibitions, tribal criminal

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<sup>16</sup> Alas. Stat. § 12.20.010 (prohibiting successive prosecutions where the individual has already been convicted or acquitted for the same offense by “any State, county, or Territory.”)

<sup>17</sup> Wis. Law. Ann. § 939.71 (referring to a conviction or acquittal for the same offense under the laws of “another jurisdiction”). Neither Nebraska nor Oregon, the remaining two mandatory Public Law 280 states, has a statute rejecting the dual sovereignty exception to the constitutional protection against double jeopardy. California’s law is more ambiguous, referring to another “state or territory.” Cal. Penal Code § 656. Washington, an optional Public Law 280 state, has a statute denying successive prosecutions where the defendant has already been convicted or acquitted for the same offense by “another state or country.” Rev. Code Wash. § 10.43.040. In *State v. Moses*, 45 Wn.2d 370 (2002), the Washington Supreme Court interpreted this language as not applying to prior acquittals or convictions in tribal court.

<sup>18</sup> See *Booth v. State*, 903 P.2d 1079 (Ct. App. Alaska 1995).

jurisdiction could conceivably supplant state jurisdiction under Public Law 280 there. Recall, however, that few tribal courts in the mandatory Public Law 280 states actually exercise adult criminal jurisdiction at this time. So long as they fail to do so, this potential for increased tribal control over criminal justice will remain unrealized.

A second legal issue framing the exercise of overlapping tribal/state jurisdiction in Public Law 280 states is the absence of a clear federal rule of priority, supremacy, or coordination that structures relations between the coexisting state and tribal authorities. In theory, at least, a PL 280 tribe could penalize an individual for engaging in acts that state law compels, and vice versa. Thus, for example, tribal law could require tribal police to deploy light bars on their vehicles, and state law could outlaw use of those same light bars.<sup>19</sup> In contrast, where federal and state jurisdiction are shared (for example, in the case of offenses such as racketeering that involve interstate commerce), the Supremacy Clause of the United States Constitution provides that federal law prevails over conflicting state law. If the two legal regimes are not in conflict, the Supremacy Clause also provides that federal law may “occupy the field,” which means that Congress can bar states from enacting or enforcing any laws addressing the same subject. Public Law 280 does require states to give effect to tribal law where it’s not in conflict with state law. But if there is a conflict, both tribe and state can presumably follow their own law. Where two states have overlapping jurisdiction, the requirement of full faith and credit in the United States Constitution and in certain federal statutes requires each government to recognize the laws and judgments of the other. Yet it’s unclear whether the federal law of full faith and credit encompasses Indian nations as well as states and the federal government.<sup>20</sup> Only in areas specifically addressed by federal statutes, such as domestic violence protection orders, is there a clear mandate that state courts enforce tribal orders.<sup>21</sup>

Arguably, the need for some kind of priority rule to ease potential conflict is much greater in the case of tribal-state overlaps than in the case of federal-state or state-state overlaps. Where different governments share the same laws and values, the potential for conflict is eased. Yet the differences between Indian nations’ and states’ legal systems are far greater than the differences between the federal and state systems.

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<sup>19</sup> This possibility is not hypothetical. See *Cabazon Band of Mission Indians v. Smith*, No. 02-56943 (9<sup>th</sup> Cir. Nov. 3, 2004) (finding California’s prohibition on light bars unenforceable against the Cabazon Tribal Police). The conflict between the Cabazon Band and Riverside County was in litigation for seven years before the Ninth Circuit decided the case on the basis of general principles of federal Indian law.

<sup>20</sup> See Nell Newton et al., *Cohen’s Handbook of Federal Indian Law* § 7.07 (LexisNexis, 2005 ed.).

<sup>21</sup> See 18 U.S.C. § 2265 (states to give full faith and credit to tribal domestic violence protection orders). Some individual states have passed laws mandating enforcement of tribal court judgments, although these laws often limit the mandate to judgments issued by tribes within the state and/or tribes that afford reciprocal enforcement to state court judgments. See, e.g., S.D. Codified Laws § 1-1-25(2)(b); Wis. Stat. § 806.245.

The absence of a federally prescribed priority or coordination rule as between Public Law 280 states and the tribes subject to their jurisdiction creates an incentive for tribal and state governments to establish cooperative arrangements. This incentive grows stronger as the capability and exercise of tribal law enforcement and criminal justice authority expands, increasing the scope of overlapping jurisdiction. These cooperative efforts in turn have bearing on issues of control/accountability and resources for law enforcement and criminal justice in Public Law 280 states, explored in Chapters 11 and 12.

## Chapter 2

### REVIEW OF THE LITERATURE

Although Public Law 280 has allocated criminal jurisdiction on reservations to some states for more than fifty years, researchers and government sources have provided surprisingly little information about its effectiveness in crime control and the degree of tribal community satisfaction with its operation. There have been no systematic efforts to compare law enforcement and criminal justice on reservations subject to Public Law 280 with their counterparts on non-Public Law 280 reservations. Furthermore, there have been no attempts to exploit opportunities for research design and comparison presented by the fact that some tribes in mandatory Public Law 280 states were initially excluded from application of the Act; some reservations straddle Public Law 280 and non-Public Law 280 states; and some reservations initially covered under mandatory or optional provisions of Public Law 280 have subsequently been returned to federal jurisdiction through the process of retrocession.

Anecdotal information in congressional testimony, government reports, and journalistic accounts suggest a generally negative view of state jurisdiction stemming from tribal communities subject to Public Law 280.<sup>1</sup> Tribal dissatisfaction with state criminal authority can also be inferred from the fact that no tribe has consented to state jurisdiction under Public Law 280 since amendment of the law in 1968 to require such prior consent. More than fifty years after the enactment of that law, however, we have very little systematic understanding of Public Law 280's affect crime rates, resources allocated to law enforcement and criminal justice, responsiveness of law enforcement to community priorities, and the suitability of state jurisdiction to particular cultural, legal, and logistical challenges presented on reservations. We also lack systematic knowledge about the circumstances that create greater or lesser tribal community satisfaction with state jurisdiction, and the circumstances that lead to state retrocession of Public Law 280 jurisdiction back to the federal government. The fact that no federal or state agencies collect law enforcement and crime data specifically for reservations affected by Public Law 280 doubtless has contributed to this serious informational void.

This review of the literature canvasses the very limited government and research data focusing specifically on Public Law 280. In addition, however, we look to general research findings regarding the determinants or preconditions for successful law enforcement on reservations, whether those reservations are subject to state or federal criminal jurisdiction. We attempt, then, to derive hypotheses about why state jurisdiction in Indian country in particular may succeed or fail.

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<sup>1</sup> See Chapter 1.

## Empirical Studies of Law Enforcement and Criminal Justice Under Public Law 280

Public Law 280's affect on law enforcement and criminal justice in Indian country has not been the subject of extensive empirical research. Indeed, there are only two studies of major significance. In 1974, University of Washington Professor Ralph Johnson interviewed 250 tribal members from twenty Washington State tribes, as well as federal, state, and local judicial and law enforcement personnel to document perceptions of Washington State Indians concerning state jurisdiction.<sup>2</sup> Johnson found half of the Indians surveyed felt state, county, and local police treated them poorly or indifferently, and that interviewees were most concerned with juvenile matters followed by violent crimes, traffic laws, narcotics, trespass, and theft. It is difficult to generalize about Public Law 280 from this study, however, because Washington State has a distinctive and unusually complex form of criminal jurisdiction on reservations located in that state.<sup>3</sup>

The other significant study, conducted in 1995, similarly focused on the effects of Public Law 280 in an individual state.<sup>4</sup> Professors Goldberg and Champagne sent a survey, part of which addressed tribal satisfaction with state law enforcement, to all 103 federally recognized California tribes.<sup>5</sup> Of the nineteen tribes that responded, seventeen complained of serious gaps in protection from county law enforcement, and one-third complained that county officials fail to respect tribal culture and sovereignty. Problems with drugs and violent crimes received frequent mention. Additionally, Professors Goldberg and Champagne carried out several intensive case studies to determine the day-to-day operation of Public Law 280 in California. They concluded from the case studies that Public Law 280 caused lawless behavior because of jurisdictional vacuums and abusive exercise of state power. In particular, limited and uncertain state jurisdiction under Public Law 280, coupled with the absence of tribal justice systems and law

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<sup>2</sup> National American Indian Court Judges Association, *Justice and the American Indian*, Volume 1: The Impact of Public Law 280 upon the Administration of Justice on Indian Reservations (1974).

<sup>3</sup> See Chapter 1; *Washington v. Confederated Bands and Tribes of Yakima Indian Nation*, 439 U.S. 43 (1979). Significantly, Washington later retroceded criminal jurisdiction over several of the tribes included in that study.

<sup>4</sup> Policing of Native communities in Alaska, which is one of the mandatory Public Law 280 states, is largely conducted by state-appointed Village Public Service Officers (VPSOs). Although this form of policing has received some scholarly attention, even the leading researcher on this topic has acknowledged that "[n]o recent evaluation or description of the program as a whole exists. We know little of how well it works, how VPSOs perform their job and how their communities react and interact with them, or whether the aspirations and goals set by the originators of the program are being achieved." Otwin Marenin, "Policing the Last Frontier," in Marianne O. Nielsen & Robert A. Silverman, eds., *Native Americans, Crime, and Justice* (Westview Press, 1996). Furthermore, nearly all Alaska Native communities were placed outside the scope of Public Law 280 in 1998 by the decision of the United States Supreme Court in *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998), which eliminated most of the Indian country in the state. See discussion at note 87, *infra*.

<sup>5</sup> Carole Goldberg & Duane Champagne, "A Second Century of Dishonor: Federal Inequities and California Tribes" (Report prepared for the Advisory Council on California Indian Policy, 1996), available at <http://www.aisc.ucla.edu/ca/Tribes.htm> (last visited August 18, 2007).

enforcement due to lack of federal funding, created situations where there was no legal remedy for problems such as dumping of noxious wastes on tribal land and unauthorized occupation of tribal rental housing. Because of these legal vacuums, tribal members sometimes engaged in self-help that erupted, or threatened to erupt, into violence.

In a more general study of tribal-state relations, Ashley and Hubbard provide brief case studies of law enforcement on several reservations subject to Public Law 280.<sup>6</sup> These reports suggest greater tribal satisfaction with county law enforcement where the tribe and the county are able to establish cooperative arrangements to share authority and resources, and the county is willing to recognize the tribe's governmental powers within its own territory.

One way to understand law enforcement and criminal justice under Public Law 280 is by examining the experience of tribes that have been subject to state jurisdiction and later returned to federal jurisdiction as a result of retrocession. As indicated in Chapter 1, only states may initiate this process; but, by and large, retrocession has only occurred where Indian nations have taken the initiative in lobbying state government.<sup>7</sup> Both the conditions that led tribes to seek retrocession in the first place, and the comparative effectiveness of law enforcement and criminal justice before and after retrocession, could illuminate the impact of Public Law 280 on reservation communities. However, there has been little systematic research on the causes and effects of retrocession. Only a few individual tribal case studies exist.<sup>8</sup> These studies indicate that tribes that mobilized to effect retrocession were troubled by lack of communication between tribal and county officials; failure of the county to provide for the cultural and rehabilitative needs of Indian arrestees; tribal concerns about disparate and retaliatory treatment of Indians with respect to arrests, sentencing, and provision of public defender services; and lack of cooperation or even recognition of tribal law enforcement by county

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<sup>6</sup> Jeffrey S. Ashley and Secody J. Hubbard, *Negotiated Sovereignty: Working to Improve Tribal-State Relations* (Praeger 2004). The tribes studied are the Campo Band of Kumeyyay Indians (California), the Puyallup Tribe (Washington), and the Confederated Tribes of the Salish-Kootenai Reservation (Montana, retroceded).

<sup>7</sup> In a few cases, state concerns about the cost of reservation law enforcement drove the retrocession process. For example, the state of Nebraska made overtures to the Omaha and Winnebago Tribes in 1969 regarding retrocession, mainly because of a lack of state financial assistance to the county, which had acquired large additional costs for reservation law enforcement without any associated property tax base. See *Omaha Tribe of Nebraska v. Walthill*, 334 F. Supp. 823, 827-28 (D. Neb. 1971).

<sup>8</sup> See, e.g., Charles F. Wilkinson, "Civil Liberties Guarantees When Indian Tribes Act As Majority Societies: The Case of the Winnebago Retrocession," 21 Creighton L. Rev. 773 (1987); Stewart Wakeling, Miriam Jorgensen, S. Michaelson, & Manley Begay, *Policing on American Indian Reservations* 35-36 (National Institute of Justice, 2001) (brief study of retrocession at the Salish-Kootenai Reservation); Bonnie Bozarth, "Public Law 280 and the Flathead Experience," 39 *Journal of the West* 46 (2000); Ashley and Hubbard, *supra* note 6 at 84-86 (brief study of retrocession at the Salish-Kootenai Reservation); Mark Scherer, *Imperfect Victories: The Legal Tenacity of the Omaha Tribe, 1945-1995*, 25-45 (Univ. of Neb. Press 1999) (discussing events leading up to and surrounding Nebraska's decision to retrocede jurisdiction over the Omaha Reservation).



authorities.<sup>9</sup> However, there may be some danger in generalizing about Public Law 280 from the concerns of Indian nations that were so troubled by state jurisdiction that they went to the trouble and expense of agitating for retrocession.

Accounts of tribal law enforcement that compare pre- and post-retrocession experience may be a more illuminating research source. Wakeling et al. suggest that, on the one hand, retrocession, is likely to result in greater accountability and satisfaction with police officers. However, it can also put a greater strain on already deficient resources. For instance, in a study of the Confederated Salish and Kootenai Tribal Police Department, they found that Montana's 1994 retrocession ceding exclusive jurisdiction over misdemeanor crimes committed by Indians dramatically increased the tribal department's work load, with calls nearly doubling.<sup>10</sup> Nonetheless, Wakeling et al. concluded that "the retrocession agreement continues to challenge the department to move beyond reliance on rapid-response policing to rethinking its strategy and role in the community."<sup>11</sup> Ashley and Hubbard's research focusing on the same Tribe led them to an even more positive assessment of retrocession. They describe retrocession as a "win-win" for the Tribe and the state, because "[t]he state was able to eliminate a number of minor criminals from their prisons and save money. The tribe was able to regain some of its inherent sovereignty and provide more viable options for some of its members."<sup>12</sup> The Tribe has made cross-deputization agreements with most of the surrounding state and local authorities, establishing protocols for arrests of tribal members and non-Indians; and the tribal and county prosecutors cooperate in allocating responsibility for felonies, which are still under concurrent jurisdiction.

### Crime in Indian Country

Crime data for reservations covered by Public Law 280 do not exist.<sup>13</sup> Public Law 280 states do not collect crime data specifically for Indian country, and the federal government does not request such data, either through the Department of the Interior, FBI Criminal Justice Information Services, or the Bureau of Justice Statistics. Goldberg and Singleton did a pilot study for two counties in California, seeking to determine whether

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<sup>9</sup> See, e.g., Milo Colton, "Self-Determination and the American Indian: A Case Study," 4 Scholar 1, 26-27 (2001) (Winnebago); Mark. R. Scherer, *Imperfect Victories: The Legal Tenacity of the Omaha Tribe, 1945-1995*, 26-30 (Lincoln: Univ. of Neb. Press 1999), (Omaha); Bonnie Bozarth, "Public Law 280 and the Flathead Experience," 39 Journal of the West 46, 49 (2000); Ashley and Hubbard, *supra* note 6, at 85 (Salish-Kootenai).

<sup>10</sup> See Wakeling, *supra* note 8, at 35.

<sup>11</sup> *Id.*

<sup>12</sup> Ashley and Hubbard, *supra* note 6, at 85.

<sup>13</sup> Carole Goldberg and Heather Singleton, *Public Law 280 and Law Enforcement in Indian Country-- Research Priorities* (National Institute of Justice, Research in Brief, 2005), available at <http://www.ncjrs.gov/pdffiles1/nij/209839.pdf> (last visited October 22, 2007).

county sheriffs would be willing and able to supply such data. It appeared that gathering the data was burdensome for county staff, but not impossible. Furthermore, the preliminary data from reservations in one county suggests higher crime rates than other parts of the county and state.<sup>14</sup>

Crime data for Indian country generally are problematic due to underreporting of crime. Initial underreporting by crime victims is largely due to conditions unique to Indian country, such as a long-standing distrust of law enforcement authorities, geographic isolation causing heightened fear of retaliation by victims of family violence, and the perception that police intervention is not legitimate or effective in communities that traditionally relied on other forms of dispute resolution.<sup>15</sup> Furthermore, police departments in Indian country do not systematically collect crime data due to understaffing, a lack of data collection and analysis systems, and limited resources.<sup>16</sup> Moreover, tribal departments lack incentives to report the data that are collected to federal agencies, with only 32% of non-Public Law 280 tribes submitting official crime reports to the BIA in 1996.<sup>17</sup>

Much of the discussion of Indian country crime gets confused with national data about criminal activity and crime victimization of Indians identified by race.<sup>18</sup> Those data have no necessary correspondence to crime rates within Indian country. Furthermore, researchers eager to make claims about reservation crime often resort to questionable indirect measures, such as victimization rates for Indians within counties in which reservations are located in whole or in part,<sup>19</sup> even though some of those counties (for example, San Diego, California) are home to many urban Indians. Nonetheless, some research findings are available regarding crime rates on those reservations not subject to Public Law 280.

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<sup>14</sup> *Id.*

<sup>15</sup> See Wakeling, *supra* note 8, at 13-14. Very recently, researchers have begun conducting crime victimization surveys on individual reservations. See, e.g., Julie C. Abril, Results from the Southern Ute Indian Community Safety Survey (December 25, 2007), available at <http://www.ncjrs.gov/pdffiles1/bjs/grants/212237.pdf> (last visited October 22, 2007).

<sup>16</sup> *Id.* at 14-15.

<sup>17</sup> *Id.*; Executive Committee for Indian Country Law Enforcement Improvements, Final Report to the Attorney General and the Secretary of the Interior, n. 11 (1997). An earlier discussion of problems with crime reporting is Sidney Harring, "Native American Crime in the United States," in Laurence French, ed., *Indians and Criminal Justice* (Allanheld, Osmun 1982).

<sup>18</sup> A good example of this confusion is Troy L. Armstrong, Michael H. Guilfoyle, and Ada Pecos Melton, "Native American Delinquency: An Overview of Prevalence, Causes, and Correlates," in Marianne O. Nielsen & Robert A. Silverman, eds., *Native Americans, Crime, and Justice* 76-82 (Westview Press, 1996). In reviewing the literature on Native American delinquency, the authors mix together reservation-based data with national data identifying Indian juvenile offenders by race or ethnicity.

<sup>19</sup> See, e.g., Ronet Bachman, *Death & Violence on the Reservation: Homicide, Family Violence, and Suicide in American Indian Populations* (Auburn House 1992).

According to a 1997 Report of the Executive Committee for Indian Country Law Enforcement Improvements, co-sponsored by the U.S. Departments of Justice and Interior, a reported crime in Indian country outside of Public Law 280 jurisdictions is twice as likely to be violent as compared to a crime reported elsewhere in the United States.<sup>20</sup> The Executive Committee for Indian Country Law Enforcement Improvements found that in contrast to a decline in violent crime nationwide from 1992 to 1996, homicide rates for non-Public Law 280 Indian country rose sharply, an increase paralleled by other violent crimes such as gang violence, domestic abuse, and child abuse.<sup>21</sup> However, in an analysis of 1992 crime data from 200 non-Public Law 280 BIA and tribal police departments, Ken Peak found that except for murder, reported Part I offenses (homicide, rape, robbery, aggravated assault, burglary, larceny, and arson) per 100,000 population were lower than the national average.<sup>22</sup> Rates of burglary and motor vehicle theft were significantly lower in Indian country than in equivalent rural areas, although robbery was reported at a much greater rate. At the same time, some Part II offenses, such as disorderly conduct, drunkenness, vandalism, and DUI, were drastically higher for Indian country. Although many reservation residents live in isolated rural areas, the majority of reservation crime takes place in semi-urban townships or villages where a significant number of residents live.<sup>23</sup> Furthermore, the reservation populace perceives crime as a major problem as evidenced by 12 out of 17 chiefs of tribal police departments interviewed by the Community Policing Consortium rating community fear of crime as medium or high.<sup>24</sup>

Despite the arguable increase in violent crime, the crimes that occupy the largest percentage of police officers' time in Indian Country, outside of Public Law 280 jurisdictions, are alcohol related. The research study conducted by Wakeling and others involved brief visits to several tribal police departments, an in-depth study of four tribal police departments, and a survey, part I of which was sent to 200 police departments in Indian country (including 66 large tribes with police departments), and part II of which was sent only to those 66 large tribes' police departments; 46 out of 66 large tribes responded to part I and 39 responded to part II.<sup>25</sup> Wakeling et al. found that alcohol-

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<sup>20</sup> Executive Committee, *supra* note 17, at 6. The Report does not provide a source for this statement.

<sup>21</sup> *Id.* at 7-8.

<sup>22</sup> Ken Peak, "Policing and Crime in Indian Country," 10 *Journal of Contemporary Criminal Justice* No. 2 (1994).

<sup>23</sup> Wakeling, *supra* note 8, at 18.

<sup>24</sup> Community Policing Consortium. To Protect and Serve: An Overview of Community Policing on Indian Reservations, available at [http://www.communitypolicing.org/pf/am\\_ind/ch2.html](http://www.communitypolicing.org/pf/am_ind/ch2.html) (last visited April 5, 2005) at chapter 2. This study does not reveal whether the police chiefs who responded to the survey were from tribes subject to state jurisdiction under Public Law 280.

<sup>25</sup> Wakeling, *supra* note 8, at 2-3.

related crimes constituted the leading category of calls for service, incident reports, and arrests.<sup>26</sup> Interviewed officers, administrators, and tribal leaders routinely cited alcohol abuse as the single biggest challenge facing their departments and communities, with one commanding officer estimating that some form of alcohol abuse was responsible for 90% of his department's calls.

The Wakeling study also concluded that the workload of police departments in non-Public Law 280 Indian country is increasing at a substantial rate. For example from 1994 to 1996 the police departments of the four tribes that were studied in depth saw average annual increases above 20% for incident reports and almost 30% for arrests while the number of officers remained relatively constant.<sup>27</sup> Recent statistics indicate that this trend has continued with the Indian country jail population, excluding Public Law 280 jurisdictions, rising by 8% from 2000 to 2001 with a 34% increase for confinement as a result of driving under the influence of alcohol.<sup>28</sup> However it is uncertain that the increased workload is the result of rising crime rates, as reservation communities are demanding more frequent and rapid responses to a broad range of problems; and greater community confidence in police and criminal justice responses may lead to increased crime reporting.<sup>29</sup>

#### Funding for Law Enforcement In Indian Country

Although federal funding for Indian programs has increased significantly over the last 10 years, this has “not been nearly enough to compensate for a decline in spending power, which had been evident for decades before that, nor to overcome a long and sad history of neglect and discrimination.”<sup>30</sup> The Congressional Research Service found that, between 1975 and 2000, funding for BIA and Office of the Special Trustee declined by \$6 million yearly when adjusted for inflation.<sup>31</sup> Similarly while the Department of Justice increased funding for tribal law enforcement by almost 85% between 1998 and

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<sup>26</sup> *Id.* at 19.

<sup>27</sup> *Id.* at 15.

<sup>28</sup> Bureau of Justice Statistics. *Jails in Indian Country*, 2001, 2 (2002).

<sup>29</sup> Wakeling, *supra* note 8, at 18. See also Douglas M. Skoog, “Taking Control: Native Self-Government and Native Policing” in Marianne O. Nielsen & Robert A. Silverman, eds., *Native Americans, Crime, and Justice* 130 (Westview Press, 1996) (suggesting that the introduction of community-controlled policing on reservations may cause an increase in the number of crimes detected and the number of arrests made because of increased community confidence in the police).

<sup>30</sup> United States Commission on Civil Rights. *A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country*, ix (2003).

<sup>31</sup> *Id.*

2003, “the amount allocated was so small to begin with that its proportion to the department’s total budget hardly changed.”<sup>32</sup>

Most but not all studies of Indian country policing suggest that significantly fewer resources are devoted to Indian country law enforcement than for policing of off-reservation jurisdictions. The Report of the (Joint Justice and Interior Departments’) Executive Committee for Indian Country Law Enforcement Improvements states that there is a “chronic shortage of personnel” in tribal police agencies, estimating that the overall police-population ration in Indian country is half the ratio for non-Indian communities.<sup>33</sup> Wakeling et al.’s survey of Indian country police departments, which excluded tribes subject to state jurisdiction under Public Law 280,<sup>34</sup> indicates that tribal communities have only 55 to 80% of the policing resources available to relevant non-Indian communities.<sup>35</sup> Tribes spend an average of \$83 on public safety per resident compared to \$104 for comparable communities, have operating expenditures of \$36,000 per officer compared with \$43,400 elsewhere, and have a ratio of 1.3 officers per 1,000 residents compared to 1.8-2.0 for comparable rural areas.<sup>36</sup> Wakeling further suggests that the actual resource differential is much greater than these reported differences because, given the high crime rate in Indian country, a more suitable comparison is to large urban areas with high crime rates. However, Luna-Firebaugh and Walker’s survey of tribal police agencies suggests more satisfactory levels of funding and other support. Of 31 agencies that provided them with usable data on reservation population,<sup>37</sup> two-thirds had police-population ratios either higher or considerably higher than equivalent non-Indian communities.<sup>38</sup> Luna-Firebaugh and Walker acknowledge that these ratios do not take into account the geographic size of the community or the availability of resources, such as 911 systems and police vehicles, that may determine whether officers can provide effective services to the community.

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<sup>32</sup> *Id.* at xi.

<sup>33</sup> Executive Committee for Indian Country Law Enforcement Improvements, *supra* note 17, at 6.

<sup>34</sup> Wakeling, *supra* note 8, at 3 n.3.

<sup>35</sup> *Id.* at 27.

<sup>36</sup> *Id.* at 26-27. A recent “Gap Analysis” undertaken by the BIA for non-Public Law 280 reservations indicates that fewer than half of BIA-funded law enforcement agencies are staffed at the level of the national average of 2.6 officers per 100,000 inhabitants in non-metropolitan communities. Statement of Patrick Ragsdale, Director of the BIA, before the Senate Committee on Indian Affairs, Oversight Hearing on Indian Country Law Enforcement, May 17, 2007, available at <http://indian.senate.gov/public/ files/ Ragsdale051707.pdf> (last visited October 22, 2007).

<sup>37</sup> It’s impossible to determine from their paper how many tribes affected by Public Law 280 were included in their study.

<sup>38</sup> Eileen Luna-Firebaugh & Samuel Walker, “Law Enforcement and the American Indian: Challenges/ Obstacles to Effective Law Enforcement,” in Jeffrey Ian Ross and Larry Gould, eds., *Native Americans and the Criminal Justice System* 117-134 (Paradigm Publishers 2006).

Carole Goldberg and Duane Champagne's report to the Advisory Council on California Indian Policy, entitled "A Second Century of Dishonor: Federal Inequities and California Tribes,"<sup>39</sup> documents that tribes in Public Law 280 states, particularly California, received considerably less in law enforcement support from the Bureau of Indian Affairs than their counterparts in non-Public Law 280 jurisdictions. Public Law 280 was often offered as the reason federal funding was denied to Public Law 280 tribes, even though legal opinions within the U.S. government, as well as court decisions, affirmed that Indian nations retain concurrent criminal jurisdiction under Public Law 280.<sup>40</sup>

### Tribal Satisfaction with and Assessments of Law Enforcement

A survey of North San Diego County reservation residents regarding enforcement of domestic violence laws found that 54% of respondents who had at least one encounter with law enforcement agencies reported a positive experience, although 87% indicated that services would be improved with cultural training or awareness of factors influencing effective first response on reservations.<sup>41</sup> Common survey responses included desire for faster response times, the perception that officers were too harsh or judgmental toward Indians, the belief that officers need to meet with and get to know community leaders and residents, and the belief that officers should become more involved in public services and community events.

The desire for faster response times is not unique to reservations in Public Law 280 States. In a survey of 17 police chiefs of Indian country police departments not identified as under federal or state jurisdiction, the chiefs unanimously stated that shorter response times and greater visibility are key to community satisfaction.<sup>42</sup> Additionally, almost every chief reported a community desire for more patrol officers. Similarly, in a series of interviews with residents of the anonymous Great Plains Reservation, which is not subject to Public Law 280, Michael Barker found that the most common recommendation for changes to tribal police departments was the addition of more officers.<sup>43</sup> Nonetheless, Barker found that most surveyed adults questioned about the

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<sup>39</sup> Goldberg & Champagne, *supra* note 5.

<sup>40</sup> *Id.* at 47-59.

<sup>41</sup> Indian Health Council, Inc. "Improving First Response to Domestic Violence, Sexual assault and Stalking on Indian Reservations" (2000) (*citing* Peace Between Partners Survey of North San Diego County Indian Communities, (1999)).

<sup>42</sup> "To Protect and Serve: An Overview of Community Policing on Indian Reservations," ch. 2 (Police Foundation, ed., 1997), available at [http://www.communitypolicing.org/pf/am\\_ind/ch2.html](http://www.communitypolicing.org/pf/am_ind/ch2.html) (last visited Apr. 5, 2005).

<sup>43</sup> Michael L. Barker, *Policing in Indian Country* 105 (1998).

effectiveness of tribal police, the appropriate community role of the police, or the need for changes, were favorable toward tribal police.<sup>44</sup>

Wakeling et al.'s in-depth study of tribal policing, which did not include Public Law 280 jurisdictions, found that the 638 contracting process, through which many tribal police forces receive funding, does not effectively create policing which adequately considers community priorities, as it results in the organizational structure and methodology of a standard police force which looks toward the law and external professional standards rather than the local community for authorization.<sup>45</sup> In contrast tribal members would "like to see more focus on community participation – talking to people, assisting them, [involving themselves] in education and community activities" rather than increased traffic enforcement or other standard policing activities.<sup>46</sup> In describing what made a good police officer, members of the Tohono O'odham Tribe placed an emphasis on community interaction, maintaining the ideal officer would simply talk with people "to understand their motivation for committing crimes, to find a solution to problems, and to quietly but firmly persuade those involved to implement the solutions."<sup>47</sup> Highlighting the disparity between community and police expectations, few Tohono O'odham police officers viewed these activities as real police work.

The desire for closer connections to the community extends not only to the individual officers serving tribal communities but also to those with administrative responsibility. Wakeling found that tribal leaders of tribes that lacked their own police departments viewed the BIA's move to take authority away from local BIA superintendents and instead centralize authority over patrol policing with the division of law enforcement services in New Mexico as a cause of concern because they felt the division of law enforcement services would know less about, and be less responsive to, tribal needs, resources and priorities.<sup>48</sup>

### Effective Policing In Indian Country

Wakeling et al. conclude from their study of reservation policing in non-Public Law 280 jurisdictions that effective policing in Indian country depends on tribes

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<sup>44</sup> *Id.* at 105-06.

<sup>45</sup> Wakeling, *supra* note 8, at 45-46.

<sup>46</sup> *Id.* at 47.

<sup>47</sup> *Id.* at 46.

<sup>48</sup> *Id.* at 44

acquiring meaningful control over police activities.<sup>49</sup> Where federal and tribal departments share policing responsibility, accountability is diffused, and there is no way for tribal communities to ensure that reservation police act according to tribal priorities. Departments administered by the BIA are not agents of the tribes but rather of the federal government; consequently these departments have limited incentive to look to the communities they serve for legitimacy.<sup>50</sup> Over time, this arrangement has created a significant gap between the tribal police and the communities they serve. As Wakeling et al. summarize, “The ongoing dominance of the BIA and other Federal agencies on policing in Indian Country has diffused accountability for Indian policing, limited tribal capacity to improve policing, deterred tribes from strategic and long-term planning, discouraged community priority setting, and prevented tribal communities and police departments from aligning their priorities, values, and resources.”<sup>51</sup>

Eileen Luna claims that this divergence between non-tribal police and the community is exacerbated by Public Law 280 which “has allowed local police forces to act in Indian Country without being accountable to tribal councils or tribal laws.”<sup>52</sup> Michael Barker goes further, stating that, under Public Law 280, “any opportunity for tribes to practice self-policing, whether traditional or otherwise, was completely eliminated; the termination movement forced affected reservation communities to rely exclusively on off-reservation law enforcement institutions.”<sup>53</sup> Barker’s assertion is an overstatement, as tribal authority is widely understood to be shared, or concurrent with, state authority under Public Law 280. The real problem has been a lack of federal funding and other support for tribal law enforcement in Public Law 280 jurisdictions. Nonetheless, it is true that tribal police departments are far less likely to exist on reservations subject to Public Law 280.<sup>54</sup> And, to the extent that Public Law 280 puts control over law enforcement and criminal justice in the hands of state or local officials rather than tribal authorities, the problems of accountability, responsiveness, and legitimacy of reservation police that Wakeling et al. identify remain. According to the Wakeling study, the most effective solution to these problems is to give tribes increased control over the police because “[s]overeignty brings with it accountability.”<sup>55</sup>

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<sup>49</sup> *Id.* at 49-50.

<sup>50</sup> *Id.* at 46.

<sup>51</sup> *Id.* at 51.

<sup>52</sup> Eileen M. Luna, “Seeking Justice: Critical Perspectives of Native People: Law Enforcement Oversight in the American Indian Community,” 4 *Geo. Public Policy Rev.* 149, 152 (1999).

<sup>53</sup> Barker, *supra* note 43, at 47.

<sup>54</sup> *See* Chapter 1 at pp. 12-15.

<sup>55</sup> Wakeling, *supra* note 8, at 50.



One potential mechanism for generating tribal community control over reservation law enforcement is the establishment of tribal-federal or tribal-state cooperative agreements.<sup>56</sup> These agreements can enable tribal police to become deputized federal or state officers in circumstances where tribes lack criminal jurisdiction as a matter of federal Indian law, such as the commission of an on-reservation crime by a non-Indian. Deputized tribal officers can also be useful to engage Indian offenders when tribes lack their own police departments and tribal courts, a state of affairs more common in Public Law 280 states. Besides allowing deputization of tribal officers under federal or state law, cooperative agreements can commission state police officers to carry out reservation law enforcement according to tribal priorities, either through the enforcement of state or tribal law.<sup>57</sup> Because Indian country criminal jurisdiction is so complex and uncertain,<sup>58</sup> all these forms of deputization can obviate the need to sort out legal authority when coming across an offender. Apart from deputization, cooperative agreements can allow for sharing of resources, mutual assistance, and training.

In Barker and Mullen's 1998 survey of 103 tribal and BIA police departments, 26 out of the 31 responding departments had existing cross-deputization agreements.<sup>59</sup> Luna and Walker's survey of a larger number of departments, with 49 responding, suggests a smaller percentage of tribes with cross-deputization agreements -- only 42.6%.<sup>60</sup> Police departments represented in Barker and Mullen's sample commonly reported benefits such as increased crime control, the ability to use the other's facilities and equipment, closure of jurisdictional cracks, mutual assistance, faster response times, and the ability to handle the others calls during staff shortages.<sup>61</sup> Cross-deputization agreements are not without their own problems, which can include lack of funding, statutes barring tribes from receiving shares of court fines, inadequate responses to reservation calls by the non-Indian agency, and fear or distrust from the non-Indian community. Perhaps an even larger problem with cross-deputization agreements is that they further encourage a crime-control, professional model of policing rather than an Indian police model. As Barker notes, tribal police officers who have been commissioned to act as deputies, highway

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<sup>56</sup> Cooperative agreements are also imaginable regarding prosecution of on-reservation offenses, such as provisions regarding deference by one concurrent authority to another in particular types of cases, or diversion of cases from state or federal to tribal court. For Indian country affected by Public Law 280, literature on this subject is not as common as literature addressing cooperative agreements regarding law enforcement. That is because almost no Public Law 280 tribes prosecute adult criminal cases.

<sup>57</sup> Luna, *supra* note 52, at 158.

<sup>58</sup> See Robert N. Clinton, "Criminal Jurisdiction over Indian Lands: A Journey Through a Jurisdictional Maze," 18 Ariz. L. Rev. 503 (1976).

<sup>59</sup> Michael Barker and Kenneth Mullen, "Cross-Deputization in Indian Country" 16 Police Studies No. 4 157, 163 (1998). These departments were not identified in a way that would make it possible to determine whether they were subject to state jurisdiction under Public Law 280.

<sup>60</sup> Luna-Firebaugh & Walker, *supra* note 38, at 127.

<sup>61</sup> *Id.* at 164-65.

patrol officers, or fish and game officers must retain that authority by exercising it in ways deemed appropriate by the authorizing agency.<sup>62</sup> Wakeling et al.'s study of BIA subcontracts for reservation policing reinforces this concern, as they point out that these contracts tend to institutionalize federal priorities regarding basic organizational, operational, and personnel issues rather than tribally driven planning or criteria.<sup>63</sup> Luna and Walker point out that many state or local agencies refuse to enter into such agreements unless all tribal personnel are trained at the state police academy, a requirement that militates against the officers' capacity to conduct culturally appropriate policing.<sup>64</sup> Finally, the existence and success of cross-deputization agreements depends upon a lack of antagonism between the tribal and non-tribal police, elected representatives, and constituents.<sup>65</sup>

Community oversight committees can also enhance police accountability as well as provide a source of information about police misconduct, acting as an early warning system for police administrators and helping empower communities.<sup>66</sup> In a survey of 170 tribal police departments, Eileen Luna found that 25 out of 49 responding departments had community oversight systems.<sup>67</sup> In contrast to the general experience nationwide, tribal police are overwhelmingly supportive of community oversight.<sup>68</sup> One Public Law 280 tribe in particular used its cooperative agreement with the local county to underwrite the county's cost of reservation law enforcement, in exchange for which the county created a tribal community oversight board that participated in the selection of county officers for the reservation and in the complaint and disciplinary process for such officers.<sup>69</sup>

Implementation of community policing policies is another means of increasing the effectiveness of policing in Indian country through increased community involvement and direction of police priorities. Many of the tribal police chiefs from non-Public Law 280 states surveyed by the Community Policing Consortium believe policing is more effective when the community is cooperative and has a stake in the success of the department's efforts than when the police are only viewed as engaging in punitive

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<sup>62</sup> Barker, *supra* note 33, at 77.

<sup>63</sup> Wakeling, *supra* note 10, at 45.

<sup>64</sup> Luna-Firebaugh & Walker, *supra* note 38, at 128.

<sup>65</sup> *Id.* at 164.

<sup>66</sup> Luna, *supra* note 52, at 155.

<sup>67</sup> *Id.* at 155-56. Of the 25 responding departments that had community oversight boards, only three were in Public Law 280 states, and only one of those was in a mandatory state. The article does not reveal whether the remaining 24 responding tribes were from Public Law 280 states or others.

<sup>68</sup> *Id.* at 159.

<sup>69</sup> *Id.* at 158.

behavior.<sup>70</sup> Furthermore, community policing provides a framework that tribes can use to design and implement Native policing approaches which should result in improved quality of Indian country policing.<sup>71</sup> Among the many advantages of bringing the police into closer contact with the public, whether on or off the reservation, are a reduction of fear, increased citizen satisfaction with the police, increased officer morale and job satisfaction, and resolution of problems before they develop into criminal activity. Wakeling et al. go so far as to claim that, because community policing has the salutary consequence of “align[ing] police priorities and values with those of the community,” “community policing is the appropriate first step for improving policing in Indian country.”<sup>72</sup>

Researchers also emphasize the importance of adequate resources for reservation police, including both funding and training. The 1998 Report of the (Joint Justice and Interior Departments’) Executive Committee for Indian Country Law Enforcement Improvements asserts that “[t]he single most glaring problem is a lack of adequate resources in Indian Country.”<sup>73</sup> As noted above, Wakeling et al. document lower levels of funding for reservation police than for off-reservation rural police. The interviews with reservation police chiefs conducted by the Community Policing Consortium indicate that Indian country police departments’ primary resource need is more personnel, specifically more patrolling officers.<sup>74</sup> The typical tribal police department serves an area roughly the size of Delaware with a population of 10,000 and patrols these areas with no more than three police officers and as few as one officer at a time.<sup>75</sup> Because distances between department offices and remote areas of the reservation can be 100 miles or more, it may take several hours for a responding officer to even reach the area.<sup>76</sup>

According to both the Community Policing Consortium and the Executive Committee for Indian Country Law Enforcement Improvements, training is another vital resource need, as enhanced professional knowledge and skills of officers are associated

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<sup>70</sup> “To Protect and Serve,” *supra* note 42, at ch. 3.

<sup>71</sup> *Id.* at 54. However, at least one commentator has suggested that the divisions between “progressives” and “traditionalists” pose serious problems for implementing a Native policing approach. Barker further suggests that if this conflict has resulted in mixed satisfaction at attempts by tribal judiciaries to implement a Native approach, it will be even more difficult to resolve the philosophical conflict between progressives and traditionalists in the conflict-prone setting of policing. See, Barker, *supra* note 33, at 119-121.

<sup>72</sup> Wakeling, *supra* note 8, at 55.

<sup>73</sup> Executive Committee on Indian Country Law Enforcement Improvements, *supra* note 17, at 3.

<sup>74</sup> “To Protect and Serve,” *supra* note 42, at ch. 2. Recall that this study did not identify whether the reservations in question were subject to state jurisdiction under Public Law 280. However, there are many fewer tribal police departments in Public Law 280 jurisdictions. See Chapter 1 at pp. 12-15.

<sup>75</sup> Wakeling, *supra* note 8, at 9; Commission on Civil Rights, *supra* note 30, at 77.

<sup>76</sup> “To Protect and Serve,” *supra* note 42, at chs. 2 & 3.

with greater community trust of the police and greater recognition of tribal police by other law enforcement agencies.<sup>77</sup> Some of this literature focuses on the insufficient number of slots at the BIA's training center for federal and tribal officers serving Indian country, and the high percentage of such trainees who leave Indian country law enforcement within two years.<sup>78</sup> The state or county law enforcement officers serving Indian country in Public Law 280 states, however, are not even eligible to attend this BIA academy and generally receive no special training for service in reservation communities. The Community Policing Consortium's interviews suggest that current officers need ongoing training in up-to-date practices and techniques, such as community policing philosophy, the appropriate use of discretion, gang prevention and intervention, and how to work with service providers, families, and community groups.<sup>79</sup>

In sum, existing research that addresses policing on non-Public Law 280 reservations suggests that the two most important determinants of effectiveness are tribal control and adequate resources (*e.g.*, funding, training). As we have seen, however, state jurisdiction under Public Law 280 can defeat both of these elements, denying control to tribal communities and diminishing funding from federal sources. Hence, a hypothesis framing our research is that state jurisdiction under Public Law 280 will be more favorably received within affected tribal communities and more effective where tribal police and courts have a greater role, reinforced by cooperative agreements, and adequate resources exist to support law enforcement and criminal justice institutions that respond to community priorities.

### Criminal Justice Issues in Indian Country

There are no systematic empirical studies of the effectiveness of state criminal justice under Public Law 280. We know very little about how county prosecutors are conducting investigations and exercising their discretion in Indian country cases, or how judges and juries are responding to those cases. We know equally little about public defender, probation, and parole services available to tribal communities affected by Public Law 280. Some significant empirical research has been undertaken on state criminal jurisdiction over offenses allegedly committed by Indians outside of Indian country in South Dakota.<sup>80</sup> That research raises troubling questions about possible bias

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<sup>77</sup> *Id.* at ch. 2.

<sup>78</sup> Executive Committee, *supra* note 17, at 17 (indicating that approximately half of those trained leave within the two-year period).

<sup>79</sup> "To Protect and Serve," *supra* note 42, at ch. 2.

<sup>80</sup> Richard Braunstein & Steve Feimer, "South Dakota Criminal Justice: A Study of Racial Disparities," 48 S.D. L. Rev. 171 (2003).

against Indians within that state's criminal justice system, although careful analysis suggests that other factors, many of them associated with being Indian, may do a better job of explaining outcomes such as sentence length and time served.<sup>81</sup> Whether this research can be transposed to criminal justice affecting on-reservation crime in a Public Law 280 state, and whether it can be transposed to other states at all, is unclear.

A somewhat more extensive literature addresses criminal justice issues in non-Public Law 280 states. There, federal jurisdiction is extensive, encompassing all offenses except misdemeanors committed by one Indian against another, felonies and misdemeanors committed by one non-Indian against another, and victimless crimes committed by non-Indians.<sup>82</sup> Concurrent tribal criminal jurisdiction exists over all offenses committed by Indians, although punishment limitations imposed by the Indian Civil Rights Act make it impractical for Indian nations to prosecute many serious felonies.<sup>83</sup>

In non-Public Law 280 states, the critique of federal criminal justice parallels the critique of Indian country law enforcement. Lack of accountability to tribal communities and inadequate resources are the common themes. Several articles focus on the physical distance prosecutors are located from reservation communities, as well as their inability to understand and internalize the values of the community that they theoretically protect.<sup>84</sup> According to several commentators, the accountability problem for prosecutors appears most often as under-enforcement of the law – failure to prosecute cases arising in tribal communities.<sup>85</sup> The problem of insufficient resources for Indian country criminal justice is highlighted by Kevin Washburn, who notes that the U.S. Department of Justice

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<sup>81</sup> Richard Braunstein & Amy Schweinle, "Explaining Race Disparities in South Dakota Sentencing and Incarceration," 50 S.D. L. Rev. 485 (2005).

<sup>82</sup> See William C. Canby, Jr., *American Indian Law in a Nutshell* 181 (4<sup>th</sup> ed. Thomson/West 2004).

<sup>83</sup> *Id.* at 171-172.

<sup>84</sup> *E.g.*, Kevin Washburn, "American Indians, Crime, and the Law," 104 Mich. L. Rev. 709 (2006); Christopher B. Chaney, "Victim Rights In Indian Country—An Assistant United States Attorney Perspective," 51 U.S. Att'ys' Bull. 1, 36 (Jan. 2003); Larry Echohawk, "Child Sexual Abuse in Indian Country: Is the Guardian Keeping in Mind the Seventh Generation?," 5 NYU J. Legis. & Pub. Pol'y 83, 99 (2001-2002).

<sup>85</sup> See, e.g., Amy Radon, Note, "Tribal Jurisdiction and Domestic Violence: The Need for Non-Indian Accountability on the Reservation," 37 U. Mich. J. L. Reform 1275, 1278 (2004); Peter Nicolas, "American-Style Justice in No Man's Land," 36 Ga. L. Rev. 895, 963 (2002) (stating that "U.S. Attorneys, unlike state prosecutors, typically decline to prosecute in a far greater percentage of cases . . . [resulting] in the under-enforcement of criminal laws in Indian country"); Echohawk, *supra* note 84, at 100-01; Larry Cunningham, Note, "Deputization of Indian Prosecutors: Protecting Indian Interests in Federal Court," 88 Geo. L. J. 2187, 2188 (2000).

has recently responded to this long-standing criticism by creating nearly 30 new positions for federal prosecutors to combat violent crime in Indian country.<sup>86</sup>

Extrapolating from the experience in non-Public Law 280 states, we hypothesize that state criminal justice for Indian country will be more effective and more favorably received by tribal communities insofar as mechanisms exist for consultation and coordination with those communities, and insofar as state and local resources are devoted to criminal prosecutions that match tribal communities' priorities. Examples of cooperation and respect for tribal priorities might include agreements for coordinating prosecution where concurrent criminal jurisdiction exists, and assignment of special prosecutorial strike forces to deal with particular types of offenses, such as drugs or child sexual abuse, that the community wants to see addressed.

### The Special Situation of Alaska

Since becoming a mandatory Public Law 280 state at the time of its admission to the Union in 1958, Alaska has inspired a substantial body of literature addressing the effectiveness of state law enforcement in the state's Native communities. But the continued relevance of this literature to the present research was limited significantly by the United States Supreme Court's decision in *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998), which effectively nullified the application of Public Law 280 in Alaska by eliminating the Indian country status of nearly all the state's Native lands. As noted in Chapter 1, the only remaining Indian country is the Metlakatla Indian Reservation, along with several thousand widely scattered Native allotments and Native town-sites.<sup>87</sup> Since Public Law 280 applies only within "Indian country," most Alaska Native village lands are now subject to state jurisdiction, not because of Public Law 280, but because they are not Indian country at all. Furthermore, the concurrent tribal jurisdiction that typically exists under Public Law 280 may be unavailable to Alaska tribes because their lack of Indian country means they lack the territorial foundation usually required for criminal jurisdiction.<sup>88</sup> There have been no studies focusing specifically on the Metlakatla Indian Reservation.

We can learn some things about Public Law 280 by examining the literature that focused on law enforcement and criminal justice in Alaska before the 1998 *Venetie*

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<sup>86</sup> Kevin Washburn, "Federal Criminal Law and Tribal Self-Determination," 84 N.C.L. Rev. 779, 789 (2006) (citing Karen E. Schreier, Testimony before the Committee on the Judiciary, United States House of Representatives, Feb. 25, 1998).

<sup>87</sup> See Chapter 1 at pp. 8-9.

<sup>88</sup> Whether such jurisdiction could be obtained over tribal members by way of their consent is unclear.

decision. That literature suggests that funding and accountability issues bedeviled the exercise of state criminal jurisdiction during the period when Public Law 280 applied more broadly within the state.

The Alaska Advisory Committee to the U.S. Commission on Civil Rights produced a report in 2002 that recounts how Public Law 280 triggered the replacement of village-based law enforcement and justice agencies with state criminal law, troopers, and courts.<sup>89</sup> According to the Committee's report, these rural, off-road villages, sometimes accessible only by plane, boat, or snowmobile, suffered from "inferior state and federal services, if any at all," particularly in the area of law enforcement.<sup>90</sup> Otwin Marenin has documented the policing strategies that Alaska employed to tailor law enforcement to these remote Native villages, including the VPO (Village Police Officer) program of the 1960s and 1970s, and the VPSO (Village Public Safety Officer) program initiated in 1980.<sup>91</sup> The former trained Natives to be village police officers. Funding shortages, inadequate training, and a philosophy of imposing state criminal norms in place of village custom, however, contributed to the program's failure. The VPSO program put Alaska Native groups in a more influential position, as state law enforcement funding was routed through the regional Native nonprofit corporations established under the Alaska Native Claims Settlement Act and the VPSOs were expected to be "accountable to local [village] councils and aware of traditional, informal norms and law-ways,"<sup>92</sup> even though they were enforcing state criminal law. Despite the VPSO program's local orientation and emphasis on local accountability, the Alaska Advisory Committee reports numerous criticisms, focusing on the inadequate number of officers to handle the needs of rural communities, as well as the fact that VPSOs receive far less training than Alaska State troopers and cannot carry firearms or intervene in major criminal cases. VPSOs also "cannot serve arrest warrants or investigate felonies without the approval of state troopers," who are often inaccessible.<sup>93</sup>

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<sup>89</sup> Alaska Advisory Committee to the U.S. Commission on Civil Rights, *Racism's Frontier: The Untold Story of Discrimination and Division in Alaska*, ch. 4 (2002), available at <http://www.usccr.gov/pubs/ssac/ak0402/ch4.htm> (last visited May 21, 2005). See also Susanne Di Pietro, "Tribal Court Jurisdiction and Public Law 280: What Role for Tribal Courts in Alaska?," 10 Alaska L. Rev. 335, 336-37 (1993). This displacement of village authorities reflected the then-prevailing assumption that Public Law 280 conferred exclusive criminal jurisdiction on the state. See David S. Case & David A. Voluck, *Alaska Natives and American Laws* 398 (Fairbanks: Univ. of Alaska Press, 2002).

<sup>90</sup> Alaska Advisory Committee, *supra* note 89, at ch. 1; Otwin Marenin, "Conflicting Perspectives on the Role of the Village Public Safety Officer in Native Villages of Alaska," *American Indian Quarterly*, 297, 300. Vol. 18(3) (1994).

<sup>91</sup> See Marenin, *supra* note 4, at 133-36 & 301.

<sup>92</sup> *Id.* at 133.

<sup>93</sup> Alaska Advisory Committee, *supra* note 89, at ch. 4 (Table 5 and accompanying text). The problem of police turnover has also afflicted the VPSO program. See Darryl Wood, *Police Turnover in Isolated Communities: The Alaska Experience*, CJ 186187, January 2001 NIJ Journal 16-23.

The Alaska Advisory Committee does not reserve its criticism of law enforcement and criminal justice in Alaska for the VPSO program alone. According to its report, the administration of justice, generally, to Native communities has long come under fire for “disproportionate sentencing and incarceration rates, inadequate defense bar funding, jurisdictional conflicts reducing tribal responsibility, lack of basic police protection for rural communities, and underemployment of Alaska Natives in the justice system.”<sup>94</sup> Critics cited in the report have also pointed to the numerous “barriers to equal access” that afflict the Alaska Natives far more than other groups. In particular, because no state court system exists in rural villages, defendants from those areas – mostly Natives – must be taken away from their villages to be tried in faraway urban areas. As a result, “residents in rural areas often lack adequate attorney-client relationships and communication due to the distances that separate them.”<sup>95</sup> Moreover, Native defendants often find themselves deprived of a jury of their peers and facing prosecution in a forum without an interpreter to translate the proceedings conducted in a foreign language.<sup>96</sup>

The urban and rural divide in Alaska has likely exacerbated problems associated with state law enforcement and criminal justice for Native villages in that state. Indeed, many of the studies that have focused on justice systems in Alaska are broadly framed as “rural,” including the very recent report of the Alaska Rural Justice and Law Enforcement Commission.<sup>97</sup> However, over 66% of the rural population in Alaska is Native.<sup>98</sup> Echoing earlier studies, this Commission recommended more partnering and collaboration among Native, state, and federal agencies; enhancements of the VPSO program; increased use of community-based solutions, such as village/community-run reentry and rehab programs; greater emphasis on intercepting transports of alcohol to dry villages and preventing alcohol use through youth programs; more effective recruitment of Alaska Natives into policing, corrections, and probation positions; provision of adequate infrastructure in remote villages to support and attract law enforcement personnel; more cross-cultural training for forensic investigators; and greater collaboration between state and tribal courts.

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<sup>94</sup> *Id.* at ch. 4.

<sup>95</sup> *Id.*

<sup>96</sup> For another critical view of the provision of criminal justice to Alaska Native communities and recommendations for improvement, see Alaska Court System, Report of the Alaska Supreme Court Advisory Committee on Fairness and Access (1997). The Committee, which was created to identify concerns about ethnic and cultural bias in the courts, made several recommendations designed to bring judicial proceedings closer to rural and Native communities, and urged the appointment of interpreters, as well as cross-cultural training for court personnel.

<sup>97</sup> Alaska Rural Justice and Law Enforcement Commission, Initial Report and Recommendation of the Alaska Rural Justice and Law Enforcement Commission (2006), available at <http://www.law.state.ak.us/pdf/press/040606-ARJLEC-report/pdf> (last visited August 18, 2007). Congress established the Commission in 2004. Pub. L. 108-199, § 112(a)(2) (2004).

<sup>98</sup> Alaska Rural Justice and Law Enforcement Commission, *supra* note 97, at 4.



Notwithstanding the distinctive challenges presented by distance and the isolation of Alaska Native communities, there are also common themes in the Alaska literature and the research conducted in other Public Law 280 states, relating to underfunded, unresponsive, and culturally insensitive state criminal authority. While the basis for state jurisdiction over Native communities has changed for most of Alaska because Public Law 280 is no longer needed to support state criminal jurisdiction, Alaska's history of implementing Public Law 280 holds lessons for other states. Furthermore, some of the policy options developed for Public Law 280 states may suggest ways of improving state law enforcement and criminal justice in Alaska independent of that statute.

### Conclusion

Our review of the literature points us toward hypothesizing that accountability to tribal communities along with adequacy of resources (as compared with other jurisdictions) are the two key determinants of tribal satisfaction and effectiveness of law enforcement and criminal justice under Public Law 280. Where tribes have taken over more functions, through cooperative agreements, unilateral assertions of tribal authority, or even retrocession of the state's Public Law 280 jurisdiction, we would expect to see higher levels of satisfaction and greater effectiveness. Likewise, where Indian nations have been able to assemble resources for regular patrolling, rapid response, thorough investigations, and community-based responses to crime, we would expect to find tribal communities more satisfied, and police and court leaders doing a more effective job.

## CHAPTER 3

### Methodology

This study aims to answer five questions: 1) How do crime rates on reservations affected by Public Law 280 compare with crime rates on other reservations and elsewhere within Public Law 280 states? 2) Is law enforcement more or less available or well funded for tribes affected by Public Law 280 as compared with non-Public Law 280 tribes, and elsewhere in Public Law 280 states? 3) What is the quality of state law enforcement and criminal justice under Public Law 280 in terms of cultural awareness and sensitivity, fairness of treatment, responsiveness to community priorities, thoroughness of investigations, etc., as compared with law enforcement and criminal justice in non-Public Law 280 jurisdictions? 4) Does the presence of state law enforcement inhibit or impair tribal legal development? 5) How effective have cooperative agreements, concurrent jurisdiction, and retrocession efforts been to alleviate any problems that may be associated with Public Law 280?

At the outset of our research, anecdotal information from scholarly, government, and journalistic sources suggested that tribes subject to state jurisdiction under Public Law 280 were dissatisfied with that arrangement and preferred the federal-tribal jurisdiction scheme prevailing in non-Public Law 280 states. Thus, our initial hypothesis was that reservation residents would have a more negative view of law enforcement and criminal justice under Public Law 280 than the county police and court officials. Furthermore, we speculated that a comparison of Public Law 280 and non-Public Law 280 tribes regarding the above questions would yield more positive results for the latter. However, based on our review of the literature and the data we began to accumulate, some of our working hypotheses shifted, especially regarding the Public Law 280/non-Public Law 280 state comparisons. As discussed in Chapter 2, it appears that outside the context of Public Law 280, tribal community satisfaction and overall effectiveness of law enforcement and criminal justice on reservations vary depending on the extent of tribal control and accountability to tribal communities, as well as the availability of adequate resources to carry out community priorities for public safety. If that is true, then for tribes affected by Public Law 280, the same factors may be at work. That is, where Public Law 280 has been implemented in such a way as to allow for greater accountability of state law enforcement to tribal communities and greater financial and other support for reservation law enforcement and criminal justice, then tribal satisfaction and effectiveness of law enforcement and criminal justice may be higher than where it has not been so implemented. In other words, the greater differences may lie within the sets of Public Law 280 tribes and non-Public Law 280 tribes, not between them.

To answer these questions and test our hypotheses, we divided the project into four components: 1) gathering data through interviews with members and officials of

selected tribes, as well as local law enforcement and criminal justice personnel from the corresponding counties; 2) gathering crime data for mandatory Public Law 280 reservations in four states; 3) gathering secondary data from published sources regarding county and statewide crime rates; 4) gathering secondary data regarding availability of law enforcement and criminal justice funding. Our analyses of these data have focused on:

- comparisons between Public Law 280 and non-Public Law 280 tribes, to determine whether the presence of state rather than federal criminal jurisdiction affects tribal satisfaction with law enforcement and criminal justice, as well as the quality and responsiveness of such services;
- identification of circumstances (e.g., presence of cooperative agreements, existence of tribal police departments, funding levels) that may produce different experiences among Public Law 280 tribes and among non-Public Law 280 tribes;
- comparisons between reservation residents on the one hand, and law enforcement and criminal justice officials on the other, to determine whether perceptions of the quality and effectiveness of law enforcement and criminal justice match or diverge;
- comparisons among different Public Law 280 states to determine whether different patterns of implementation of the act are associated with different outcomes.

## Interviews

Through more than 350 interviews with reservation residents and tribal officials; state, local, and federal law enforcement officers; and state, local, and federal criminal justice officials, we investigated the availability, quality, and sensitivity of reservation law enforcement. These interviews were conducted at 17 different reservation sites.<sup>1</sup> According to procedures for the protection of human subjects, permission was obtained from the tribal government at each of these sites and the names of the tribes will not be disclosed. Instead, they will be designated by state (except where designation would identify the tribe) and by type of relationship to Public Law 280. A redacted sample of one of the letters of tribal consent is included at the end of this Report as Appendix A. Letters of support were also obtained from the State Sheriff's Association of each of the mandatory Public Law 280 states included in the study. These letters state a willingness to facilitate securing reservation-based crime rates as well as to provide contacts in law enforcement who may be willing to be interviewed. A sample of one of these letters is included as Appendix B. As discussed below, individual letters of consent were also obtained from each of the interviewees.

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<sup>1</sup> The original proposal called for only 13 sites. We, however, added one pilot site and three other sites to provide greater sample size and balance to the research design.

## Selection of the Tribes

We selected tribes for this study to obtain as much comparable tribal data as possible from Public Law 280 and non-Public Law 280 tribes. At the same time, we chose tribes from a variety of Public Law 280 and non-Public Law 280 situations so we could assess whether experiences differ as a result of those different circumstances. Thus, for example, we wanted at least one tribe from each of the mandatory Public Law 280 states, at least one tribe from an optional Public Law 280 state, at least one of the three tribes that had been initially excluded from Public Law 280 in the mandatory states, at least one tribe that straddled a Public Law 280 state and a non-Public Law 280 state, several tribes in Public Law 280 states that had been subject to state jurisdiction at one time but had subsequently experienced retrocession of the state's Public Law 280 jurisdiction, and some tribes that had never been subject to Public Law 280 jurisdiction. The constants in selecting tribes for the study were: 1) a substantial and consistent size in acreage and population of reservation; 2) reservation covering one county (when possible) for consistency of data; and 3) a written commitment to participate in the research and to abide by requirements for the protection of human subjects. To test for variables we hypothesized might be important, such as degree of tribal control and availability of resources to support law enforcement and criminal justice, we deliberately included some Public Law 280 tribes that have tribal courts, cooperative agreements, and/or successful economic development enterprises.

The tribes we eventually selected fall into the following aggregate categories:

- Mandatory Public Law 280 tribes (10) (selected from the six mandatory Public Law 280 states)
- Optional Public Law 280 tribes (1) (Washington)
- Retroceded Tribes (2) (Washington and Nebraska)
- Excluded Tribes (1) (listing state would identify the tribe)
- “Pure” non-Public Law 280 Tribes (2) (Arizona and North Dakota)
- “Straddler” Tribe — Reservation straddles a mandatory Public Law 280 state and a retroceded non-Public Law 280 state (1) (listing states would identify tribe)

For purposes of analysis, we later identified seven features of each of the tribes, each potentially relevant to the issues of tribal control or accountability, and adequacy of resources for reservation law enforcement and criminal justice. These seven features are:

### Sample Selection Characteristics

Tribe	PL 280 or not	Funding	Gaming	Agreement	Criml Code	Policing	Court	Tribal Criml. Jurisd.
A	Mandatory	County	Yes	No	No	County	No	No
B	Mandatory	County/Tribe/COPS	Yes	Yes (verbal)	No	County/Tribe	No	No
C	Mandatory	County/Tribe/BIA Compact	Yes	Yes	No	County/Tribe	Yes	Yes, misds.
D	Mandatory	County/Tribe/COPS/BIA	Yes	Yes	No	County	Yes	No
E	Mandatory	County/BIA Compact/COPS	Yes	Yes	No	County/Tribe	Yes	No
F	Mandatory	County/BIA Compact	No	Yes (verbal)	No	County/Tribe	Yes	Yes, misds.
G	Mandatory	County/Tribe	Yes	No	No	County/Tribe	No	No
H	Mandatory	County/State/Tribe	Yes	Yes	No	County/Tribe	Yes	No
I	Mandatory	County/COPS	Yes	Some Cos.	No	County/Tribe	Yes	No
J	Mandatory	County/State/Tribe/COPS	Yes	Yes	Yes	County/Tribe	Yes	Yes
K	Optional	County/City/Tribe	Yes	Yes	No	County/City	Yes	No
L	Straddler	Federal/County/Tribe/COPS	No	No	Yes	Federal/County/Tribe	Yes	Yes
M	Retroceded	Tribe/BIA 638 Contract/COPS	Yes	Yes	Yes	Federal/Tribe	Yes	Yes
N	Retroceded	Tribe/ BIA 638 Contract	Yes	Yes	Yes	Federal/Tribe/BIA	Yes	Yes
O	Excluded	Tribe/BIA 638 Contract/COPS	Yes	Verbal agreement	Yes	Federal/Tribe	Yes	Yes
P	Non-280	BIA 638 Contract/COPS	No	No	Yes	BIA/Tribe	Yes	Yes
Q	Non-280	BIA 638 Contract/COPS	Yes	No	Yes	BIA/Tribe	Yes	Yes

Figure 3.1

1) the source of funding for reservation law enforcement (county, BIA, tribal contract with BIA, or some combination thereof); 2) whether the tribe has substantial gaming revenue; 3) whether the tribe has a cooperative law enforcement agreement with county or other governments; 4) whether the tribe has a criminal code; 5) the type of policing arrangement for the reservation (county, tribal, BIA, or some combination thereof); 6) whether the tribe has a tribal court; 7) whether the tribe exercises concurrent criminal jurisdiction with the state or federal government. These characteristics of the tribes included in the study are represented in the table above, Figure 3.1.

### Selection of the Interviewees

A team of three researchers visited each of these sites for one week each, meeting with tribal officials, law enforcement officers, tribal court personnel, elders, and tribal citizens concerned about or involved with law enforcement and criminal justice issues; county sheriffs, BIA law enforcement agents, and others associated with tribal law enforcement; and personnel associated with state or federal court systems that have responsibility for criminal justice on reservations. We divided these interviewees into three rough categories — reservation residents (including tribal law enforcement and criminal justice officials), law enforcement personnel (who would be from state or local government in Public Law 280 states, and from the federal government in non-Public Law 280 situations), and criminal justice personnel (again, state or federal, depending on the type of jurisdictional arrangement for tribe). Occasionally two individuals in related roles preferred joint interviews, and we honored those preferences. When interviewing elders, we sometimes attended their daily or weekly group lunches, putting together impromptu focus groups and conducting the interviews en masse.

The respondents are reservation residents, law enforcement personnel, and criminal justice personnel. Most respondents work with crime-related issues and are generally well informed about crime, court, and policing issues on Indian reservations. Reservation-resident respondents are individuals who are employed on the reservation, an Indian person living on the reservation, or a tribal member. Most reservation residents are tribal members on the reservation in question, but non-Indian tribal employees and non-tribal member Indian employees and residents are also part of the reservation-resident sample. Reservation residents are chosen because they are community elders or leaders, or their work is engaged with police, court, social services, or related crime issues. Law enforcement personnel generally are police officers and related personnel who work for county or BIA police departments. Tribal police officers who work for and are funded by a tribal government are classified as reservation residents in the PL 280 jurisdictions, while police officers who work for the BIA or federal government, as well as tribal police in non-PL 280 jurisdictions, are classified as law enforcement personnel. Criminal justice personnel are judges, attorneys, public defenders, probation officers and other related personnel who work as county, federal, or (in the non-Public Law 280 jurisdictions) tribal employees or who work in the courts, such as legal advocates, public

defenders, and attorneys. Tribal judges and tribal court personnel who work for the tribal government in PL 280 jurisdictions are classified as reservation residents, and reservation court and legal personnel who work for the tribe, the BIA or the federal government in non-PL 280 jurisdictions are classified as criminal justice personnel.

The key to the distinction between reservation residents and the categories of law enforcement and criminal justice personnel is who has responsibility for criminal jurisdiction. In the PL 280 jurisdictions, where tribal police and court personnel exist, they are treated as reservation residents because they are not generally exercising criminal jurisdiction. They may be enforcing state law under cross-deputization agreements or enforcing civil laws. However, where questions ask reservation residents in PL 280 jurisdictions to evaluate tribal police and courts, the respondents in those categories are excluded from the reservation-resident sample. In the non-PL 280 jurisdictions, in contrast, there are crimes over which the tribe has exclusive jurisdiction, and therefore where tribal police and courts exist, they are generally exercising criminal jurisdiction. Thus, in these jurisdictions, the tribal police are treated as law enforcement personnel, and the tribal court and related staff are treated as criminal justice personnel.

Our assumption in constructing the reservation resident category is that reservation residents will have different work, community, and government experiences than law enforcement and criminal justice personnel, and they may express these views and orientations regarding their understandings and experiences with police and courts. The groupings of reservation residents, law enforcement personnel, and criminal justice personnel are not based on racial or tribal membership. Many non-Indians work for tribal governments, and they are classified as reservation residents — except where they are policing or administering justice in non-PL 280 jurisdictions. Many tribal members work for county police departments, some are county judges, or work for BIA police departments or courts. The latter tribal members are classified as law enforcement or criminal justice personnel because their occupations are outside of tribal government management, and these tribal members are entrusted to carry out county, state, or federal laws and procedures and not tribal government law and policing practices.

Certain categories of interviewees were fixtures of these site visits. For the reservation resident interviews, those included the chief of tribal police or public safety (where there was one), the chief judge (where there was one), the tribal chair or other council members, tribal administrators or managers, and elders. For the law enforcement officers, we invariably interviewed the head of law enforcement for the state or federal government or that person's chief deputy, as well as other officers. In the case of criminal justice officials, we interviewed prosecutors, public defenders, and judicial officers at each site, as well as probation or parole officers. Additional interviewees were identified through a "snowballing" technique, in which an interviewee identifies others relevant to the study. They typically included tribal social services staff, tribal citizens serving on the tribe's public safety committee, former tribal leaders who had dealt with

issues related to Public Law 280, tribal attorneys, prosecutors, and public defenders, and representatives of community-based domestic violence programs.

### Descriptive Sample Statistics

<b><i>Category</i></b>	<b>Freq</b>	<b>%</b>
Non PL 280 Pure	41	11.6
PL 280 Excluded	15	4.2
Retroceded	50	14.1
PL 280 Mandatory	233	65.8
PL 280 Optional	15	4.2
<b>Total</b>	<b>354</b>	<b>100.0</b>

<b><i>Respondent type</i></b>	<b>Freq</b>	<b>%</b>
Reservation Resident	227	64.1
Law Enforcement	49	13.8
Criminal Justice	78	22.0
<b>Total</b>	<b>354</b>	<b>100.0</b>

<b><i>Category</i></b>	<b><i>Respondent type</i></b>					
	Reservation Resident		Law Enforcement		Criminal Justice	
	<b>Freq</b>	<b>%</b>	<b>Freq</b>	<b>%</b>	<b>Freq</b>	<b>%</b>
Non PL 280 Pure	23	10.1	6	12.2	12	15.4
PL 280 Excluded	8	3.5	2	4.1	5	6.4
Retroceded	33	14.5	10	20.4	7	9.0
PL 280 Mandatory	154	67.8	27	55.1	52	66.7
PL 280 Optional	9	4.0	4	8.2	2	2.6
<b>Total</b>	<b>227</b>	<b>100.0</b>	<b>49</b>	<b>100.0</b>	<b>78</b>	<b>100.0</b>

<b><i>Gender</i></b>	<b>Freq</b>	<b>%</b>
Male	234	66.9
Female	116	33.1
<b>Total</b>	<b>350</b>	<b>100.0</b>

Figure 3.2



The number of interviews at each site ranged from a low of 14 to a high of 30, with a median of 21. The total number and categories of interviews are represented in tables in Figure 3.2. For the purposes of these tables, the interviewees in the straddler tribe are divided between the Public Law 280 category and the (non-Public Law 280) Retroceded category.

As represented in the tables in Figure 3.2, 70% of the interviewees come from tribes subject to state jurisdiction under Public Law 280, with 96% of those coming from the mandatory states. The remaining 30% are divided between the pure, excluded, and retroceded non-Public Law 280 tribes, with the most (47% of those) coming from non-Public Law 280 retroceded tribes, and the fewest (14% of those) coming from the one non-Public Law 280 excluded tribe included in the study. Nearly two-thirds of all the interviews (64%) fall into the reservation resident category, with another 14% coming from state, local, and federal law enforcement officers; the remaining 22% from state, local, and federal criminal justice personnel. Two-thirds (67%) of the interviewees are male, reflecting the greater representation of males in tribal, state, local, and federal law enforcement.

### Selection and Analysis of the Questions

The interviews lasted from 1-3 hours, and elicited both narrative (qualitative) and numeric (quantitative) responses. Each of the interviewees was provided with and signed a consent form. A copy of this form is attached toward the end of this Report as Appendix C. All the narrative responses were recorded, transcribed, and coded using the software program HyperResearch. This program enabled us to identify themes that occurred throughout interviews and to determine and compare how certain groups responded to similar or paired questions.

The interview instruments for each category of interviewee were similar and designed to facilitate comparisons. We did make slight changes to adapt the instruments for the reservation residents, the state or federal law enforcement personnel, and the state or federal criminal justice personnel. More significant differences in the interview instruments were required to take into account the different jurisdictional arrangements and attendant issues for Public Law 280 versus non-Public Law 280 tribes. For example, for the non-Public Law 280 jurisdictions, we asked reservation residents questions about the quality and availability of federal, rather than state or county, law enforcement and criminal justice. Nonetheless, we strove to keep the instruments comparable. Copies of the instruments used for reservation residents in Public Law 280 states and for law enforcement officials in non-Public Law 280 states are attached as Appendices D, E and F to provide illustrations of the types of instruments employed in the study.

The interview questions were designed to help us determine the following:

- the availability of law enforcement services (patrolling, response time);
- the responsiveness of such services to community priorities;
- whether crime is reported, and, if it's not regularly reported, the reasons for the unwillingness to report;
- the nature and extent of communication between law enforcement officials and tribal members about the law enforcement needs of the community;
- the quality of investigations;
- the nature and extent of respondents' confusion or understanding about PL 280;
- any problems with "jurisdictional vacuums" because of PL 280;
- whether state law enforcement and criminal justice systems have been insensitive, harassing, discriminatory, or overstepping jurisdictional limits;
- whether law enforcement problems have been especially acute about certain types of crimes, such as homicide, domestic violence, or driving under the influence;
- the degree of tribal members' satisfaction or dissatisfaction with the quality of law enforcement and criminal justice;
- funding and other resource problems associated with reservation law enforcement and criminal justice;
- whether they believe that tribally based justice systems would do a better job of achieving peace on the reservation.

Questions were formulated to enable the reservation residents to comment on law enforcement and criminal justice personnel's understanding and assessment of Public Law 280, as well as vice versa. Such crossover questions also allowed us to explore the possibility that different categories of respondents had substantially different perceptions about the law and how it functions.

We then analyzed data from each tribal condition or situation under Public Law 280 (see Figure 3.1) to determine the source and nature of problems in achieving effective law enforcement and criminal justice administration. These analyses have enabled us to determine which problems are present only under certain Public Law 280 conditions, and which ones are present in all Public Law 280 tribes compared with non-Public Law 280 tribes. Likewise, through these comparisons among Public Law 280 tribes and non-Public Law 280 tribes, we can determine whether Public Law 280 contributes to successful, effective Indian country law enforcement, and, if so, under what situations and conditions. These analyses contributed to answering three of our research questions: Is law enforcement reasonably available or well funded in PL 280 states versus non PL 280 states and elsewhere in PL 280 states? What is the quality of state law enforcement (e.g., cultural sensitivity, fairness of treatment)? Does state jurisdiction inhibit or impair tribal legal development?

Further questions were added for tribes exercising concurrent criminal jurisdiction, to explore whether such overlapping authority creates new problems (such as community dissatisfaction with tribal justice or coordination issues) or ameliorates problems that otherwise would exist under Public Law 280 (for example, by affording tribal communities greater control over law enforcement and criminal justice). For tribes that had undergone the retrocession process, questions were added to determine the circumstances that created the desire for retrocession, the actions taken to achieve retrocession, and before and after comparisons regarding law enforcement and criminal justice. Considering the interview results and additional research in secondary sources, we produced case studies of concurrent tribal jurisdiction, cooperative agreements, and retrocession as options to alleviate problems associated with Public Law 280. In the case of cooperative agreements and retrocession, these studies went beyond the 17 tribes included in our site visits. These case studies are designed to provide answers to our fifth research question: How effective have cooperative agreements, concurrent jurisdiction, and retrocession efforts been to alleviate problems that may be associated with Public Law 280?

All the interview instruments included quantitative questions (using a rating system of 1-5), corresponding to the most important qualitative or narrative questions. These quantitative questions allowed us to conduct statistical analyses. These analyses included:

- comparisons between the types of respondents (reservation residents, law enforcement personnel, criminal justice personnel) in Public Law 280 jurisdictions with their counterpart types in non-Public Law 280 jurisdictions;
- two-way comparisons of reservation residents with law enforcement personnel and criminal justice personnel according to whether they are in Public Law 280 jurisdictions;
- comparisons of each type of respondent in mandatory Public Law 280 jurisdictions with their counterpart types in optional Public Law 280 jurisdictions;
- comparisons of each type of respondent in the three different kinds of non-Public Law 280 jurisdictions (“pure,” excluded, retroceded);
- comparisons of types of respondents within individual states, where sample sizes permitted;
- comparisons of each type of respondent in different mandatory Public Law 280 states, where sample sizes permitted;
- comparisons of each type of respondent about conditions before and after retrocession.

Reports of these analyses are woven together with our accounts of the corresponding qualitative or narrative responses. Our comparative method is driven by an appreciation for the real differences that exist when states exercise criminal jurisdiction under Public Law 280, as opposed to the more limited power that the federal government exercises when it has criminal jurisdiction. However, we also undertake comparisons to determine whether there are other factors — such as resource levels and the extent of accountability to the tribe — that affect tribal satisfaction and the quality of reservation law enforcement and criminal justice.

In addition to the rating questions, we also asked respondents to rank the offenses appearing on a list we provided to them, according to two criteria: first, which offenses occur most frequently in the community; second, which offenses receive the highest priority from reservation law enforcement (state or county in the Public Law 280 jurisdictions, federal or tribal in the non-Public Law 280 jurisdictions). These quantitative measures in turn enabled us to gauge the extent to which different types of law enforcement and criminal justice personnel share the perceptions and priorities of reservation residents. Also, comparisons of quantitative measures reporting on crime occurrence and law enforcement crime priorities were analyzed to determine whether any differences were statistically significant.

## Funding Data

A 1996 study conducted for the Advisory Council on California Indian Policy<sup>2</sup> found that California tribes received significantly less funding for law enforcement and tribal courts than other tribes, and that one of the reasons government officials gave for this disparity was the existence of state jurisdiction under Public Law 280. Thus, one of our research questions was whether tribes subject to state jurisdiction under Public Law 280 receive lower levels of funding for law enforcement and criminal justice under programs sponsored by the Bureau of Indian Affairs within the Department of the Interior or the U.S. Department of Justice. We secured funding data for the years 1995-2001, and calculated BIA and DOJ funding per person for the five mandatory Public Law 280 states of California, Minnesota, Nebraska, Oregon, and Wisconsin. Within each of these states, we also compared the tribes subject to state jurisdiction under Public Law 280 with the tribes, if any, that had been excluded or retroceded.

## Plan of Analysis

Through the analysis provided in the remainder of this Report, we present the first systematic look at law enforcement and criminal justice under Public Law 280, as well as

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<sup>2</sup> Carole Goldberg & Duane Champagne, “A Second Century of Dishonor: Federal Inequities and California Tribes” (Report prepared for the Advisory Council on California Indian Policy, 1996), available at <http://www.aisc.ucla.edu/ca/Tribes/htm> (last visited August 18, 2007).

a comparison with select non-Public Law 280 tribes. In the chapters to follow, we will employ the interview and other data to examine the following:

- understanding of Public Law 280
- availability of law enforcement
- quality of law enforcement
- quality of criminal justice
- court fairness
- community, crime, and law enforcement priorities
- retrocession
- funding
- cooperative agreements
- sovereignty, government resources and capabilities, and community control over law enforcement

These more detailed examinations will weave together interview responses, quantitative data, case studies, and other sources of information about the particular topic.

### Study Limitations

Since the sample design focused on making comparisons among seven significant characteristics of Public Law 280 communities (see Figure 3.1), the selection of communities is not based on a random sample. Sample communities were selected to ensure a range of features such as region and whether the communities were in Public Law 280 jurisdictions under mandatory, optional, excluded, straggler, or retroceded status. The cases are selected and matched to ensure comparisons and inclusion of each of the different types of Public Law 280 conditions. Non-Public Law 280 comparison communities were selected as retroceded communities, stragglers, or never were under Public Law 280 jurisdiction. Within each of the main selection categories, we matched and selected communities meeting several other criteria as outlined in Figure 3.1. In the end, 17 communities were selected and studied based on matching communities according to how well they conformed to the matching criteria set out above. The selection process does not result in a random sample; therefore, the following analysis does not use classic parametric statistics for analysis of scale data and for analysis of quantitative patterns found in the qualitative interviews. The statistical analyses that follow will rely on nonparametric statistical techniques that are more appropriate to proportional, categorical, and scale data.

Furthermore, since the 17 case sites do not represent a random sample of the national sample of Public Law 280 and non-Public Law 280 jurisdictions, the results generated by the study are not generalizable to the entire population of American Indian communities. The findings are valid only for the population of communities taking part

in the study. All conclusions in the study are generalized to the 17 participant communities; there is no basis for generalization to the entire population of American Indian communities. The results of this study must be qualified by the limited sample. Nevertheless, the present study includes a systematic qualitative and quantitative analysis of the administration of criminal justice in 17 American Indian communities, including interviews of reservation residents, law enforcement and criminal justice personnel. So far there is little or no work in the literature to date that is as comprehensive as the present research effort. The results will establish many base line relations and results for the 17 sampled communities, thereby giving researchers and policy makers considerable new information, pointing toward further research possibilities and informing policy-making discussions.

## CHAPTER 4

### How Well Is Public Law 280 Understood?

Public Law 280 is a relatively obscure and generally not well understood piece of federal legislation. The law was originally passed in 1953 and has undergone changes in content and legal interpretation. Our experience before the research indicated that students, tribal community members, county officials, and tribal leaders are unclear about the meaning and implications of Public Law 280 for their reservations. Sometimes tribal community have practical, everyday understanding of legal and police actions on the reservations, but often do not have direct knowledge about the purpose or content of Public Law 280. Accurate and comprehensive knowledge of Public Law 280 should lead to more effective and responsive police and criminal justice actions, as well as better relations between reservation residents, and law enforcement and criminal justice personnel on Public Law 280 reservations.

As part of the present research, we asked a battery of questions of reservation residents, criminal justice personnel and law enforcement personnel to measure their understanding of Public Law 280. The respondents are reservation residents, law enforcement personnel, and criminal justice personnel. Most respondents work with crime-related issues and are generally well informed about crime, court, and policing issues on Indian reservations. Reservation-resident respondents are individuals who are employed on the reservation, an Indian person living on the reservation, or a tribal member. Most reservation residents are tribal members on the reservation in question, but non-Indian tribal employees and non-tribal member Indian employees and residents are also part of the reservation-resident sample. Reservation residents are chosen because they are community elders or leaders, or their work is engaged with police, court, social services, or related crime issues. Law enforcement personnel generally are police officers and related personnel who work for county or BIA police departments. Tribal police officers who work for and are funded by a tribal government are classified as reservation residents in the PL 280 jurisdictions, while police officers who work for the BIA or federal government, as well as tribal police in non-PL 280 jurisdictions, are classified as law enforcement personnel. Criminal justice personnel are judges, attorneys, public defenders, probation officers, and other related personnel who work as county, federal-BIA, or, in the non-Public Law 280 jurisdictions, tribal employees, or who work in the courts, such as legal advocates, public defenders, and attorneys. Tribal judges and tribal court personnel who work for the tribal government in PL 280 jurisdictions are classified as reservation residents, and reservation court and legal personnel who work for the tribe, the BIA or the federal government in non-PL 280 jurisdictions are classified as criminal justice personnel.

The distinction between reservation residents and the categories of law enforcement and criminal justice personnel lies in who has responsibility for criminal jurisdiction. In the PL 280 jurisdictions, where tribal police and court personnel exist, they are treated as reservation residents because they are not generally exercising criminal jurisdiction. They may be enforcing state/county law under cross-deputization agreements or enforcing civil laws. However, where

questions ask reservation residents in PL 280 jurisdictions to evaluate tribal police and courts, the respondents in those categories are excluded from the reservation-resident sample. In the non-PL 280 jurisdictions, in contrast, there are crimes over which the tribe has exclusive jurisdiction; therefore where tribal police and courts exist, they are generally exercising criminal jurisdiction. Thus, in these jurisdictions, the tribal police are treated as law enforcement personnel, and the tribal court and related staff are treated as criminal justice personnel.

Our assumption in constructing the reservation resident category is that reservation residents will have different work, community, and government experiences than law enforcement and criminal justice personnel, and they may express these views and orientations with reference to their understandings and experiences with police and courts. The groupings of reservation residents, law enforcement personnel, and criminal justice personnel are not based on racial or tribal membership. Many non-Indians work for tribal governments, and they are classified as reservation residents, except where they are policing or administering justice in non-PL 280 jurisdictions. Many tribal members work for county police departments. Some are county judges, or work for BIA police departments or courts. The latter tribal members are classified as law enforcement or criminal justice personnel because their occupations are outside of tribal government management. These tribal members are entrusted to carry out county, state, or federal laws and procedures and not tribal government law and policing practices.

We asked the respondents to give a self-report on a scale of 1 to 5 about how well they understood Public Law 280, with 5 being best. The respondents were asked whether they knew their reservation, or the reservation in their county, was subject to Public Law 280. Additional questions were: How did you learn about Public Law 280? What does Public Law 280 mean to you? The latter question allowed analysis of stated understandings by respondents and provided information about general misunderstandings. Furthermore, each person in all three of our main respondent groups — reservation residents, criminal justice personnel, and law enforcement officers — was asked to provide their viewpoint about how well police, court, and tribal members understand Public Law 280. Here, we investigate the differences in understanding and perception among tribal members, law enforcement officers, and criminal justice personnel. Suggestions for improving understanding of Public Law 280 were solicited, and respondents were asked to state the most important issue about Public Law 280 that they wanted explained. Our analysis of these responses should help in developing more useful learning tools for Public Law 280 states and reservations, and provide a survey of the patterns of understanding and implementation of Public Law 280.

### Ranking Knowledge About Public Law 280

The respondents all came from reservations subject to Public Law 280 and usually were involved in tribal, county, and state organizations. The sample includes individuals who, through their work or community participation, had some role in Public Law 280 issues and, therefore, were relatively well informed about Public Law 280 and its consequences. Respondents were



asked to self-rate their level of knowledge of Public Law 280, and 228 gave ratings that averaged 3.11 on a 5-point scale. Overall, the sample is much better informed than the general public about Public Law 280 issues, having professional experiences related to Public Law 280. An average of 3.11 is very nearly at the middle range of the scale, since people could not select less than one, so 3.00 was the middle score. A ranking of 1 was a “poor” ranking and a rating of 5 was an “excellent” ranking. The relatively well informed interview group assessed themselves to have only medium level understanding of Public Law 280. They believed they were neither poorly informed, but did not have excellent knowledge of Public Law 280.

Respondents are modest about their understanding of Public Law 280. Respondents who work with Public Law 280 every day on a professional basis tend to give themselves high rankings, but many have little knowledge or are unsure of their knowledge. A reservation resident states: “I don’t think I am that knowledgeable. I have made some efforts to know about it. I knew that it existed. I have tried to educate myself a little bit about it, but I don’t think that I know very much about it really.” Another reservation resident remarked:

- I’m in the middle of that one, too. I know I was around here at that time, but that was many years ago when that was developed. When you get older, you forget a lot of things. I used to keep all the material on Public Law 280, and one time I just gave up on it because we became more solid into it. Nobody was talking retrocession. I kept a lot of things regarding retrocession and what was going on with that, and I was kind of involved in that. I kept a lot of stuff over the years, and it just kind of fell by the wayside. Until funding starting going down further each year, until now it’s become a question again. So that’s where I set on that.

A criminal justice respondent supplemented his relatively high self-ranking by stating: “I’ll put it this way: I know enough of Indian law to know that I don’t know nothing about Indian law, and I work in death penalty and a lot of complex areas. And Indian law is the most complex of any of the areas I do because there is not rhyme or reason. You have to know what the history was because it is constantly changing and circling back on itself.” In general, although the respondents were the people who had the most contact with Public Law 280 and its issues, as a group they ranked themselves as having only medium-level understanding of Public Law 280.

### Do You Know Your Reservation Is Subject to Public Law 280?

In the Public Law 280 states, the reservation-resident respondents were asked whether they knew their reservation was subject to Public Law 280. Criminal justice and law enforcement personnel, usually state or county employees, were asked a similar question: whether they know that the reservation, or in a few cases, reservations, in their county are subject to Public Law 280. Of the 240 responses to the question, 223 said yes and 17, or 7%, said no, they were not aware that Public Law 280 was the applicable law setting the rules for jurisdiction on the local reservation. Among reservation-resident respondents, 163 said they were aware their reservation was subject to Public Law 280, and, 5, or about 3%, said they were not aware that their reservation was subject to Public Law 280. Law enforcement personnel answered with

28 affirmatives to understanding Public Law 280 applied to a reservation in their county, while 4 respondents, or 12.5%, said they were not aware of Public Law 280 jurisdiction. Forty-nine criminal justice personnel responded to the same question, and 8 respondents, or 16%, reported they were not aware that Public Law 280 jurisdiction applied to the reservation in their county. These data suggest that criminal justice personnel are the least informed about whether Public Law 280 jurisdiction applies to a reservation in their county, while reservation residents are comparatively more aware that their reservation is subject to Public Law 280 jurisdiction. \

Reservation residents are aware of Public Law 280 jurisdiction at a higher rate than criminal justice workers or county law enforcement personnel, a particularly interesting finding

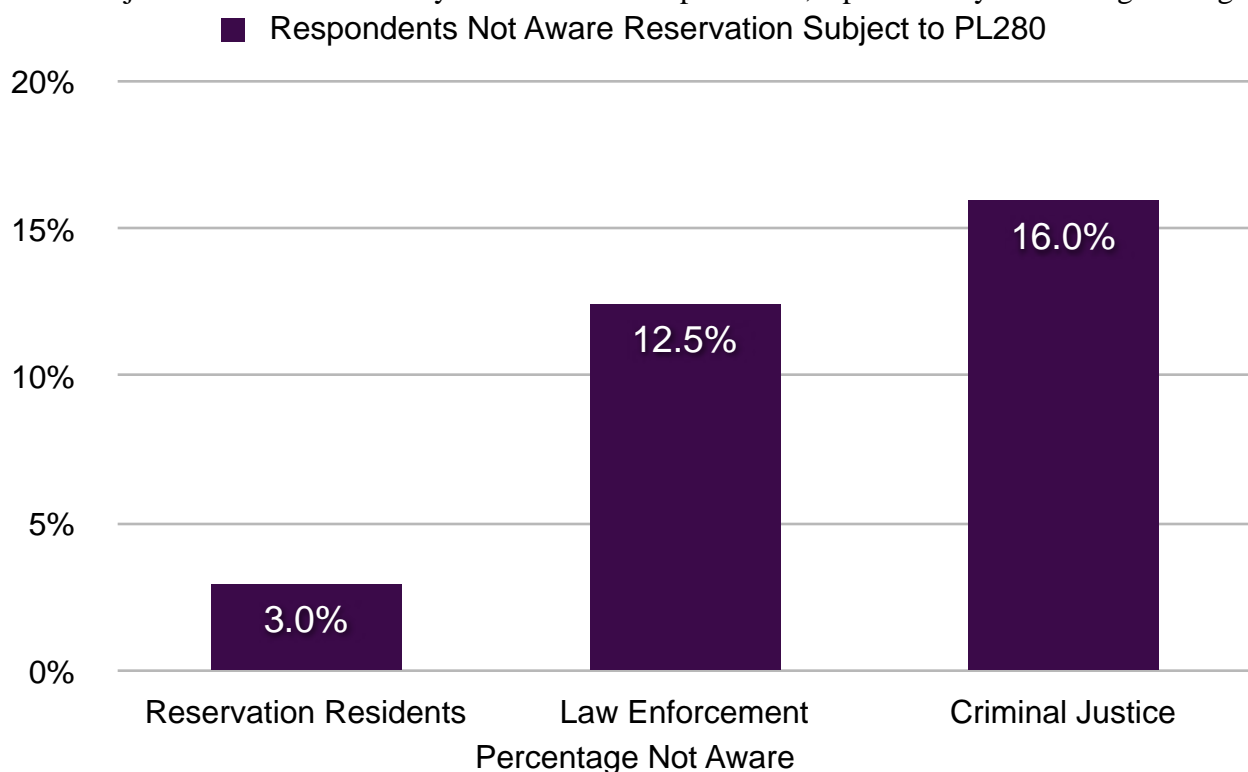


Figure 4.1

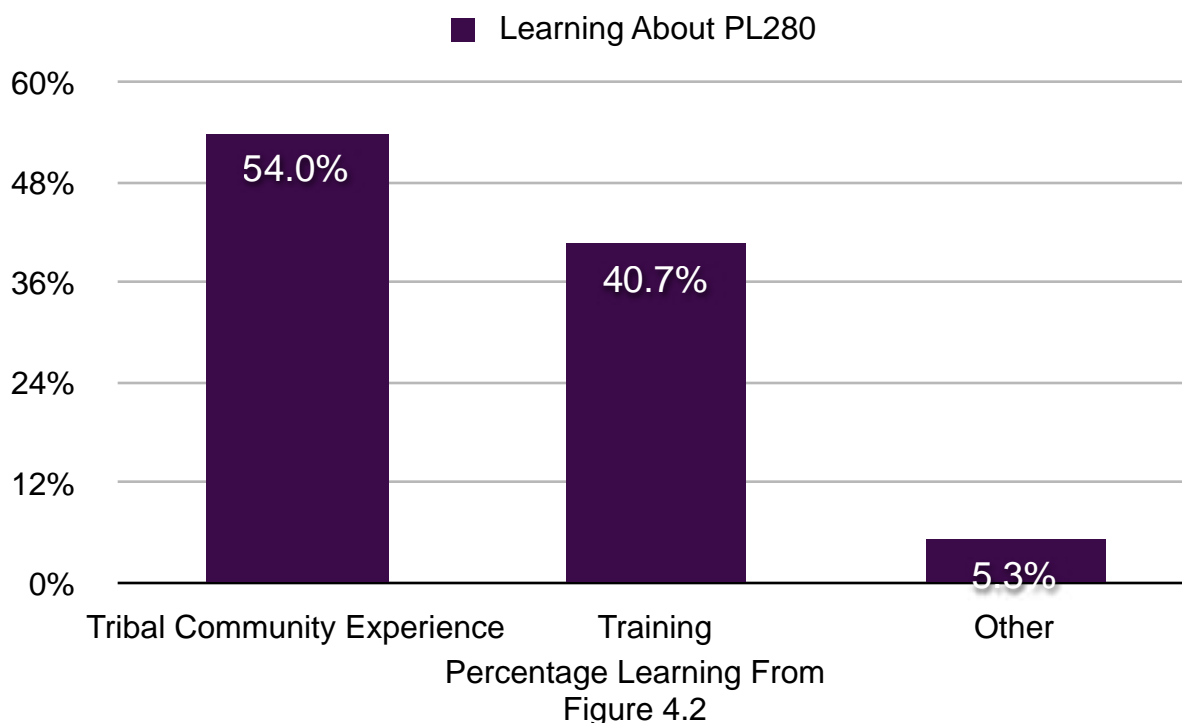
in light of the fact that law enforcement and (especially) criminal justice personnel are supposed to receive training in the law they apply.

When asked whether they understood that the reservation in their county was subject to Public Law 280, one of the criminal justice respondents replied: “No. It is not something I’ve ever thought of. We see a lot of people and have over for 26 years. The people I know are (reservation) tribal members.” Interviewer: “But these issues never arose in any legal proceedings or procedural proceedings?” Respondent: “No.” Interviewer: “Did you know that without Public Law 280 the state would have no jurisdiction in Indian country?” Respondent: “I guess I do know that.” In another state, a criminal justice respondent answered the question with: “What I understand about what? I don’t understand Public Law 280. I’m not familiar with it. What I do know is that there’s concurrent jurisdiction (on the reservation) that will allow state

laws to be prosecuted there. However, it is somewhat confusing because federal constitution law applies there. But yes, I get cases prosecuting state offenses (on the reservation).”

### How Did You Learn About Public Law 280?

To evaluate their knowledge and the depth of their familiarity with Public Law 280, we asked respondents for the reservations affected by Public Law 280 how they learned about that statute. The question was open ended, and the answers were coded to reflect the range and content expressed by the speakers. Some respondents gave multiple sources for their learning about Public Law 280. If an interviewee gave two clear sources for their knowledge about Public Law 280, then two reasons were coded. The surveys yielded 221 responses from reservation residents (162), criminal justice personnel (27), and law enforcement officers (30). Reservation residents gave 11 different kinds of sources for learning about Public Law 280, while criminal justice personnel gave seven different sources, and law enforcement officers gave 4. Overall, respondents mentioned 14 different ways they gained information about Public Law 280.



The ways in which respondents gained information about Public Law 280 can be summarized in two major ways: 1) through work for or with a tribal community, and 2) through courses and training. Tribal community experience (119 responses) is composed of a variety of reports that include gaining information about Public Law 280 by:

- working for or with a tribal community;
- living in a tribal community;

- attending tribal council meetings;
- interacting with elders, tribal leaders, and kin.

Generally, information about Public Law 280 was gained through community conversations, or through direct experiences working in the community or for tribal government about issues that include Public Law 280 jurisdiction matters. Criminal justice and law enforcement personnel usually do not live on reservations, but reported that they often learned firsthand through on-the-job experience about Public Law 280 by engaging in work with reservation communities where Public Law 280 is a relevant issue. Law enforcement and criminal justice personnel often emphasized the on-the-job training aspect of their experiences, and many reservation residents made similar comments, emphasizing that they often did not have direct course work or training sessions and gained their information about Public Law 280 through direct experiences while working for the community or tribal government. Reservation residents often remarked that their experiences and knowledge about Public Law 280 resulted from their work for or participation in community and tribal government functions.

Training (n=90), the second major source of information about Public Law 280 gleaned from the interviews, consists of: training sessions, college courses, high school courses, and departmental discussions. Formal training sessions dedicated to Public Law 280 or related information were mentioned 31 times, while college courses were cited 26 times, high school courses three times, and departmental discussions 12 times. The remaining 21 responses include those who learned by self teaching, had an encounter with law enforcement, did not answer the question, learned when Public Law 280 was enacted, or did not have knowledge of Public Law 280 before the interview.

Among reservation residents the most frequently mentioned sources of learning about Public Law 280 are:

- learned working for or with a tribal community (48);
- training sessions (24);
- college courses (22);
- living in a tribal community (17);
- tribal council meetings (14); and
- elders, leaders and kin (14).

Less frequently mentioned ways that reservation residents learned about Public Law 280 are:

- self taught (8);

- no knowledge before interview (4);
- when Public Law 280 was enacted (4);
- experience with law enforcement (3);
- experience with legal services (2); and
- high school course (2).

Reservation residents learned about Public Law 280 through on-the-job training or life experiences within the tribal community 57.4% of the time; they learned through training, college, and high school courses at a rate of 29.6%.

The criminal justice personnel provided 29 responses about their sources for knowledge about Public Law 280. The most frequently mentioned sources were:

- working for or with a tribal community (9);
- no knowledge before interview (6);
- college courses (4);
- departmental discussions (3);
- training sessions (2);
- self taught (2);
- elders, leaders or kin (2); and
- no answer (1).

Criminal justice personnel learned about Public Law 280 through on-the-job experience with tribal communities 37.9% of the time, and learned through formal training, departmental discussions, and education courses at a rate of 31%. Another 20.6% of criminal justice personnel did not have knowledge of Public Law 280 before the interview or did not answer (3.4%) the question inquiring where they received their information about Public Law 280.

Law enforcement personnel most frequently mentioned: working for or with a tribal community (13), and departmental discussion (9), while training sessions (5), elders, leaders or kin (1), high school course (1), and no answer (1) were less frequently mentioned. Law enforcement personnel learned about Public Law 280 through direct experiences with tribal communities 46.6% of the time, while they learned through formal training, education courses, and departmental discussions 50% of the time. Police officers were informed about Public Law

280 through workshops or classroom study at a rate of 20%, and relied most heavily (30%) on their own departmental information networks and understandings to gain information about Public Law 280. Law enforcement officers had less access to formal training than reservation residents and criminal justice personnel.

The reservation residents emphasized they learned about Public Law 280 through living and working on the reservation. Here are some expressions of those viewpoints by reservation residents:

How did I first learn about it? I guess from my work with the tribe.

I learned it when I started with the tribal police here. ... But that's where I really got into the knowledge and checking in about its background and history.

I was appointed to the law enforcement committee ... and have attempted to read up on it, but it's a bit dry. Being appointed to the committee is how I started taking a look at Public Law 280.

Public Law 280 first came to my awareness probably within the last 10 years. I always wondered why there was such a disparity between equal treatment of Native Americans and non-Natives here in this town, not knowing pretty much of the country, on the county level, but within the last 10 years I began to hear about Public Law 280, and the problems of, or not the problems of, but the application of, I guess, PL, provisions of 280 for the reservation. And that was the effect of my coming back, moving back, and working with the tribes.

Many reservation residents said they gained knowledge of Public Law 280 through the everyday experiences they have living on the reservation.

I learned about it way back. I think I really got into it in the early 80s and all this, kind of, how this Public Law 280 was affecting tribes and stuff. ... Why can't we do this? And why can't we do that? What right do we have under Public Law 280? And what rights do we have as a sovereign nation? Because we still bump into that issue right now.

I knew about that (Public Law 280) long before it came. Things like that just don't happen. I think that people discuss it and something like that, they talk things over. A lot of people know that was going to happen or was happening.

I knew about Public Law 280 before I even took the job because it comes up in the Native Indian community a lot. Because other tribes in non-Public Law 280 states are just totally mysticized by the law. They can't grasp that it is actually something that Indian tribes have to live by in today's society.

Other reservation residents say they learned about Public Law 280 by listening to elders, tribal leaders, and family.

Oh my gosh. I guess hearing about it from tribal leaders. I didn't really understand it probably until later and having a formal education on it.

I heard about it since my earliest memories growing up. ...Yeah, yeah elders, tribal meetings, there was a lot of discontent. This is back in the early 1960's. I can remember people talking about it up to the early 1970's that they didn't like that fact that outside sheriffs can come in and roam the reservation at will. There was a lot of concern about that; people were not respecting the tribe's sovereignty.

Law enforcement officers also emphasize that direct contact with day to day activities are a major way in which they learned about Public Law 280.

When I came here from where I came from, I never dealt with a reservation. Public Law 280 when I first came here ... a lot of OJT (on-the-job training) here, where you are given a car and you are given the keys, and you go do it.

Just from dealing with the tribe and the training that I began to seek and sheriffs supported me in attending brought to life the Public Law 280 relationship and why we have authority there.

I actually learned about Public Law 280 shortly after I came here as part of my familiarization with (this area). And in talking with tribal members, as well as the county sheriff and with some of our people, my predecessors, and people in the community. ... As patrol officers we've received some informational training about working around reservations and what the people on the reservation can and cannot do. What our authority is.

Department discussion and informal information was a major way in which law enforcement officers learned about Public Law 280.

Through my department, it was probably how I became educated into what Public Law 280 is and basic premises of 280.

When I first came to work here for the department. When I started my career with the department regarding issues of tribal lands. That is when I first learned about Public Law 280.

A significant finding of our research is that a majority of state and county professionals who work with Public Law 280 in the fields of law enforcement and criminal justice do not

receive formal training or education about Public Law 280. This lack of training and education may explain why such professionals claim only a modest understanding of Public Law 280.

### What Does Public Law 280 Mean to You?

So far we have examined how reservation residents, criminal justice personnel, and law enforcement officers evaluate their knowledge and understanding of Public Law 280, and how they learned about Public Law 280. In this section we explore their understanding of Public Law 280 in another way. We ask the open-ended question, What does Public Law 280 mean to you? We expect that the answers will reveal the strengths and weaknesses in understanding Public Law 280 among the three respondent groups. We coded the different responses regarding the understandings and viewpoints of the respondents and used their coded understandings to reveal more clearly how reservation residents, criminal justice personnel, and law enforcement officers grasp the definition and application of Public Law 280 to their local communities. Many respondents didn't venture a direct definition of Public Law 280, but rather emphasized the features of Public Law 280 that most affected their work or lives. The patterns of response should be read as the issues about Public Law 280 that were of greatest concern for the respondents rather than a reflection of their legal understanding of Public Law 280. The question requests a response about what Public Law 280 meant to them and elicited answers about the most significant features of Public Law 280.

A total of 218 respondents answered the question — 45 criminal justice personnel, 29 law enforcement personnel, and 144 reservation residents. The answers were diverse and often contained multiple themes. Several themes emerged from the coding. Respondents emphasized as most important in their understanding of Public Law 280 the following:

- concurrent jurisdiction (n=22, or 10.1%);
- difficulties for tribal governments (34, or 15.6%);
- advantages for tribal governments (12, or 5.5%);
- state/county criminal jurisdiction (131, or 60.1%); and
- unable to say (19, or 8.7%).

By far, most respondents emphasized state/county criminal jurisdiction and law enforcement as the central impact of Public Law 280 on Indian reservations. Thirty-two emphasized that states extended law enforcement and jurisdiction over the reservation, and 47 emphasized that the primary impact of Public Law 280 was that states extended criminal justice jurisdiction over reservation communities. Among those who emphasized concurrent state and tribal jurisdiction, five focused on concurrent criminal jurisdiction and 17 emphasized concurrent criminal and civil jurisdiction. According to court and other legal sources (see Chapter 1), an emphasis on concurrent criminal and civil jurisdiction for tribes and state/county government is the most complete understanding of Public Law 280. Nineteen of the respondents who emphasized Public Law 280's difficulties for tribal governments remarked that the law



diminished tribal sovereignty. Seven emphasized that Public Law 280's unfunded mandate created difficulties for local and tribal policing, and criminal justice relations. Other difficulties mentioned by a few respondents were the absence of state/county police support, discouragement of tribal law enforcement, and need for greater clarification of concurrent jurisdiction. Those that emphasized that Public Law 280 enhanced tribal government thought that Public Law 280 helped define county and tribal services responsibilities, allowed tribal governments law enforcement, defined legal jurisdiction, and enabled greater exercise of self-government. Nineteen respondents did not venture an opinion.

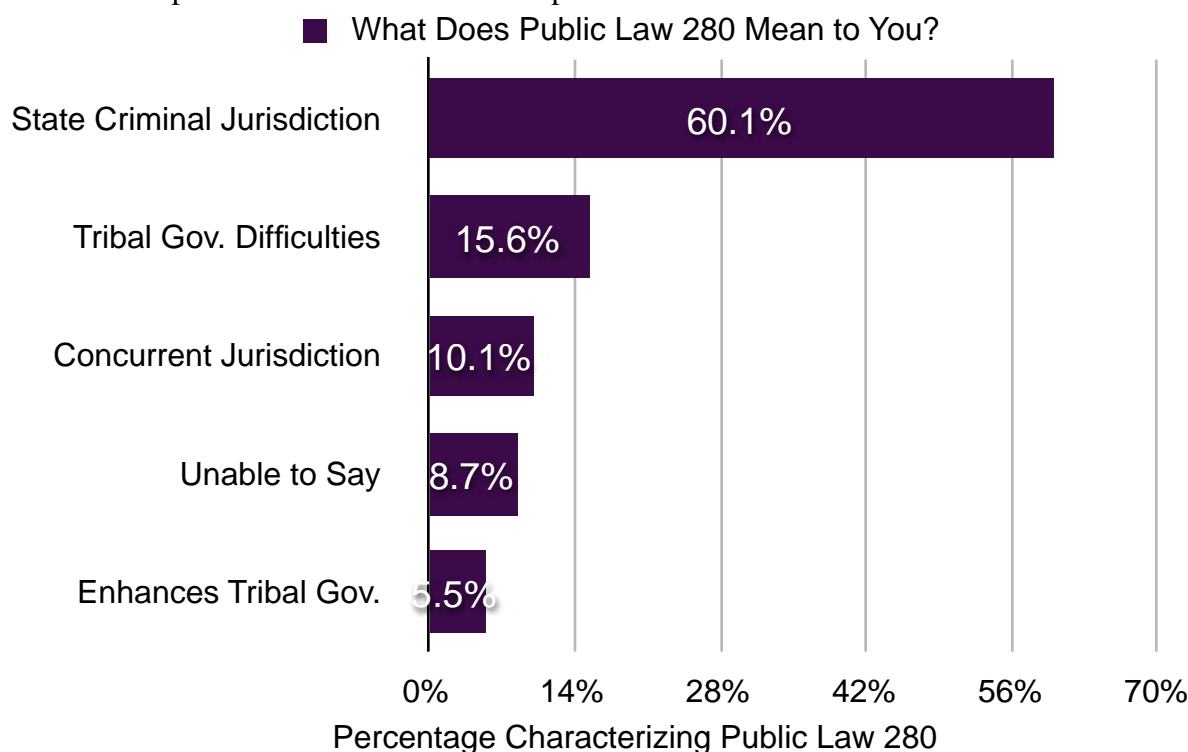


Figure 4.3

These data indicate that the central concern about Public Law 280 revolves around the exercise of state/county criminal jurisdiction on reservations and its tendency to supplant tribal authority. While there is some knowledge about concurrent jurisdiction, many tribal governments are not able to provide financial support for courts, police forces, and jails or probation services, or may not have organizational and community support for upholding concurrent criminal and civil jurisdiction on Public Law 280 reservations. "This tribe does not yet have the ability, either financially or internally, through its organizational structure, to handle exclusively, criminal jurisdiction. They do have a tribal court, now. So they can handle disputes that might be handled otherwise in state court." Hence respondents often noted that Public Law 280 has the result of leaving the field to state and county police and courts. For a majority of respondents, state/county criminal jurisdiction was the most overriding fact of Public Law 280, and few mentioned or believed that concurrent jurisdiction was available, or could be implemented, given the present resources and organizational capabilities of tribal governments. Most respondents who emphasized state/county criminal jurisdiction as the defining feature of Public Law 280 generally did not remark that the tribal government also had concurrent

jurisdiction, either believing it did not exist or was not a force in every day implementation of the law.

Among reservation residents, 56.9% (n=144) emphasized state/county criminal jurisdiction as the main feature of Public Law 280. Some reservation residents distinguished between state/county criminal and civil jurisdiction, perhaps taking their cue from many court decisions limiting the power of Public Law 280 states to apply their civil regulatory laws on reservations (see Chapter 1). Thus, these respondents tended to portray the differences between criminal and civil jurisdiction not as a matter of concurrent jurisdiction but as assigned, or de facto, divisions of jurisdiction between state/county and tribal governments. Thus, 12.5 % of reservation-resident respondents believed the state/county held jurisdiction in criminal affairs while the tribal government held jurisdiction in civil matters. Some remarked about difficulties or gray areas in distinguishing criminal and civil actions.

Well it means that the local law enforcement have jurisdiction on the reservation on criminal matters. Sometimes there is a fine line they determine, they are determining what is criminal, not us.

I think we probably could if we had concurrent jurisdiction or current authority with the sheriff's office and the state ... which right now they are really not really that They pretty much like to just say, "This is ours, and that is yours."

Within the group that emphasized state/county criminal jurisdiction as the primary feature of Public Law 280, 22.2% of reservation-resident respondents did not mention state/county criminal jurisdiction directly, but referred more generally to the state/county having law enforcement authority or jurisdiction over their reservation. The respondents most likely included criminal jurisdiction, but also seemed to attribute broad powers to state and county government on Public Law 280 reservations.

Yeah. Is that they can come onto the reservation anytime they please, and I have seen in practice, although it has improved since the new sheriff. But in practice they can come on anytime they please, and when they are called onto the reservation, there is hesitation. It doesn't feel good to me.

To me it means we are still under the jurisdiction of the state. We still have to comply with the state rules and regulations that they have in some form or fashion in a certain point.

Difficulties for tribal governments created by Public Law 280 were mentioned 18% of the time by reservation residents. Most of these respondents emphasized that Public Law 280 diminished tribal sovereignty (11.8%). Several reservation residents (4.7%) emphasized advantages to tribal governments as a result of Public Law 280. They focused on greater self-government, and the ability to create police, social, and court services for the community in

cooperation with the established law, social service, and criminal justice institutions of counties and states. Finally, 9% of reservation residents did not formulate a view on the impact of Public Law 280 on their reservation community.

Law enforcement personnel (n=29) emphasized the extension of state/county criminal jurisdiction over Indian reservations as the most important feature of Public Law 280 at a rate of 55.2% (n=16). Forty-one percent of law enforcement respondents emphasized county law enforcement or state criminal jurisdiction without mentioning separate or concurrent powers with tribal governments as primary in their experiences. Either concurrent jurisdiction or a separation of civil and criminal jurisdictions among tribal and state/county governments were mentioned by 24.1% of law enforcement officers. Some law enforcement officers emphasized that Public Law 280 enhanced tribal government, mainly through defining county and tribal responsibilities (13.8%), or emphasized the difficulties for tribal and local governments, primarily because Public Law 280 was an unfunded mandate (10.3%); and, finally, 10.3% of the law enforcement respondents did not formulate a viewpoint on the effect or meaning of Public Law 280.

Criminal justice personnel (n=45) emphasized state/county jurisdiction over local Indian reservations 73.3% of the time, a higher rate than either law enforcement or reservation residents. Among those criminal justice respondents who emphasized state/county jurisdiction, 17.7% said states managed criminal jurisdiction and tribal governments managed civil jurisdiction. Another 55.6% of criminal justice personnel focused primarily on the state's powers in criminal justice on reservations and did not report on concurrent or tribal powers in the civil law area. Several respondents (6.7%) emphasized concurrent jurisdiction, and, combined with those who emphasized separate civil and criminal jurisdiction for state/county and tribal governments, 24.3% of criminal justice personnel mentioned tribal government powers in civil law areas. Some of the remaining respondents remarked about diminishing tribal sovereignty (11.1%), including 2 who emphasized unfunded mandates. In a different vein, 1 criminal justice respondent emphasized ways in which tribal government was enhanced through defining services obligations between tribal and local government; and 3 respondents did not formulate a viewpoint on the significance of Public Law 280.

For this sample, most respondents believe that the assertion of state/county criminal jurisdiction is the most significant feature of Public Law 280. To a large extent, Public Law 280 is defined by the presence of state/county criminal jurisdiction. Concurrent jurisdiction and tribal civil authority were mentioned by about a quarter of the respondents, and appear to have much less affect the day-to-day understanding and relations that involve Public Law 280. These findings are significant because they may bear on the likelihood that the exercise of tribal jurisdiction in Public Law 280 states will receive political recognition and financial support among tribal and state/county groups as well as from the federal government. The absence of support for tribal jurisdiction may, in turn, affect the level of accountability and resources associated with reservation law enforcement (see Chapter 2).

## How Well Do Tribal Members, Criminal Justice and Law Enforcement Understand Public Law 280?

When all respondents, including reservation residents, in Public Law 280 states (n=218) were asked to rate the Public Law 280 knowledge of state/county law enforcement and criminal justice personnel, their rankings averaged 2.53, which is lower than the self rankings of 3.11 and below the medium score on the scale. In addition, we asked respondents to comment on whether tribal members, criminal justice personnel, and law enforcement officers understood Public Law 280 and the limits of state/county jurisdiction. Each group of respondents was asked to comment on their own group and on the other two groups. Reservation residents commented on whether tribal members within their own community had a good understanding of Public Law 280, but also commented on whether state/county criminal justice personnel and law enforcement officers have a good understanding of Public Law 280. Criminal justice personnel also commented on their own level of understanding of Public Law 280, as well as that of reservation residents. Similarly, law enforcement officers commented on whether they themselves have a good understanding of Public Law 280, and made the same observations about reservation residents. The several cross-comparisons enable observation of perceptions and expected understandings of Public Law 280 among the three main respondent groups. We summarize the comments and make comparisons about how well each group understands Public Law 280 according to their self-perceptions and perceptions of one other group.

Residents of reservations subject to Public Law 280 gave 198 comments on whether other reservation residents had a good understanding of Public Law 280. Among reservation residents, 124 (62.6%) thought that most reservation residents did not have a good understanding of Public Law 280, while 48 (24.2%) thought that most reservation residents had a good understanding of Public Law 280. Eighteen reservation residents (9.1%) thought that Public Law 280 knowledge was very mixed in the reservation community, while 8 (4.0%) did not want to venture a viewpoint.

Comments about how reservation residents don't understand the legal implications of Public Law 280 include:

It's real typical for people to think that the police can't come on here, they can't do anything to you here. I know people who, it's really mercuric, because as far as the tribe, the tribe does have criminal jurisdiction, but it is concurrent, in my understanding. So it means it is a battle of the wits, and of the will, of who actually is going to enforce and what laws. So if you want to put it that way, if the tribe really stands up and decides we are going to fully implement our sovereign authority and establish its own sets of laws, according to 280, we could request that the county help us implement our laws. ... but that is not how it usually

works. ... so people are just really misinformed. Even people off the reservation and on the reservation don't understand the law.

I mostly think that the lack of understanding is because they have no knowledge of it really. And the tribal members mostly think that, "Well, we are federal. Cops can't come out here." ... and for whatever reasons, they want to believe just that.

They don't understand. ... But for some reason, the membership looks at the Tribal Council as not doing their duties because we are not protecting them from county law. And it is not that. It is just Public Law 280. They have the right to do a lot of things, they do do. Where I think Public Law 280 hurts us, it is not doing enough for us.

When evaluating whether state and county law enforcement had a good understanding of Public Law 280, reservation residents provided 167 responses. Sixty-seven reservation residents (40.1%) thought that state/county law enforcement personnel have a good understanding of Public Law 280, while 68 reservation residents (40.7%) thought state/county law enforcement did not have a good understanding of Public Law 280. Twenty-one reservation residents (12.6%) thought that the understanding of Public Law 280 among state/county law enforcement personnel was mixed, and 11 (6.7%) reservation residents did not comment. While 67 respondents thought that state/county law enforcement personnel had a good understanding of Public Law 280, 23 of the same respondents, or 13.8% of all respondents, thought that law enforcement personnel have serious shortcomings in application of Public Law 280 and commented on selective application of the law, emphasis on enforcement over protection, emphasis on criminal over civil enforcement, the need to engage community relations, and inadequate appreciation of tribal government powers. Subtracting the qualified answers from those respondents who believe that law enforcement personnel were well informed yields 26.3% of reservation residents who believe that Public Law 280 is fully or effectively implemented on their reservation. Furthermore, those reservation residents who did not think that state/county law enforcement personnel had a good understanding of Public Law 280 or who had significant misgivings over the practices of a reasonably well informed law enforcement total 54.5%, or a majority of the reservation residents responding. When reservation residents say that law enforcement personnel do not understand Public Law 280, they generally mean that the state or county police either did not know the law well enough, and, therefore, it was not implemented well; or that the law was not implemented in ways that the reservation residents believed was satisfactory or correct. Other reservation residents believe that law enforcement personnel understood Public Law 280 well enough but did not implement Public Law 280 in ways that respected tribal government powers or concurrent jurisdiction. More than half of reservation residents (54.5%) do not believe that state/county law enforcement personnel understand Public Law 280 well enough to implement the law effectively, or they do not effectively carry out the law, although they have good knowledge of Public Law 280.

Some comments affirming that state/county law enforcement personnel are knowledgeable about Public Law 280, yet suggesting that reservation residents have concerns about implementation include:

I think the county itself, I think they go by the book. ... They understand that as far as that goes, right there. But they don't understand the part of the tribe and what sovereignty they have.

In some areas yes, I think in the purely criminal sense, they do. I think it gets hazier when you are starting to get into more civil areas that they really shy away from and back off from.

I think that they have understanding. I don't know, but I think it is getting better, but I don't know that there is always the respect that there should be because I believe that the tribal police here are cross-deputized, so there are times that they travel off the reservation to assist the county. But I know there are situations that perhaps the county is involved in doing something, and they would prefer having county sheriff's office be involved in the investigation as opposed to the tribal police. I think along with that probably comes some fear. Oh, maybe it is their cousin or maybe it is their sister-in-law, so they are not going to be fair. I think they have an understanding of it, and they know what they are supposed to do, but I think sometimes it may be easier or more efficient in their minds to do it themselves.

The law enforcement, they don't have, they don't perceive themselves to having limitations.

I think they have an understanding of what benefits them, and if it doesn't benefit them they tend to ignore it. ... and when push comes to shove, and we say excuse me, but Public Law 280 says you will blah, blah, blah, or county tribal agreement says, blah, blah, blah, they tend to blow it off saying, yes, we are supposed to, but we really don't have to.

Reservation residents (n=139) also commented on how well state/county criminal justice personnel understood Public Law 280. Forty-six reservation residents (33.1%) thought that state/county criminal justice personnel were well informed about Public Law 280. Among the latter affirmative reservation residents, 12 (8.6%) commented that criminal justice personnel focused too much on criminal issues over civil and did not support tribal government powers. Seventy-one reservation residents (51.1%) said that state/county criminal justice personnel were not well informed about Public Law 280. Among the major comments were that criminal justice personnel were not sensitive to tribal powers, needed more training, and were not clear on jurisdiction. Two reservation residents (1.4%) viewed state/county criminal justice personnel as mixed in their understanding of Public Law 280; new workers were relatively less informed.

Nineteen reservation residents (13.7%) did not give an opinion about how well state/county criminal justice personnel understand Public Law 280. Most reservation residents (59.7%) thought that either state/county criminal justice personnel did not have a good understanding of Public Law 280 or residents had significant misgivings about criminal justice applications of law, notwithstanding criminal justice personnel were well informed about Public Law 280. Their greatest concerns were about lack of respect for tribal sovereignty and concurrent jurisdiction, and failure to enforce the law for the benefit of reservation residents. Some sample comments from the latter group include:

I don't think they do. I don't think that they realize that a lot of this stuff. I just don't think you are treated as equal.

No ... I see it quite often in assault complaints that occur on the reservation. I don't know why, but it seems that they never seem to follow through with anything, and I just have a feeling it is a lack of understanding of Public Law 280. And an unwillingness to step on the toes of the tribe.

I don't believe they do. But I think the reason is because court personnel, DAs, even judges, in a traditional legal system, something that is outside of a tribal court or what have you, do not have a very good understanding, knowledge of Indian law issues in general. I mean, it is a specialized body of law. And the first time they look at Indian law issues probably the first time they picked up a book to learn about Public Law 280 or the Indian Child Welfare Act (ICWA) or anything else... and that poses a problem for a tribal member and for the tribe itself. Because we have somebody who is adjudicating the issues doesn't understand the problems that surround them, not what is in a book, but culturally and historically.

Not to the degree that they should. But I think any lack of knowledge regarding Public Law 280 has been made up with their willingness to try to coexist with the tribe, and our laws, and our ability to police ourselves.

No, I would agree that they need more understanding. It is more understanding, more education, more knowledge, a sort of profile of what tribal government status is about. I think a lot of them just don't know. They just think it is a piece of land where Indians live. Never mind about being a sovereign government, never mind about all that stuff. I mean, we just see it that way ...

As presented in Figure 4.4, this sample of reservation residents believe state/county criminal justice workers and police have better understanding of Public Law 280 than reservation residents (chi square = 10.62, df = 2, p = .0049). The chi-square compares the observed good understanding of Public Law 280 of reservation residents (24.2%, n=48), law enforcement (40.1%, n=67) and criminal justice personnel (33.1%, n=46) with expected outcomes. For this

sample, reservation residents believe that there are significant differences in Public Law 280 knowledge among reservation residents, law enforcement and criminal justice personnel. Significantly more reservation residents believe that law enforcement has good knowledge of Public Law 280 than do reservation residents. In this sample, reservation residents believe that law enforcement has better knowledge of Public Law 280 than reservation residents, and criminal justice personnel have better knowledge than do residents but less than police officers. However, most reservation residents do not believe that any of the groups has a good overall understanding of Public Law 280.

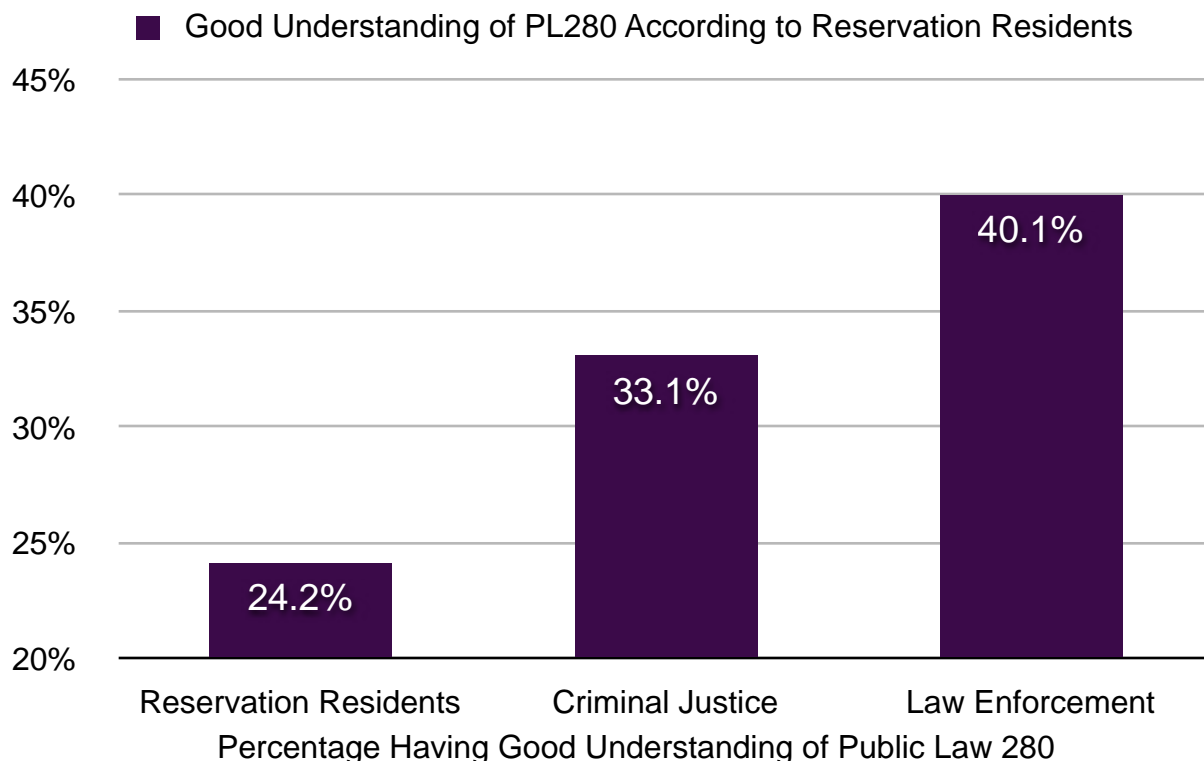


Figure 4.4

Twenty-nine state/county law enforcement respondents provided comments on whether reservation residents have a good understanding of Public Law 280. Nine law enforcement officers (31%) said that reservation residents had a good understanding of Public Law 280, while 9 law enforcement personnel thought reservation residents did not have a good understanding of Public Law 280. Five law enforcement respondents (17.2%) suggested there was a mixed understanding of Public Law 280 among reservation residents; and 5 law enforcement officers declined to comment.

Law enforcement personnel also commented on whether such officers have a good understanding of Public Law 280. Seventeen of the 29 respondents, or 58.6%, said that state/county law enforcement personnel have a good understanding of Public Law 280, while 11, or 37.9%, law enforcement officers said that such officers did not have a good understanding of Public Law 280. One respondent thought that Public Law 280 knowledge among state/county law enforcement was mixed. Among the affirmative responses, 3 responses (13%) were



qualified with comments that officers were not strongly committed to implementing the law and that veterans were more knowledgeable than rookies. Consequently, only 48.3% of the law enforcement respondents thought that Public Law 280 was fully or effectively implemented based on good knowledge of Public Law 280 among law enforcement personnel.

Figure 4.5 summarizes how reservation residents (RR), state/county criminal justice personnel (CJ), and state/county law enforcement officers (LE) rated themselves and others on how well Public Law 280 was understood. The first column (with header RR) gives the percentage of reservation residents who believe the groups in the rows have good understanding of Public Law 280. The first column is the data analyzed in Figure 4.4 above. The second column (with header LE) gives the percentage of law enforcement personnel who believe the groups in the rows have good understanding of Public Law 280, and so on for column three with the CJ, or criminal justice header.

As represented in Figure 4.5, state/county law enforcement personnel (58.6%) believe they understand Public Law 280 significantly better than reservation residents (31%), and this difference is statistically significant (chi square = 5.63, df = 1,  $p = .018$ ). Fewer reservation residents (24.2%) thought reservation residents were well informed about Public Law 280 than did state/county law enforcement (31%) (chi square = 2.76,  $p = .10$ , NS). The difference in perceptions between reservation residents and state/county law enforcement are not significant, indicating agreement about how well reservation residents understand Public Law 280 by police and reservation residents. Most police and reservation residents do not believe reservation residents have a good understanding of Public Law 280. Law enforcement respondents (58.6%) thought that state/county law enforcement officers were well informed about Public Law 280, while 40.1% of reservation residents believe that law enforcement is well informed about Public Law 280, but the difference is not statistically significant (chi square = .05, df = 1,  $p = .8$ , NS). Reservation residents and state/county police agree that police have a relatively high understanding of Public Law 280. State/county law enforcement personnel believe that they are better informed about Public Law 280 than reservation residents by a large margin, almost twice as many law enforcement officers have a good understanding compared to reservation residents. For this sample, law enforcement personnel believe they are significantly better informed about Public Law 280 than reservation residents, and reservation residents agree that state/county police have better understanding of Public Law 280 than reservation residents.

Forty-five criminal justice personnel commented on whether reservation residents had good knowledge of Public Law 280. Twenty-four workers in criminal justice (53.3%) do not believe that most reservation residents have a good understanding of Public Law 280. Thirteen (28.8%) of the criminal justice personnel said that most reservation residents understand Public Law 280 well enough, while 8 (17.7%) thought that reservation residents were mixed in their understanding of Public Law 280, where some tribal leaders, council members, and tribal employees were well informed, but other tribal members were not well informed.

Fifty criminal justice personnel gave their views on how well such personnel understand Public Law 280. Eighteen criminal justice respondents (36%) believed that criminal justice personnel had a good understanding of Public Law 280, but 8 of the same respondents (16% of the total sample) qualified their answers with comments that state/county criminal justice personnel tended to have relatively little appreciation for tribal government powers within Public Law 280. Thirty criminal justice workers (60%) said that they think most state/county criminal justice personnel do not have a good understanding of Public Law 280. Some comments by criminal justice workers include:

I would expect typically not. ... I think the reason why they typically wouldn't would be it is kind of hit or miss whether it applies, or not, if you go to a training ... while it is helpful information, having that come back to your home county and then having to apply it in some way and knowing even who to work with if there are efforts amongst any particular tribes in that direction. You know, how do we make this happen? How do we define our role in relation to the tribe, and how does the tribe define its role in relation to the court and all? It seems like there are a lot of disconnections. ... and the infrastructure I don't think is developed at this point were there is a sweeping application of 280. And then, additionally, I don't know that there are either inter-agency agreements or MOUs or whatever it might work to make it happen so people understand the structure within which services, or programming, or legal application would apply.

Well I wouldn't think it is complete, frankly, because I certainly wouldn't say that my own knowledge of it is complete. Obviously, we exercise criminal jurisdiction over Indians on the reservation. I can appreciate the distinctions between the tribe's own criminal code and our criminal code, and so forth. What I think is missing is, it is my impression that there is a fair amount of latent tribal authority to actually enforce criminal laws that they don't exercise, and I am not sure we all understand the real parameters of that. It really hasn't been all that long, in a historical sense, that the tribe has any tribal court system at all. And so we are kind of feeling our way, I think, as their court system evolves.

As represented in Figure 4.5, criminal justice workers (36%) believe they were somewhat better informed than reservation residents (28.8%) (chi square = .27, df = 1, p = .6, NS). A slightly higher percentage of criminal justice personnel (28.8%) than reservation residents (24.2%) believe reservation residents are well informed about Public Law 280 (chi square = 1.49, df = 1, p = .2, NS). A slightly lower percentage of reservation residents (33.1%) rated criminal justice workers as having a good understanding of Public Law 280, compared with the criminal justice personnel's self-rating (36%) (chi square = .04, df = 1, p = .84, NS). All comparisons between criminal justice personnel and reservation residents are not statistically significant, indicating agreement and similarity in understanding of Public Law 280 by both groups. For this sample, most criminal justice and reservation residents believe both reservation residents and criminal justice personnel do not have good understanding of Public Law 280.

The diagonal from top left to lower right provides a comparison of self-reports of Public Law 280 understanding by reservation residents, police and criminal justice workers. As presented in Figure 4.5, state/county law enforcement officers rated themselves as having the highest rate of good understanding of Public Law 280, and reservation residents also ranked law enforcement personnel highest in understanding of Public Law 280, although at a lower percentage than the law enforcement officers themselves (chi-square = 15.31, df = 2, p = .0005). State/county police ranked their own knowledge of Public Law 280 significantly higher than reservation residents ranked themselves in knowledge of Public Law 280. State/county police also rank themselves significantly more knowledgeable in Public Law 280 matters than criminal justice personnel, while criminal justice personnel rank their knowledge of Public Law 280 higher than reservation residents rank themselves. Both criminal justice and police rank themselves above expectations for the sample, while reservation residents rank their own knowledge of Public Law 280 below expected values.

Comparisons of Public Law 280 Understanding  
by Groups

	RR	LE	CJ
Reservation Residents (RR)	24.2% n=48 N=198	31% n=46 N=139	28.8% n=13 N=45
Law Enforcement (LE)	40.1% n=67 N=167	58.6% n=17 N=29	No Data
Criminal Justice (CJ)	33.1% n=46 N=139	No Data	36% n=18 N=50

Percentage Reporting Good Understanding  
Figure 4.5

Reservation residents ranked themselves lower than any other group for having a good understanding of Public Law 280. Both law enforcement and criminal justice personnel ranked reservation residents' knowledge slightly higher than the reservation residents ranked themselves. Reservation residents disagree substantially about law enforcement's knowledge of Public Law 280, while showing closer agreement with criminal justice workers, ranking them slightly lower than their own self-ranking. Except for law enforcement's self-rating, all ratings are well below 50%, indicating that most reservation residents and criminal justice personnel do not understand Public Law 280 very well. State/county law enforcement ranked themselves significantly higher than reservation residents and criminal justice personnel. Reservation residents rank state/county police significantly higher than their own self rating, although lower

than law enforcement's self rating. Reservation residents' ranking of state/county police as highest in Public Law 280 knowledge is similar to law enforcement's high self ranking, and both rankings are highest among all rankings, for the given sample.

If we ask how well Public Law 280 is implemented, then 20% (n=10) of criminal justice personnel thought Public Law 280 was fully implemented, while 24.5 % (n=41) of reservation residents thought the state/county criminal justice system fully or effectively implemented Public Law 280 (chi square = .23, df = 1, p =.6, NS). Criminal justice personnel and reservation residents agree about how well Public Law 280 is implemented: Less than a quarter believe that Public Law 280 is well implemented. For 48.3% (n=14) of law enforcement personnel respondents, Public Law 280 was well implemented, while 27% (n=45) reservation residents gave law enforcement personnel a good knowledge rating without significant concerns over Public Law 280 implementation (chi square = 4.38, df = 1, p = .0364). For this sample, more police in Public Law 280 jurisdictions believe Public Law 280 is well implemented than do reservation residents. We arrive at the latter percentages by subtracting the affirmative responses that expressed qualifications about how fully or well Public Law 280 was carried out on reservations, notwithstanding criminal justice personnel or law enforcement workers were well informed about Public Law 280. While reservation residents often expressed the view that criminal justice or law enforcement personnel had a good understanding of Public Law 280, they commented that, despite this good understanding, significant aspects of Public Law 280, generally tribal powers or concurrent jurisdiction, were not upheld. Similarly, a "no" response generally meant that either criminal justice or law enforcement personnel did not understand Public Law 280, and, therefore, Public Law 280 was not well implemented, or that the law was not well implemented, and, therefore, criminal justice or law enforcement did not understand Public Law 280 well. A "mixed" viewpoint implies that only some law enforcement or criminal justice personnel understand Public Law 280 and others do not, and so implementation was not complete. Those respondents who said they did not know enough to judge whether criminal justice or law enforcement understood Public Law 280 can be interpreted as contributing to the picture of incomplete implementation of Public Law 280. An unqualified view that one or more groups of respondents understand Public Law 280 very well can be taken as an estimate of how well Public Law 280 is implemented, according to the views of the respondents. According to these data, except for law enforcement personnel at 48.3%, only 20% to 27% of respondents gave ratings for good understanding of Public Law 280 without qualifications. State/county law enforcement believes that Public Law 280 is more completely implemented than reservation residents, of whom only 27% say that state/county police implement Public Law 280 well. Reservation residents disagree with state/county law enforcement that police implement Public Law 280 relatively well. Law enforcement also believes that it's significantly better at implementing Public Law 280 than do criminal justice workers, who rank themselves lowest among all groups (chi square = 5.67, df = 1, p = .017). Law Enforcement believes it implements Public Law 280 much better than criminal justice workers, and much better than reservation residents believe Public Law 280 is implemented. Reservation residents rate the implementation of Public Law 280 by law enforcement significantly lower than do state/county police.

About three-quarters of reservation residents and criminal justice personnel respondents together thought that Public Law 280 was not well or fully implemented. Public Law 280 may be well implemented for the remaining quarter of the respondents in these categories, but the data only suggest that about a quarter of these respondents thought that criminal justice and law enforcement had a good understanding of Public Law 280 without qualifications. In contrast, law enforcement personnel responded that Public Law 280 was potentially implemented completely or well 48.3% of the time, making them the outliers in relation to the other two groups. For these data, police thought Public Law 280 was well implemented significantly more often than criminal justice or reservation residents. Nevertheless, most respondents did not believe Public Law 280 was well implemented.

### How to Improve Understanding of Public Law 280

We asked reservation residents, criminal justice personnel, and law enforcement officers to suggest ways in which understanding of Public Law 280 could be improved within their own group or profession. Reservation residents (n=141) gave suggestions that fell into several areas, while some stated that education would be difficult and direct experience with Public Law 280 issues was the best teacher. Forty-six reservation residents (32.6%) expressed the view that understanding of Public Law 280 could be enhanced by public community and tribal council meetings, public presentations, and training programs for community members. They generally emphasized that the material presented should be specific and crafted to be accessible to a community audience.

I think that the best way would be to have a group meeting, whether it is a discussion in the tribal council meeting or something like that. It really would get a lot of people there. You have to have controversy there to do it. But, I mean, people who are interested enough to really be informed about it, they would come to a public meeting.

I think that is a real good idea because, generation-wise, a lot of young people, if they don't hear about it and know about it, the real law itself, they are not going to be educated on it. So periodically, just like anything, things change, people grow up, and I think it's a constant thing that needs to be brought out all the time. ... At least every couple of years or even yearly to come and do another presentation on Public Law 280, and if it is changed anymore.

Well, there can be more training, I think the legal office here constantly works on training the tribal council.

I think it is important that in order for the people that live on the reservation, or even near the reservation, who do a lot of work on or with the tribal government, to maybe, you know, attend a class that addresses Public Law 280 issues and how it affects the tribal government and the people who live on the reservation, and the work that they do.

Besides public meetings and training, other reservation residents (24.8%) suggested use of public media such as tribal radio stations, newspapers, brochures, and mailings. This group felt that mass media will attract interest among community members, and accessible and

entertaining information and updates on Public Law 280 will blend with everyday life and activities. According to these respondents, a steady presentation of mass media will gain attention and greater understanding among reservation residents.

The media ... the tribal radio station ... the tribal newspaper, and also with even the police themselves, even the sheriffs and tribal police have been informing people. And, you know, you have got booklets, pamphlets, but you get booklets, pamphlets, and they all sit here, and we are lucky if we get rid of a couple of them.

Probably an article in the newspaper would be nice with 280 simplified.

I think newspaper articles might help, or discussions in general council meetings.

Public education, I guess. More discussion of it among the political leadership. The newspaper is a main forum of communication, in addition to just sort of informal. I mean its so small here that a lot gets communicated informally, but the newspaper would be, I think, kind of the main place where there would have to be more discussion and exposition and explanation.

What might work is some kind of colorful tri-fold brochure kind of thing that is just bullets. You know, this is what it means, these are your rights. ... But I think a colorful brochure that just gets right straight to the point. Covers the main points that people could just , you know, "Hey, I am having trouble. I think these guys are doing me wrong. What do I do?" Just hand it to them ...

Some reservation residents (9.9%) favored courses in high school, college, and one-on-one discussions. Others (11.3%) remarked about general education through community institutions such as tribal courts and law enforcement, and emphasized that the education materials must be adapted to the various audiences in the community.

If you could write it so that a person who is not well read could read it, so it is understandable to the normal person.

Well, I think we need to have some sort of in-service training, and find out what it meant to us as professionals. And the community members probably have a publication given to them by the tribe, or maybe have it discussed at a council meeting or a community meeting where some expert could say, "This is what it is, and this is what it means to you." ... I think a lot of people are not interested in it, but I think there is a percentage, at least, of folks who take note of all this sort of thing, and do study it to make sure that they are aware of it.

About 16.3% of reservations residents expressed doubt about the usually suggested ways to inform and educate tribal community members. The group of reservation residents doubted

whether there was sufficient interest in the community to engage in public meetings or read written explanations, and emphasized that people learned about Public Law 280 through personal and professional experiences, otherwise they tended to ignore the details of the law and its presence on the reservation. This group of reservation residents thought that teaching about Public Law 280 to tribal community members would be very difficult.

I know, myself and 280 ... it still can be confused, I mean, as far as what is this and what is that and being clear on it, until you really get into it and start working with it. That helps. I think that helps. General education sometimes is great, but without the practical nature of it, it makes it tough to understand exactly. Yeah, it is tough responding. They wouldn't gain an understanding of Public Law 280 until it began to affect the quality of service. ... Let's say a state trooper came in and became overzealous in the enforcement and it offended our culturally sensitive tribal members. Let's say a tribal elder or something. Then they would probably want to know what Public Law 280 was about and really invest interest with the tribe. So until the quality of service goes down, I don't think people have any serious interest in Public Law 280.

The simple answer would be greater education, but who is going to do that? That is like when you talk about getting voters more educated about a measure or something that is on a ballot. There is plenty of information out there, but most people are not going to do that because they are busy with their daily lives, so they are not going to get involved in that. Or if it affects them personally, the unfortunate situation to happen that maybe some mother's son got picked up at the house on a warrant or something, that might be cause for her to learn about Public Law 280. But the average person to go out, no. I don't know really what you would do, or frankly, if you were to do anything people would much care about.

Twenty-five state/county law enforcement officers provided suggestions for improving the understanding of Public Law 280 among their colleagues. Training, informational meetings, and seminars accounted for 72% of the suggestions. The remaining law enforcement officers said there was no need for improvement (20%) or they did not venture a suggestion (8%). Law enforcement prefer training and information exchange, much more so than reservation residents.

Thirty-nine criminal justice personnel gave suggestions for improving understanding of Public Law 280 among workers in their profession. Criminal justice personnel (66.6%) strongly preferred formal training as the means of gaining knowledge about Public Law 280. A small group (12.8%) did not support learning through formal training sessions, but emphasized that knowledge about Public Law 280 was best gained through direct experience and work on issues involving that statute.

State/county criminal justice and law enforcement personnel prefer formal training, but reservation residents offered a variety of approaches including public media, public meetings, and education. Both criminal justice and law enforcement are professions, and the means of gaining information and knowledge are routinely sought through formal training and meetings. A tribal community, however, requires motivation, presentation, community networks, and public media to effectively inform the reservation public.

### What is Most Important to Learn about Public Law 280?

To better develop material for distributing information about Public Law 280, we asked respondents to tell us the question or information they most desired to know about Public Law 280. There were 55 suggestions from reservation residents, who emphasized the need for clearer information and definition of Public Law 280 and specific issues contained within the law. Thirty-four reservation residents (61.8%) asked for greater explanation about Public Law 280 legal and jurisdictional specifics, and how the statute applies to reservations and tribal governments. Some topics that reservation residents said required clarification or more information about Public Law 280 include: tribal sovereignty, concurrent jurisdiction, clarification of state/county and tribal powers and jurisdiction, nonmember jurisdiction, retrocession, making Public Law 280 workable, absence of tribal consultation, and a simple explanation of Public Law 280.

I am thinking back to the community members and one question would be what is Public Law 280 in simple terms.

I would like to have a better understanding of (Public Law 280). They just had that one thing one day that I can remember that they really don't know what it is all about. It is just a number to them. They know, maybe, some of it but somebody come here and give a better explanation.

Well I wouldn't mind having some literature that would explain just what it is all about. I wouldn't mind that at all. People, they hear Public Law 280, but how many people know really if they could define it?

I think we are often confused about civil regulatory and criminal jurisdiction, what county and state have the authority over. Why we can be told no on something, and made to feel like a ward. Sometimes that is humiliating. In fact, it is always humiliating to feel that you cannot take care of (yourself).

Jurisdiction. What they can do when they are called, and what they cannot do.

One question about 280? I have a question. Government-to-government relationship. Why are we going through all the rules of the county, state? Why



isn't it federal, or federal-to-Indian government relationship? How does the state, it seems just like the tribe, keeps getting moved down the ladder. Because originally, it was on a government-to-government relationship. And the first treaties were always directed on that level. Why are we minimizing it by going down to a county level?

A second group of reservation residents (25.5%) was interested in the origins, purpose, and history of Public Law 280. They wanted to gain a greater contextual understanding of why Public Law 280 was created and how.

Why was it set up, or how was it set up, for what purpose?  
Why is (Public Law 280) here? Even though we are federally recognized, they still hold it over us.

Why did they ever do it? I guess that is what I would like to know. Why did they ever put those kind of things, restraints almost like? Maybe we never thought we would ever get to be adequate to be able to do that, and then that was a reason. ... Why did we ever do it in the first place? And even the other question would be knowing that it is not a good system, why do we keep it? I mean, is it just because, "Oh we, that is the way we have done it for 50 years, so we will keep doing it"?

The legislative history. How was it developed?

My question would be: Why did it happen without tribal involvement? Because it was an agreement between federal government and the states, the tribes had no say in it. Nobody asked who wanted this arrangement.

I think everyone should know that we didn't ask for this. This is forced on us. It has caused a lot of problems.

A last group of reservation residents did not give a suggestion for the question (12.7%).

Twenty law enforcement personnel answered the question, and 60% asked for definitions and explanations about Public Law 280. Most were interested in definitions of retrocession and explanations in simple terms of the overall Public Law 280 law. Two respondents were concerned about the historical origins and policy purposes of Public Law 280. Thirty percent of law enforcement respondents did not formulate a question they needed answered about Public Law 280.

Among criminal justice workers, 19 responded, and 68.2% asked for clearer definitions about Public Law 280. They were interested in explanations and clarifications of concurrent jurisdiction, and jurisdiction between state/county and tribal powers. Four criminal justice

workers were interested in the history and policy purposes of Public Law 280, and in particular why some tribes were affected and others not, the unfunded mandate of the law, and why partial implementations occurred in some places.

The questions that criminal justice, reservation residents, and law enforcement personnel wanted most answered about Public Law 280 were definitions and clarifications of tribal and state/county jurisdictional relations. Many also are interested in the origins, policy purposes, and legislative history of Public Law 280, and how and why it became applied to some Indian reservations and not others.

### Summary

The respondents, generally, are people who have contact with Public Law 280 and its issues. As a group they ranked themselves as having only medium level understanding of Public Law 280. Most reservation residents know they are under Public Law 280 jurisdiction, LE slightly less so and about 16% of CJ were not aware of Public Law 280. Most respondents know about Public Law 280. Most respondents learned about Public Law 280 through direct experience and work with a tribal community, and about 40% learned from training and education courses. Most criminal justice and police professionals do not receive formal training about Public Law 280 and its implementation, and the lack of formal training programs may help explain the self report of modest knowledge about Public Law 280. Most respondents understand Public Law 280 as the assertion of state/county jurisdiction over Public Law 280 reservations, and few are aware of or understand concurrent jurisdiction in criminal issues for tribal governments. The general lack of detailed understanding of Public Law 280 may lead to jurisdictional disputes and may inhibit tribal communities from gaining funding and support for managing criminal jurisdiction. Except for law enforcement, reservation residents and criminal justice personnel believe that tribal members and criminal justice workers have modest understanding of Public Law 280. Less than 40% believe that reservation residents and criminal justice have good understanding of Public Law 280. Law enforcement believes they have significantly better understanding of Public Law 280 than reservation residents and criminal justice workers. Reservation residents also rank police understanding of Public Law 280 higher than that of reservation residents and criminal justice. State/county police believe that they have very good understanding of Public Law 280 and that they implement Public Law 280 police activities better than reservation residents and criminal justice believe.

State/county police believe they implement Public Law 280 significantly better than reservation residents believe. There is significant disagreement between police and reservation residents, as relatively fewer reservation residents believe that police are implementing Public Law 280 well. Less than 30% of reservation residents and criminal justice believe Public Law 280 is well implemented, but significantly more, about half, of state/county police believe that law enforcement is effectively implementing Public Law 280.

State and county criminal justice and law enforcement personnel prefer formal training to learn more about Public Law 280, but reservation residents believe that, for tribal members, consistent distribution of public information about Public Law 280 in public media, public meetings, and education is better. Both criminal justice and law enforcement are professions, and the means of gaining information and knowledge are routinely sought through formal training and meetings. A program of Public Law 280 information in a tribal community, however, requires motivation, presentation, community networks, and public media to effectively inform the reservation public. Improving information and understanding about Public Law 280 will require two different types of campaigns: training sessions for professionals and general public media education campaigns for community tribal members.

In any information program about Public Law 280, most criminal justice, reservation residents, and law enforcement personnel wanted better information about Public Law 280 definitions, as well as clarifications of tribal and state/county jurisdictional relations. Many respondents are interested in the origins, policy purposes, and legislative history of Public Law 280, and how and why it became applied to some Indian reservations and not others.

## CHAPTER 5

### Availability of Law Enforcement

Availability of law enforcement is one measure of possible effectiveness of police services and potential satisfaction by community members. How quickly do police officers respond to a call for help? We expect that most community members prefer quick responses when they are in need of help, or when there are disturbances or law breaking in the neighborhood. We investigate police availability through a variety of questions and ratings. Reservation residents were asked to give an overall rating of satisfaction with law enforcement availability on a scale of 1 to 5, with 5 being best. Further qualitative questions were asked about satisfaction with police availability, response time, remoteness, distance to nearest police station, and questions about patrolling the reservation. Previous experience and research (see Chapters 1 and 3) suggest that a major issue on Public Law 280 reservations is the relative unavailability of police services when called for help. Furthermore, on Public Law 280 reservations, police are reportedly slow when responding to calls for service. The concerns raised by these reports led us to investigate police availability and response through comparisons of Public Law 280 reservations and non-Public Law 280 reservations. Here we explore evaluations of overall responses and availability satisfaction, and develop possible explanations for any observed differences by examining respondent stories and contexts provided by the qualitative questions.

The average ranking given by reservation residents ( $n=226$ ) for availability of law enforcement is 3.04 on a 5-point scale. The rating is near the medium level, and so all reservation residents believe that the availability of police on their reservations is not particularly poor or excellent but about average. When comparing the reservation residents' ratings in Public Law 280 reservations with those in non-Public Law 280 reservations, reservation residents in Public Law 280 jurisdictions ( $n=161$ ) give an average rating of 2.87 compared to 3.5 for non-Public Law 280 reservation residents ( $n=64$ ). Public Law 280 reservation residents rate police availability significantly lower than non-Public Law 280 reservation residents (Wilcoxon  $W = 16642.0$ ,  $p < .001$ ).<sup>1</sup> Non-Public Law 280 reservation residents rate the availability of law enforcement above average, while Public Law 280 reservation residents rate availability of law enforcement slightly below average.

In the qualitative interviews, we asked the reservation residents whether the availability of law enforcement was satisfactory, and allowed them to comment. The interviews resulted in yes or no responses, with many qualifications and supporting information. In the quantitative rating scale question, Public Law 280 reservation residents rated availability of law enforcement significantly lower than non-Public Law 280 reservation residents, so we use the qualitative comments to search for differing patterns of police availability. The interviews yield reservation

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<sup>1</sup> Here and later in the study, we are using the Wilcoxon nonparametric group comparison test. The statistic will be identified as "Wilcoxon W".

residents' comments about their satisfaction with police availability for federal-BIA, county-state, and tribal police forces.

Satisfaction with federal or BIA police availability among non-Public Law 280 reservation residents (n=36) yields 16 "yes" answers, but 7 of those with significant qualifying comments; 8 "no" answers; and 10 mixed answers, all with qualifying comments. Two respondents said they could not formulate an opinion. The 7 qualified "yes" answers are varied and include caveats about lack of timeliness, tribal or family politics, too many community complaints, not enough officers, and police impersonality. The "no" answers emphasize mostly that there are not enough officers, but also allude to lack of resources, lack of respect, and too many community complaints. The mixed answers emphasize mainly that there are not enough officers and the complications of community-family politics, but also a tendency toward crisis management and a general need for improvement. The absence of enough police officers is mentioned by 10 non-Public Law 280 reservation-resident respondents (27.7%). It is somewhat difficult to unravel the qualified "yes" comments and the mixed comments, but assuming the "yes" comments are more positive than the mixed comments, then we can compare the three main types of responses. Forty-four percent of non-Public Law 280 reservation residents are generally satisfied with federal or BIA police availability, while 27.7% have mixed reactions, and 22.2% are dissatisfied. Only 9 non-Public Law 280 reservation residents (25%) are satisfied with federal-BIA police availability without qualification. These data are comparable to the somewhat above-average police availability ratings given by non-Public Law 280 reservation residents overall.

On some non-Public Law 280 reservations, BIA police are complemented by tribal police, or tribal police are employed by the tribal government through the 638 contracting process, which allows tribes to contract to provide BIA services. In some cases, tribal police are assigned to work with or under the command of BIA police but in other cases the tribal government has management of the tribal police. Reservation residents (n=52) in non-Public Law 280 reservations were asked to comment on their satisfaction with the availability of tribal police. Twenty-seven non-Public Law 280 reservation residents (51.9%) said they were satisfied with the availability of tribal police, although, from this number, 12 provide qualifications to their answers. The most common comment was that tribal law enforcement could improve.

I think it could be better, and I think we can keep moving towards immediate responses and good public relations and more preventative-type work than just crisis intervention.

Yeah. Like I say, they still got to get some kinks out, but down the line I am hoping that things will change.

Twenty-two reservation residents in non-Public Law 280 communities (42%) said that the availability of tribal law enforcement was not satisfactory. The greatest concern among the commentators was the lack of resources and police officers, which inhibited tribal police from sufficient availability.

“No, not to me.” Interviewer: “What would make it better?” Interviewee: “By having more officers on patrol at different times. Say, having four police officers in the morning and evening. Well, the days are not so bad because we could probably do with less in the day. But I think that we need to have more people on in the evening. ... But we need to have availability. We need to have people there all the time.”

Well, let's see. If you are talking about up here and the whole reservation here and the business park, it has not been. We need more officers.

I don't think the availability of law enforcement is satisfactory. I believe they are short-handed. They probably need to have more officers in our community.

Three respondents from the non-Public Law 280 reservations declined to formulate an opinion about their satisfaction with tribal law enforcement.

Among non-Public Law 280 reservation residents, a higher percentage said that the availability of tribal police is satisfactory (51.9%) compared with the percentage that found availability of federal/BIA police satisfactory (44.4%). If we exclude from the calculations all non-Public Law 280 reservation residents who expressed significant qualifications about the availability of tribal or federal/BIA law enforcement, the difference is even greater. Unqualified satisfaction with the availability of tribal police on non-Public Law 280 reservations was at the level of 42% compared with a 22.2% satisfaction rate for federal-BIA officers. The primary reason for dissatisfaction with the availability tribal law enforcement was the lack of police officers and resources. There were not enough officers to provide sufficient service and coverage within the reservation community. Non-Public Law 280 reservation residents (27.9%) were concerned that the lack of officers and resources inhibited the availability of federal-BIA police coverage and 34.6% had the same concern about tribal police availability. Tribal police availability is somewhat more inhibited by lack of resources and officers than federal-BIA police availability in non-Public Law 280 locations. Reservation residents have more mixed reactions to federal-BIA law enforcement availability than to tribal police availability. Perhaps reservation residents are more willing to express clear opinions about tribal police availability than about the federal or BIA police.

On Public Law 280 reservations, law enforcement is provided by the local state and county governments, and, in some cases, tribal police. Hereafter, when we refer to state police, we will mean county and city, as well as state, officers. On most Public Law 280 reservations, county officers enforce state law.

Reservation residents in Public Law 280 states (n=137) commented on their satisfaction with the availability of state/county police. Sixty-one Public Law 280 reservation residents (44.5%) said they are satisfied with the availability of state/county police, and among this group, 12 provided varied qualifying comments. These comments are very diverse and don't seem to

have a pattern, and unlike the non-Public Law 280 comments, there appears not to be a central theme about lack of resources or police officers among the affirmative answers. Sixty-six Public Law 280 reservation residents (48.2%) said that the availability of state/county police was not satisfactory, and 46 from this group made qualifying comments. Similar to the non-Public Law 280 reservation resident comments on lack of resources, 14 Public Law 280 reservation residents, or 10.2%, made comments about lack of coverage or too few police officers.

No. ... It should be to where there is 24-hour coverage. There should be enough man power just to provide 24 hours/seven days a week.

No. I think the county is too big. There are too many miles to cover for the amount of deputies they have on, especially at the night shifts.

I think they need more police. ... Because like they say, it takes forever to get out here.

No, because I don't think we have enough officers on the reservation.

Among the Public Law 280 reservation residents, however, the need for additional resources and officers is overshadowed by concerns over the mode of interaction with county or state/county police. Among the issues mentioned are: absence of police presence, lack of quick response, lack of priority for reservation enforcement, need for strong community relations, selective enforcement and others. Thirty Public Law 280 reservation residents (21.9%) were concerned about the relations of the state/county police with the reservation community and thought that those relations were strained and inhibited the availability of state/county law enforcement in their communities. Some comments include:

I would have to say no. I think there is a lot of room for improvement. For one thing, clarification on Public Law 280 for both sides: the law enforcement agencies and the tribal community.

No. I just believe that it's who's at the helm at that particular time. I can say about some police officers, they are good police officers, but they have orders. I can remember we did have some cooperation with some sergeants, but when they knew that they were cooperating with the Indians, they were put on the other side of the county.

They usually put stuff in priority and usually the reservation is less priority ... No, I don't think so. I think they are really prejudiced, I guess you would say. They are trying to be the white law enforcement, I think. Instead of being there for the people, you know to help serve and protect ...

The availability, I believe, could be satisfactory if the tribe had a mechanism in which to enforce, or procedure in which to call them. Where there would be that trust, and it had been previously set up.

No, because I don't see a presence, and I don't know if there necessarily has to be a physical presence. But I don't see a presence of enforcement of laws, of criminal laws, or even tribal codes on the reservation.

I think the tribal community would like to see more of a presence of law enforcement.

No. We have no law enforcement. It's just like no man's land in regard to law enforcement.

Seven respondents gave mixed evaluations to their satisfaction with the availability of law enforcement, and 3 did not venture a viewpoint.

Public Law 280 reservations sometimes have tribal police departments, and reservation residents were asked to comment on their satisfaction with the availability of tribal law enforcement. Seventy-three Public Law 280 reservation residents commented on their satisfaction with the availability of tribal police enforcement. Fifty-one respondents (69.9%) were satisfied with the availability of tribal police. However, to eliminate a possible self-evaluation bias among reservation residents who are tribal police, we take them out of the study, and 43 respondents (66.0%) remain who say they are satisfied with the availability of tribal police, although among this group 13 made qualifying remarks. Most of the qualifying statements concern lack of resources or emphasized the ways in which tribal law enforcement could improve.

It is satisfactory. It could be better. We either need more officers, we need better trained officers, probably we need to have expectancies spelled out better. We need to know: What their mission is. What their goals are. What do we expect of them? ... better communications.

No. It could be more. It's, I like to think, adequate, but I would like to have even more (officers).

Relatively few reservation residents (27.4%) expressed dissatisfaction with the availability of tribal police. Twenty Public Law 280 reservation residents expressed dissatisfaction with the availability of tribal police, and 15 gave qualifying comments. Six focused on the lack of resources, and 8 commented on community-relations issues, such as visibility in the community, selective enforcement, and overbearing demeanor. One respondent did not formulate an opinion, and 1 other respondent gave a mixed response.



As represented in Figure 5.1, for the study sample, reservation residents are more satisfied with the availability of tribal police than BIA-federal or state/county police (chi square = 19.09, df = 3, p = .0003; Cramer's V = .24). Tribal police in both Public Law 280 and non-Public Law 280 jurisdictions are seen by reservation residents to be more available than Public Law 280 state/county police and non-Public Law 280 federal-BIA police. Public Law 280 reservation residents are more satisfied with the availability of tribal police than with state or

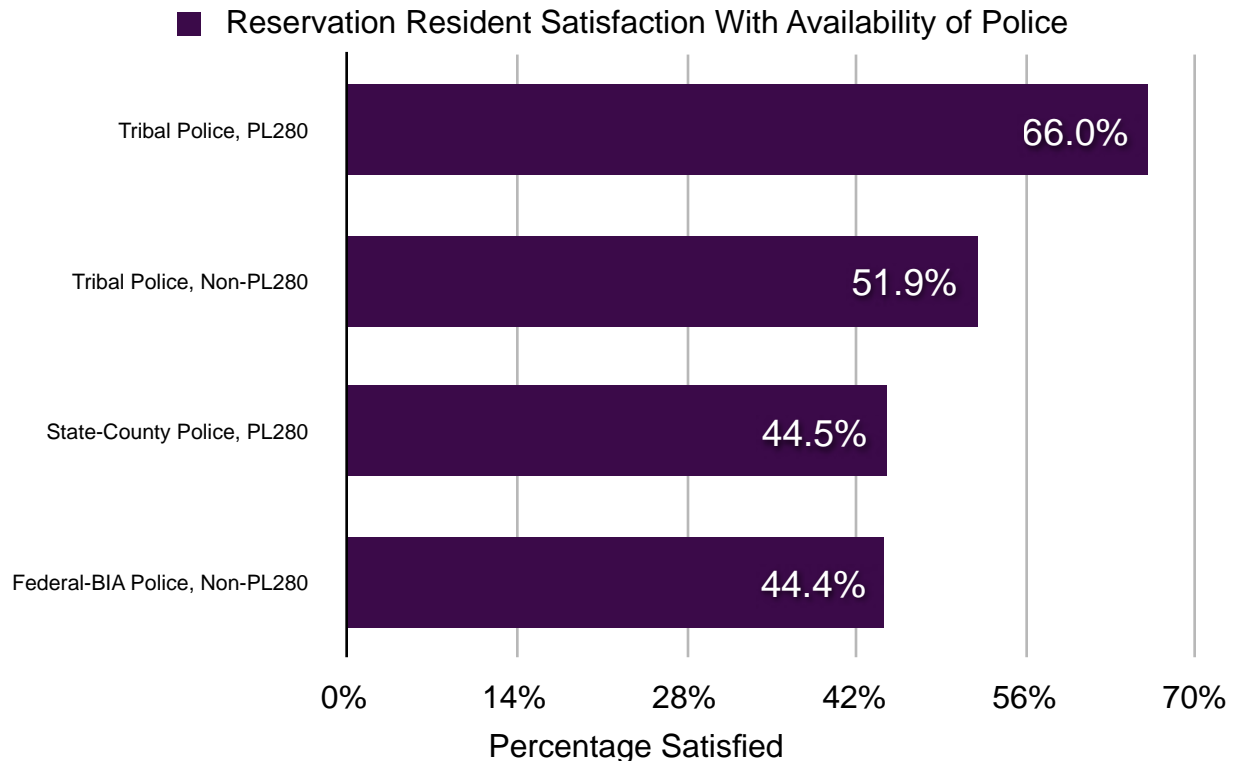


Figure 5.1

county police. Public Law 280 reservation residents are more satisfied with the availability of Public Law 280 tribal police than are non-Public Law 280 reservation residents satisfied with the availability of non-Public Law 280 federal-BIA police. Reservation residents rate the availability of tribal police in Public Law 280 and non-Public Law 280 jurisdictions about the same.

Satisfaction of Public Law 280 reservation residents with the availability of tribal law enforcement is relatively high, the relative dissatisfaction of Public Law 280 reservation residents with law enforcement appears mainly concentrated on dissatisfaction with the availability of state or county police. That dissatisfaction is not the result of resource limitations, but rather owing to difficulties in relations between tribal reservation communities and state or local law enforcement. Perhaps the high satisfaction with the availability of Public Law 280 tribal police is a result of the relative perceived absences of availability by the state/county police. In effect, Public Law 280 tribal police are filling a vacuum in police coverage left by state/county police, an absence that is noticeable and appreciated by reservation residents. Dissatisfaction with the availability of tribal and federal-BIA police in non-Public Law 280

reservations is more strongly influenced by the lack of resources, rather than issues of contested services and jurisdiction as in Public Law 280 reservations, as well as lack of resources.

To investigate the patterns of reservation residents' explanation for the availability of police, we grouped all comments into two groups: 1) concentration on lack of resources, and 2) issues of community relations and interaction with the police and community. Often when respondents answered affirmatively that the police were available, they made qualifying comments about lack of resources or other difficulties that might inhibit or explain police availability. Not all respondents commented, some just said yes or no without qualifying comment. Here we can gain more insight into the ways in which reservation residents understand the patterns of police availability. Non-Public Law 280 tribal police are perceived to be underfunded (34.6%), and the underfunding contributes to the unavailability of police coverage. For Public Law 280 tribal police, the constraints on police availability are about

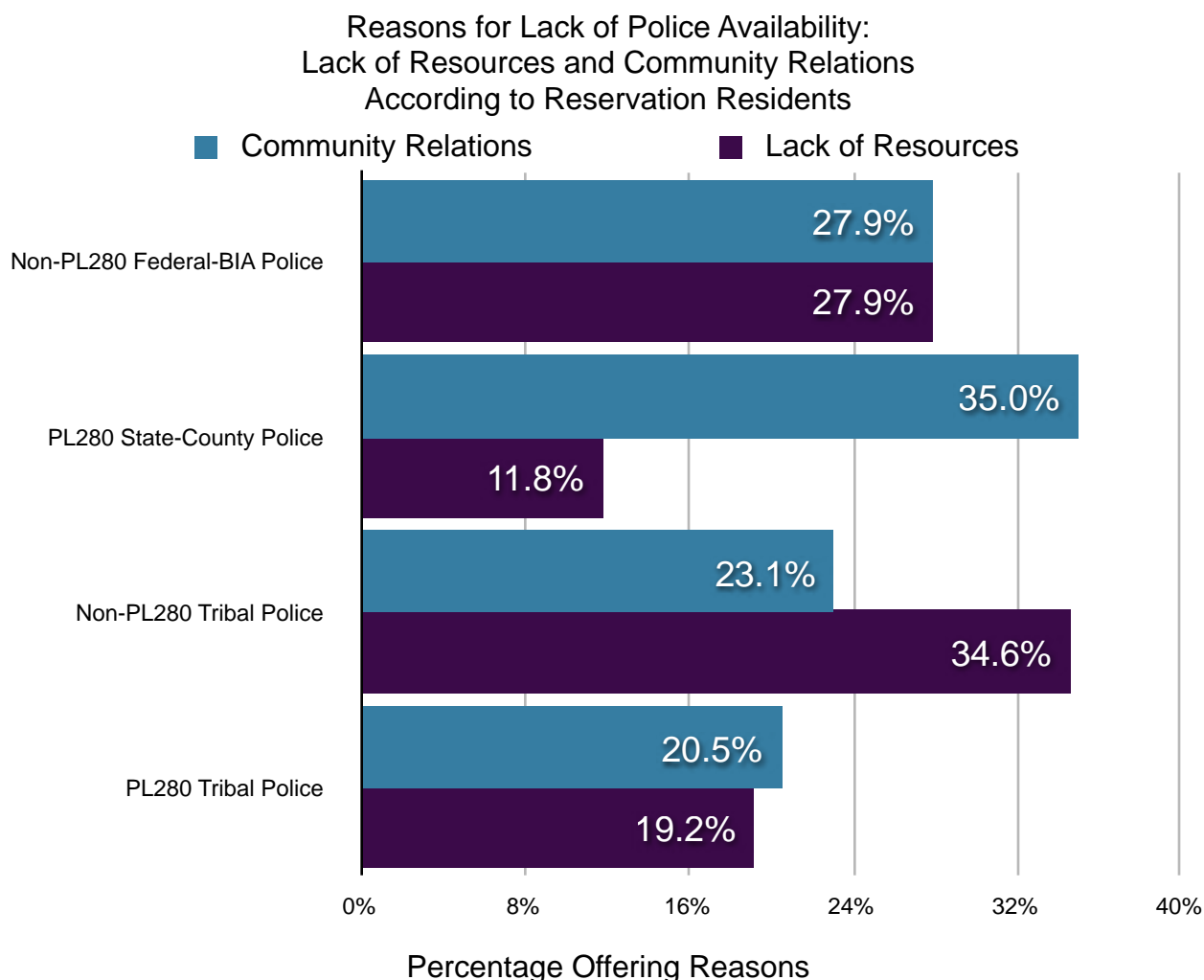


Figure 5.2

equally distributed between resource (19.2%) and community-relations issues (20.5%). Similarly, federal-BIA police constraints on availability are viewed as evenly distributed between

community relations (27.9%) and resource issues (27.9%), although both issues are seen by reservation residents as more pronounced than among Public Law 280 tribal police. As represented in Figure 5.2, reservation residents perceive that underfunding affects non-Public Law 280 police availability more than Public Law 280 police departments ( $\chi^2 = 14.5$ ,  $df = 3$ ,  $p = .002$ ; Cramer's  $V = .22$ ). Reservation residents believe that non-Public Law 280 tribal police are constrained significantly more by lack of funding than Public Law 280 state/county police. According to reservation residents, both tribal and federal-BIA police in non-PL 280 jurisdictions are constrained from providing services because of lack of sufficient resources. State/county police are perceived to have relatively adequate resources, and, hence, their lack of availability is due to other reasons. Public Law 280 police are perceived as providing slightly less services than their allocation of resources. For this sample, reservation residents believe non-Public Law 280 federal-BIA and tribal police departments are significantly underfunded for the services required, and underfunding is a major cause of police unavailability. For this sample in Public Law 280 jurisdictions, reservation residents say lack of funding is not a significant cause constraining state/county or tribal police availability.

Many reservation residents perceive the availability of state/county law enforcement not in resources terms, but in community relations terms. Relatively few reservation residents (11.7%) thought that state/county police unavailability was owing to lack of resources; rather, they attributed problems to other issues, such as jurisdiction, lack of priority, selective enforcement, lack of presence, and need for stronger community relations (35.0%). As represented in Figure 5.2, this sample indicates reservation residents do not believe community relations are a significant cause for constraining police availability ( $\chi^2 = 5.89$ ,  $df = 3$ ,  $p = .12$ ). For this sample, the effects of community relations are similar for both PL 280 and Non-PL 280 jurisdictions and for tribal police when compared with federal-BIA and state/county police.

Non-Public Law 280 reservation residents say federal-BIA and tribal police availability can be improved with more resources. Public Law 280 reservation residents, however, perceive that lack of resources is a significantly lesser constraint on police availability than non-Public Law 280 reservation residents. Reservation residents say police community relations have similar effects toward constraining delivery of services in both Public Law 280 and non-Public Law 280 jurisdictions. Improvement in availability of Public Law 280 tribal police is seen as depending on a mix of additional resources and improvement in community relations. Any suggestions for improving police availability on Indian reservations, Public Law 280 and non-Public Law 280, will require attention to both resources and community relations. Greater emphasis on community relations will be necessary to improve the availability of police enforcement in all Indian jurisdictions. The delivery of law enforcement appears complicated by uneasy community relations beyond the lack of officers or resources.

## Response Time

Police studies of rapid response do not suggest rapid responses are likely to create greater police effectiveness as measured by quicker and more arrests. Studies show that about 75% of serious crimes are usually discovered well after a crime is committed.<sup>2</sup> Citizens often delay calling on an incident for at least five minutes, and often perpetrators have fled the scene by the time police officers can respond and arrive at the incident location. There is little research evidence suggesting rapid police response is a measure of police effectiveness for making immediate arrests.<sup>3</sup> In the present study, we research whether reservation residents believe county, state, federal-BIA and tribal police respond to calls for their services. We are not asking whether the police make arrests, although the common complaint is that suspects have fled the scene well before police are called and/or arrive.

Reservation residents were asked whether police responded to calls in a timely manner. We asked this questions about federal-BIA, tribal, and state/county police. Depending on the reservation and the way the community and state/county or federal government organize police, there could be tribal and federal-BIA police combinations, or in some cases no tribally controlled police. In recent years, some reservation communities have supported tribal police that work with state/county police. Reservation residents in both Public Law 280 and non-Public Law 280 reservations were asked whether federal-BIA, state/county, and tribal police responded to calls for help promptly. There were 35 reservation-resident responses to the question for non-Public Law 280 reservations, and 25 answered affirmatively that BIA police responded to calls promptly. Hence, 71.4% of non-Public Law 280 reservation-resident respondents believed that federal-BIA police on non-Public Law 280 reservations were responsive to calls for police. Among the 25 affirmative responses, 7 respondents commented that responses were limited by lack of officers (3) and availability (3), and 1 commented that some officers were not responsive, but most were. Both comments on the lack of officers and limited availability for response indicate resource constraints. Seven non-Public Law 280 respondents stated they did not believe that federal-BIA police were responsive to calls promptly, and all gave comments. Three respondents gave resource constraints, such as lack of officers and availability, as reasons for untimely responses by the federal-BIA police. Other comments include breakdowns in communication, jurisdictional complexity, family favoritism, and lack of confidentiality as reasons for tardiness from BIA police response to calls. Two non-Public Law 280 reservation residents replied that the timeliness of BIA police was mixed and cited availability resource restraints. In total, 11 non-Public Law 280 reservation residents (44%) commented on lack of resources as a constraint inhibiting timeliness of response for federal-BIA police, while 6, or 24%, commented on non-resource community relations constraints on federal-BIA police responsiveness.

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<sup>2</sup> Skogan, Wesley and Kathleen Frydl (eds.) *Fairness and Effectiveness in Policing: The Evidence*, (Washington, DC: National Academies Press, 2004), pp. 226-227.

<sup>3</sup> Skogan *Fairness*, p 227.

Reservation residents in Public Law 280 locations (n=153) answered the question whether state/county police responded to calls promptly. Among Public Law 280 reservation residents, 68, or 44.4%, affirmed that state/county police responded to calls in a timely manner. Among the affirmative group, 23 made comments, of which 5 said that contracts or agreements with tribal police contributed to timely responses by the police. Twelve affirmative respondents (7.8%) gave resource-related comments, indicating that, while the police were responsive in a timely fashion, they were constrained by lack of officers (5), distance (6), and officer availability (1). The remaining 6 responses (3.9%) offered constraints to police timeliness in terms of community-relations issues, such as low reservation priority, demonstrations of armed force, and focus on some serious crimes but not on drugs.

Sixty-eight Public Law 280 reservation residents (44.4%) thought that state/county police did not respond promptly. Among this non-affirmative reservation group, 38 made comments about their concerns with state/county police timeliness. Among the 38 commentators, 16 or 10.5% mentioned resource-related issues, such as lack of officers, distance, and help from tribal police. The remaining 22 commentators (14.4%) recounted non-resource issues, such as discrimination, inconsistency, jurisdictional difficulties, lack of community contact, and emphasis on serious crimes only.

Seven Public Law 280 reservation residents did not report a viewpoint on the timeliness of state/county police, and 10 thought that the timeliness of state/county police was mixed, remarking mainly that they were not consistent, while 2 respondents stated that state/county police timeliness was restrained by lack of officers or distance. In total, among Public Law 280 reservation-resident respondents, 30, or 19.6%, thought state/county police timeliness was constrained by lack of resources, and 28 respondents (23.5%) attributed slow state/county police reservation responses to community relations.

The timeliness of tribal police was discussed by 53 non-Public Law 280 reservation residents. Thirty-seven (69.8%) affirmed that tribal police responded to calls in a timely manner, and 18 of the affirmative responders made additional comments. Resource constraints were mentioned by the affirmative responders 14 times (26.4%) and included: lack of officers, need for police facilities, police prioritize calls, and distance. Non-resource constraints on timeliness of tribal police were mentioned by 3 affirmative non-Public Law 280 respondents (5.7%) and included selective enforcement, family favoritism, and jurisdictional complications. Eleven respondents (20.1%) said that tribal police were not timely when responding to calls, 3 said the tribal police response was mixed, and 2 could not say. Among the “no” and “mixed” comments, 4 mentioned resource constraints to timely tribal police responses, including need for officers and distance. Community-relations issues were mentioned by 8 non-affirmative and mixed respondents as constraints on tribal police timeliness, including family favoritism, inconsistency, and lapses of confidentiality. Overall, 34% of non-Public Law 280 reservation residents respondents believe that lack of resources constrain the timeliness of reservation police, while 20.7% suggest that reservation police are constrained by difficulties related to community relations.

The timeliness of tribal police in Public Law 280 reservations was addressed by 86 Public Law 280 reservation residents. A large majority (n=73), or 84.5%, thought that Public Law 280 reservation police responded to calls promptly. However, reservation residents who worked as police officers are removed from the analysis, so there would not be any self-evaluation bias. With the removal of tribal police officers, 76 Public Law 280 reservation residents responded, and a large majority (n=63), or 82.9%, say that Public Law 280 tribal police respond to calls promptly. All the police officers say that tribal police are timely on service calls. Among the total sample of 86 Public Law 280 reservation residents, 32 made additional comments. Among the affirmative commentators, 20 thought that lack of resources tended to constrain tribal police timeliness and mentioned the need for officers, the need to prioritize calls, and officer availability. Three respondents mentioned community-relations issues

■ According to Reservation Residents, Do Police Respond in a Timely Manner?

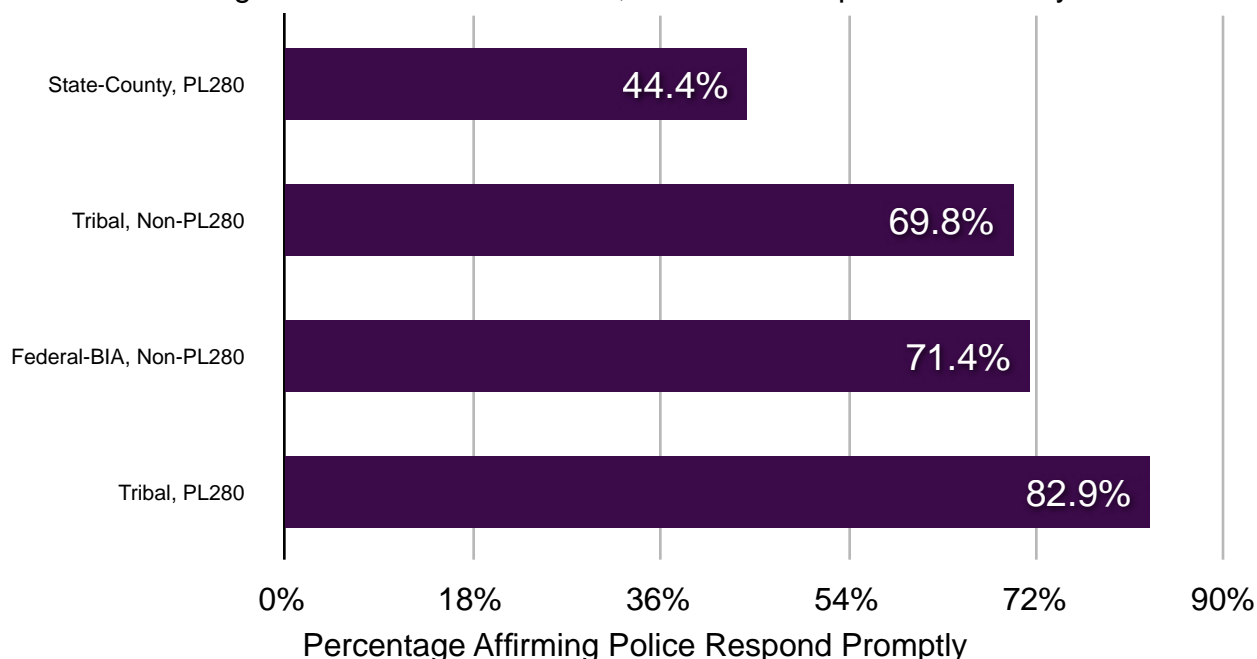


Figure 5.3

as constraints on police responsiveness, and their answers included family favoritism and emphasis on major crimes, but not on drug policing or prevention. Eleven Public Law 280 reservation residents (12.8%) did not believe that tribal police are timely. Two non-affirmative commentators said that tribal police are constrained by distance and lack of officers, while 3 emphasized community relations with comments such as needing improvement and inconsistency. Two Public Law 280 reservation residents did not have a view on whether tribal police respond in a timely manner. Overall, among Public Law 280 commentators on tribal police timeliness of response, 22, or 25.6%, emphasized resources constraints, while 6, or 7%, emphasized non-resource or community relations as constraints on tribal police responsiveness.

We can make comparisons about how reservation residents experience the timeliness of tribal, state/county, and federal-BIA police. As presented in Figure 5.3, there are significant

differences in timeliness of police response among the four types of police departments (chi square = 36.23, df = 3,  $p < .0001$ ; Cramer's  $V = .34$ ). Reservation residents in Public Law 280 reservations say tribal police responded promptly at a rate about twice that of state/county police, 82.9% to 44.8%. According to our sample, Public Law 280 reservations residents report tribal police are performing in a timely manner significantly above expectations, while state/county police are performing significantly below expectations. Public Law 280 reservation residents say that state/county police are significantly less responsive to calls than tribal police in non-Public Law 280 jurisdictions. State/county police forces are usually located off the reservation, while tribal and federal-BIA police generally stationed on the reservation have considerable advantages in responding to calls from the reservation community. State/county police appear to have considerable difficulty responding promptly to calls from reservation residents. On non-Public Law 280 reservations, federal-BIA and tribal police are rated about the same for timeliness of response to calls from reservation residents. In our sample, reservation residents suggest that non-PL 280 federal-BIA and tribal police are performing above expectations when responding to calls promptly.

Many respondents made comments about why they believed that police were not responding in a timely manner. Others who answered that the police response was timely nonetheless made qualifying remarks about the constraints that police officers met when carrying out their duties to respond quickly. Generally, there are two types of comments: lack of resources and community-relations issues. Lack of resources are generally too few officers, too much distance to cover, or other logistical issues that inhibit quick responses to all calls. Community relations refer to favoritism, jurisdictional complexities, lack of community contact or knowledge, selective enforcement, lack of police presence or, related issues. Reservation-resident commentators thought that the Public Law 280 tribal police lack of resources (26.5%) was a much greater inhibitor to timeliness of response than community relations (7%). Public Law 280 tribal police appear to have the fewest community-relations constraints among all police forces for providing prompt service to reservation communities. In contrast, state/county police on Public Law 280 reservations are viewed by Public Law 280 reservation residents as having fewer resource constraints (19.6%) than Public Law 280 tribal police but more community-relations issues (23.5%) that inhibit timely response. On non-Public Law 280 reservations, reservation residents believe that tribal (34%) and federal-BIA (42.8%) police are more constrained by the lack of resources than Public Law 280 reservation residents observe on their reservations. Resources are generally more often mentioned than poor community relations or commitments as constraints to speedy delivery of police assistance.

Nonetheless many reservation-resident respondents made qualifying remarks about the constraints that police officers met with when carrying out their duties to respond quickly. Generally, there are two types of comments: lack of resources or community relations issues. Lack of resources are generally too few officers, too much distance to cover, or other logistical issues that inhibit quick responses to all calls. Community relations refer to favoritism, jurisdictional complexities, lack of community contact or knowledge, selective enforcement, lack of police presence or, related issues. Reservation resident commentators thought that Public Law

280 tribal police lack of resources (26.5%) was a much greater inhibitor to timeliness of response than community relations (7%). Public Law 280 tribal police appear to have the fewest community relations constraints among all police forces for providing timely services to reservation communities. In contrast, state/county police on Public Law 280 reservations are viewed by Public Law 280 reservation residents as having fewer resource constraints (19.6%) than Public Law 280 tribal police, but more community relations issues (23.5%) that inhibit timely response. On non-Public Law 280 reservations, reservation residents believe that tribal (34%) and federal-BIA (42.8%) police are more constrained by lack of resources than do Public Law 280 reservation residents observe on their reservations. Resources are generally more often mentioned than poor community relations or commitments as constraints to speedy delivery of police.

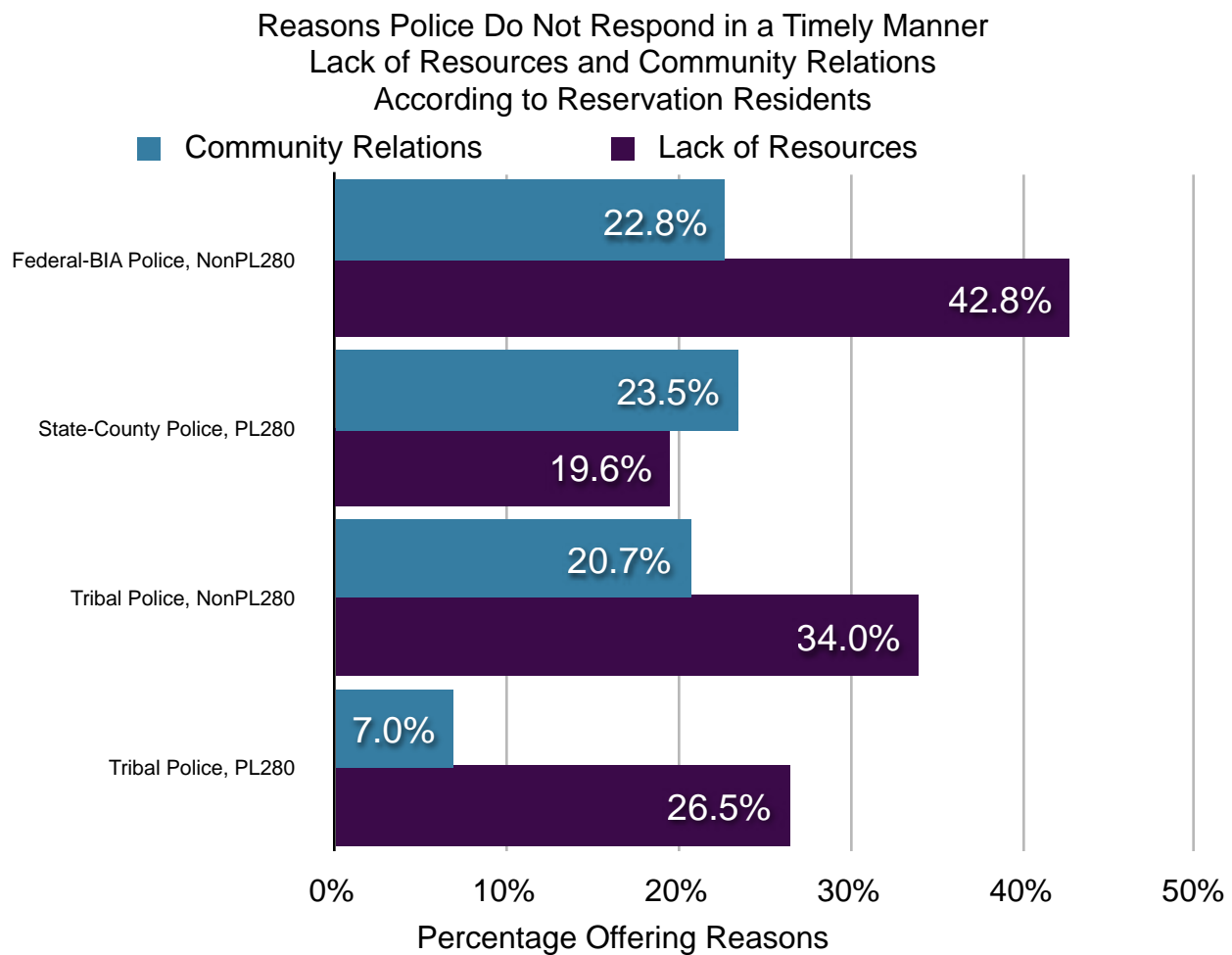


Figure 5.4

As shown in Figure 5.4, we can test for significant differences between resources and community relations. There are significant differences among police departments about whether reservation residents believe that lack of resources determines timeliness of police response to service calls (chi square = 10.1, df = 3,  $p < .018$ ; Cramer's  $V = .18$ ). For our sample, reservation residents suggest that the timeliness of Public Law 280 state/county police service calls are significantly less constrained by lack of resources than all other police departments. Reservation



residents suggest that non-Public Law 280 police, both tribal and federal-BIA, are significantly more impaired by lack of resources that impede timely response to calls than are Public Law 280 police, both tribal and state/county departments. For our sample, reservation residents perceive the lack of resources is a significantly greater constraint on timely responses for police departments in non-Public Law 280 jurisdictions than in Public Law 280 police departments. As shown by Figure 5.4, in our sample the effect of community relations on timeliness of police response yields significant differences among the four types of police departments (chi square = 10.69,  $df = 3$ ,  $p < .014$ ; Cramer's  $V = .18$ ). Public Law 280 tribal police departments are significantly less constrained by community-relations issues when providing timely responses than are state/county police and non-PL 280 police departments, both federal-BIA and tribal departments. Community relations appear to be good for the Public Law 280 tribal police in the sample, and therefore not a constrain in delivering timely police services, although lack of resources is a relatively greater issue. Difficulties with community relations are above expectations for state/county police, and for federal-BIA and non-Public Law 280 tribal police. In our sample, reservation residents suggest Public Law 280 state/county police are most constrained by community-relations issues when attempting to deliver timely services.

Public Law 280 reservation residents say that tribal police in Public Law 280 jurisdictions are significantly more inhibited in providing timely service calls by lack of resources than by less friendly community relations or intent. Public Law 280 tribal police are more constrained by underfunding for making timely police calls than by poor relations with the tribal community. With relatively good relations with the tribal community, Public Law 280 tribal police are in need of more resources to improve the timeliness of response for police service calls. Public Law 280 reservation residents say that funding and poor community relations are about equal effect on inhibiting state/county police from timely response to service calls. Emphasis on improving timeliness of police response for state/county police will require additional resources and greater communication and more friendly relations between the tribal community and state/county police officers. Additional resources, while probably improving the situation, will not solve the entire problem unless friendlier and more trusting relations are established between tribal members and state/county police.

In non-Public Law 280 jurisdictions, reservation residents say that tribal police response times are affected by lack of resources and poor relations with tribal communities. Improvement in non-Public Law 280 tribal police response times will require both improvement in community relations and additional resources. Community residents in non-Public Law 280 jurisdictions observe that timeliness of response by federal-BIA police is affected by both lack of resources and moderately poor community relations. Federal-BIA police will need additional resources and to establish friendlier relations with community members to improve response time.

Except for Public Law 280 tribal police who have good community relations, both lack of resources and better community relations or commitments are seen by reservation residents as the greatest constraints for inhibiting speedy police response to calls. Reservation residents are concerned that poor community relations or weak commitments to reservation police services is

inhibiting timely delivery of police services to reservation communities and members. For our sample, reservation residents say non-Public Law 280 federal-BIA and tribal police are more constrained by lack of resources than Public Law 280 tribal police, while Public Law 280 state/county police are perceived to have more resources than non-Public Law 280 federal-BIA police, but significantly poorer community relations. Any solution to improve police responsiveness should include both additional resources and improvement of community relations and commitments to serving tribal communities and members.

### Responding to Serious or Minor Offenses

In a follow up question, reservation residents were asked whether they observed a difference in the response time by the police depending on whether the offense was a serious or minor offense. Do police focus on serious crimes and give less attention to other crimes and issues? The question addresses the priorities of response and coverage within the reservation communities.

Twenty-seven non-Public Law 280 reservation residents gave answers about the differences in federal/BIA police response to serious versus minor offenses. Fourteen non-Public Law 280 reservation residents (51.8%) said that federal-BIA police responded faster to calls reporting serious offenses than minor offenses. The affirmative responses emphasize that police are quick to respond to known serious issues, and those issues receive considerable and immediate attention. Emergencies with injuries and major offenses have priority and are quickly attended for response or assistance. Six interviewees (22.2%) answering affirmatively said federal-BIA police prioritized calls, the serious calls receiving priority over minor calls, which were responded to when there was time and officers were available.

Yeah. I think there is a difference. I think it depends on what it is. Whether the call is important or not. And to me, again, that is scary. Because somebody might come off as, this is minor, and it could be something very serious. ... When that call came in. He has a gun, and there were young people in the house. And somebody called and said, "There is a domestic disturbance there." Instead of a man with a gun. And he's still got the gun. It was his son, though, that actually talked him out of the gun. But the other man was already dead. ... so I just ran in and grabbed my phone and called law enforcement. I never did see them. ... But when I saw they were not coming, I waited five minutes and then ran out of there.

The minor things, I think, sometimes people get fed up with the minor things because we have some serious things going on. There is drug trafficking, and child abuse, and domestic violence. These things that I think are more serious where the police are out stopping somebody for a light that is out or something so minor you just wonder where their priorities are.

Eleven non-Public Law 280 reservation residents (40.7%) thought that there was no difference in responses to calls between serious and minor offenses. Federal-BIA law officers responded to serious or minor calls with the same timeliness and attention.

No. I think they are the same. And I think that all relates to them being in a community, the community being small.

I don't think there is any distinction. Regardless of the scale of the crime they should respond anyway ...

No, I don't think so. I know I have called in traffic things and fires. I think domestic violence stuff they help pretty much. I got the same response time. You know, when I say this, sometimes yes and sometimes no, I wish I could say that there is a difference between them, but no. An assault could take them a half an hour, 45 minutes. And the same with just some disorderly conduct. It is the same thing. It doesn't seem like there is a difference in response time. It is the more serious crimes, get more attention paid to them once they do respond.

Two non-Public Law 280 respondents said they did not have enough knowledge to answer the question.

Among Public Law 280 reservation residents, 130 answered the question about the difference, if any, in response time between serious and minor offenses. Seventy-six Public Law 280 reservation residents (58.5%) said that there was a difference in the response time for calls reporting serious offenses versus minor offenses. For these respondents, state/county police respond to serious crimes faster than minor offenses. Twenty-six Public Law 280 reservation-resident respondents made comments that emphasized community relations (9.2%) and resource issues (22.4%). Community-relations comments emphasized excessive backup, discrimination, and less attention to juveniles. Resource comments focused on the need to make choices because of limited resources, the need for tribal police support, and officer availability. The following comments emphasize how officers prioritize:

I think they weigh it, the seriousness of it. If there were shots fired, we still have this problem, there are shots fired, someone discharges a firearm, and you rarely get a response. If shots are fired and somebody gets shot, then you get a response. ... So, I think the seriousness of it, and I think that had a lot to do with when officers were responding.

If it's just light-weight-type misdemeanor, or we have a little minor problem, they get here. See, they have to handle calls in order... Our little problem may not take precedence over an armed robbery call down-town. But if it was a serious problem, we would have a good response time.

Sometimes they see more serious calls than minor offenses. They do their own prioritizing.

Yes. I think if an accident is reported, and they say, “This is really a bad accident.” You got people flying there. Whereas, if you have got a domestic abuse situation, they will come, but it’s probably not as swift as it’s an accident. I have heard complaints that sometimes their response time is slow to issues that are mostly of a tribal nature, such as cattle, horses in the road. I know I have made calls myself in that regard, but my own experience, they have been very responsive, at least to call me back and tell me, “Well there is nobody on duty right now, but somebody will pick up the animal.” I felt that I have got a good response, but other, my relatives, have made minor complaints.

Thirty-three Public Law 280 reservation residents (25.4%) observed that state/county police responded with similar timeliness to calls about major and minor offenses. However, 12 respondents (9.2%) said that response times for calls to both minor and serious offenses were too slow, or discriminatory, or out of proper jurisdiction. Six respondents said that timeliness for calls for major and minor offenses was about the same, but qualified their answers according to the logistics of distance or lack of enough officers. Thirteen said that responses to calls for major and minor offenses were handled by state/county police at about the same pace. One respondent said that response rates were about the same, and were improving, while another respondent observed that response rates were mixed, and the response depended on the person calling. A rather high number of respondents, 19, or 14.6%, did not venture an opinion. Here are some comments from Public Law 280 reservation residents who observed that responses to calls by state/county police were similar for major and minor offenses.

I know there have been many, many incidences when somebody would call concerning not a real horrible thing that is going on. There may be an argument with a family member or something, and they would call for some help to get somebody away from their house or home. And it would be like a convoy of (state highway patrol, local and county police). It was like there was a raid or something on, you know, when one person may be just asking for a little assistance. It was always exaggerated every time they were called out here. It always is. You can tell when there is something on the reservation, they always call for two or three or four backups.

In my experience, it doesn’t make any difference. Sometimes they come right out, and sometimes it depends, like I say, whether they are on another domestic situation somewhere. ... When you talk to them on the phone, they know where you live and your phone number, and they know the address where you are calling about the complaint, so they take their time in different homes. Yeah, I know that. If it’s the same home, they don’t want to go there. The same old problem. ...

yeah, if it's repetitious, if it's the same people, they go, "Oh, it's Jane Doe and John are fighting again. Big Deal." And they won't go.

My sense is that they just respond to whoever calls and whatever the call is.

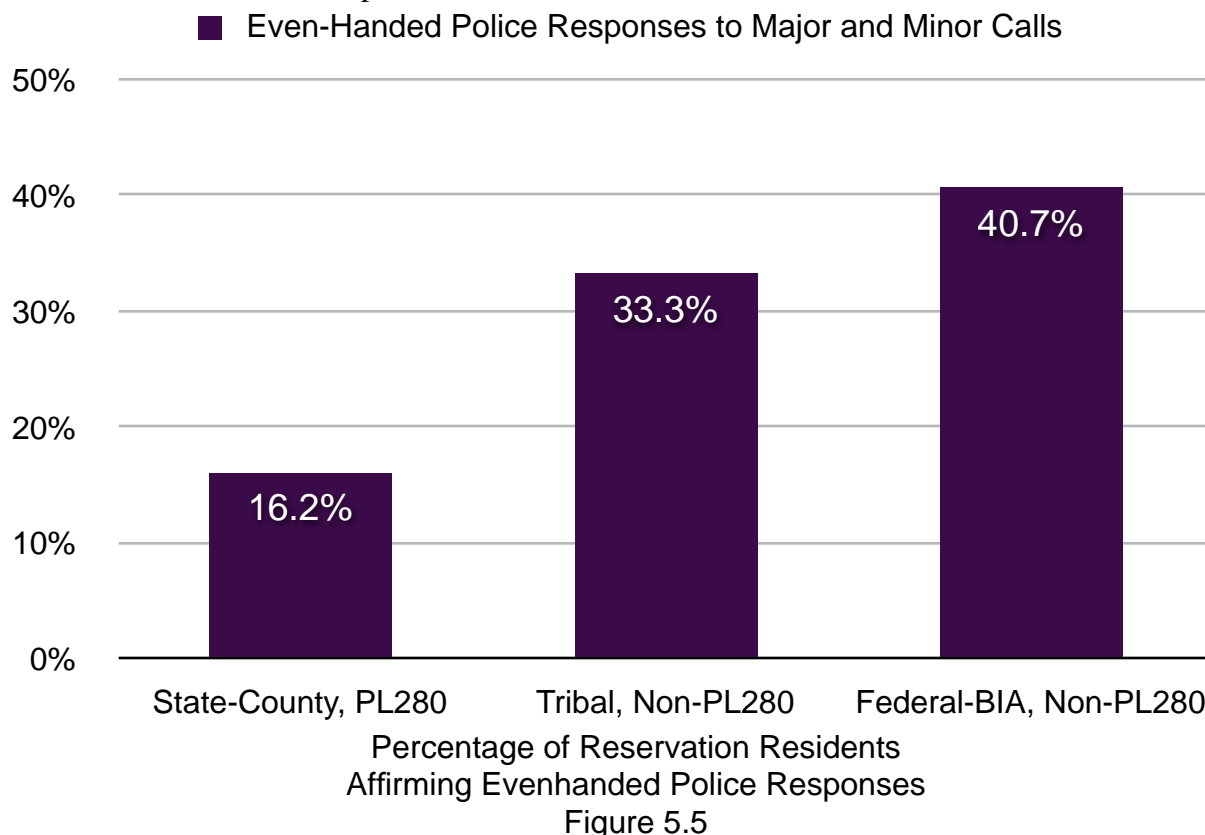
Forty-two non-Public Law 280 reservation residents commented on whether tribal police responded differently to calls involving serious or minor offenses. Twenty-three (54.8%) said that there was a difference, and 16, or 38.1%, said tribal police responded about the same to calls for serious and minor offenses. Only 4 Public Law 280 reservation residents answered whether tribal police responded differently to serious or minor offenses. One Public Law 280 reservation resident said yes, police prioritize, while 3 said that the responses were similar. The data for the Public Law 280 tribal police are too few for comparison.

Reservation residents observed that non-Public Law 280, state/county, and federal-BIA police respond differently to calls involving serious and minor offenses at about the same rate, ranging from 51.8% for federal-BIA police to 58.5% for state/county police, and in the middle non-Public Law 280 tribal police with 54.8%. The comparison is not statistically significant (chi square = .49, df = 2, p = .78, NS). State/county police have a lower rate of situations where they respond similarly to both serious and minor crimes (25.4%, n=33), while non-Public Law 280 tribal and federal-BIA police are rated for similarity of response to calls about minor and major offenses at 38.1% (n=16) and 40.7% (n=11) respectively, but the differences are not statistically significant (chi square = 4.1, df = 2, p = .13, NS).

If we look more closely at the comments about state/county police, another 9.2% of respondents did not believe that state/county police evenhandedness was positive but was mainly too slow, and a few respondents commented about discrimination and difficulties over jurisdiction. Consequently, by subtracting the respondents who believe that evenhanded responses were not positive, then only 16.2% of Public Law 280 reservation residents thought that state/county police effectively responded in the same manner to calls about major and minor offenses. Looking for similar patterns among federal-BIA and non-Public Law 280 police, 2 respondents (4.8%) among non-Public Law 280 reservation residents believe that tribal police responded too slowly to both minor and major crimes. No similar comments were made about federal-BIA police. Recalculating yields 33.3% of non-Public Law 280 reservation residents thought that tribal police managed calls about major and minor offenses in a constructive manner. Federal-BIA police in non-Public Law 280 reservations had the highest rate of evenhanded responsiveness to serious and minor offenses at 40.7%. State/county police in Public Law 280 reservations showed the lowest rate of evenhanded responsiveness to calls for major and minor offenses at 16.2%.

As shown in Figure 5.5, our sample of reservation residents indicates there are significant differences in evenhanded responses by police departments to major and minor calls (chi square = 34.76, df = 2, p < .005; Cramer's V = .23). Non-Public Law 280 police, both tribal and federal-

BIA, give equal attention to major and minor calls more often than Public Law 280 state/county police, who are more biased toward giving attention to calls that appear major rather than minor. Federal-BIA police more often give evenhanded responses to minor and major calls than non-Public 280 tribal police. According to our sample, more so than residents believe of their non-Public 280 police departments, Public Law 280 reservation residents believe that state/county police prioritize and respond to calls for serious offenses more often and in more timely a manner than to calls for responses to minor offenses.



### Patrolling on Indian Reservations

To explore the availability of police, we asked a series of questions about who patrolled the reservation, patrol schedules, how patrols benefited the community, and whether patrols were requested from off-reservation police departments.

Reservation residents from non-Public Law 280 reservations (N=33) commented on whether federal-BIA law enforcement, the Bureau of Indian Affairs (BIA) police, patrolled their reservation. In our sample, 25 (75.8%) of non-Public Law 280 reservation residents said that the BIA police were present on the reservation; but the most common combination for non-Public Law 280 police was both BIA and tribal police (72.8%), while 24.2% said that their reservation was served by tribal police only and the BIA police were not present.

I think the tribal is like the 638 contracts, so that is controlled by the tribal council rather than the BIA police. In some places the BIA actually manages the police force, and the tribe doesn't have a contract. So, I think here it's the 638 arrangement.

Most tribal police departments without a BIA police presence were supported by federal 638 contracts. Under such arrangements, the tribal government contracts to operate the police department from the BIA and manages law enforcement under tribal government administration. Ten respondents (33.3%) related that county and state highway patrol played a role in law enforcement on their reservations. Here are some comments about state police patrols on non-Public Law 280 reservations.

A couple of the cops are cross-deputized with the state. And I think with the highway patrol. I am not too sure. But they patrol the highways. Our law enforcement patrols the reservation.

I have seen every (police force). There is a cross-deputization agreement. And we have highway patrol, and we have the tribal police, and we have the local county, the sheriff.

It's primarily the BIA police with the tribal police as an integral part of the force. I do know that when there are serious disturbances, or they have organized a drug bust or something, then there is cooperation (with the local and county police). Even the highway patrol. There is cooperation in serious matters. They will all be here.

Fifty-two reservation residents in non-Public Law 280 reservations said that tribal police patrol their reservations. Reservation residents made no comments about non-Public Law 280 tribal police patrolling, which suggests tribal police are not providing effective patrolling coverage. Sixteen non-Public Law 280 reservation residents said their tribal police work with BIA police, and 13 mentioned cooperative police activities with state/county police.

Reservation residents on Public Law 280 reservations (n=140) responded to whether the county or state police patrolled their reservation, and many made extended comments. Fifty-two percent of Public Law 280 reservation residents (52.1%) said that county law enforcement patrolled the reservation, while 47.8% said that county law enforcement did not patrol the reservation or did not provide complete coverage. Some comments about the absence of county patrolling on the reservations included minimal coverage, that the county police come only when they are called, and the tribal police does most of the reservation patrolling. While most Public Law 280 reservation residents affirmed that county police patrol the reservation, many (17.8%) made comments that the patrolling was not satisfactory or complete. Their comments included tribal police or tribal contract officers doing the patrolling, selective enforcement, minimal coverage, and that county law enforcement comes only when called. Subtracting those

reservation residents who had concerns about county police patrolling the reservation yields 34.3% of Public Law 280 reservation residents believe that county law enforcement is patrolling their reservation in good form.<sup>4</sup>

County law enforcement personnel (n=23) also commented on how they patrolled Public Law 280 reservations. Eighteen (78.3%) said they patrol Public Law 280 reservations, while 21.7% said they give limited patrolling services to Public Law 280 reservations. Reasons given for limited services were that county police provided only minimal coverage and answered calls but did not patrol, and that tribal police did the patrolling on reservations. County law enforcement believed they provide patrolling services to Public Law 280 reservations at over twice the rate that Public Law 280 reservation residents believe that county police provide complete or satisfactory

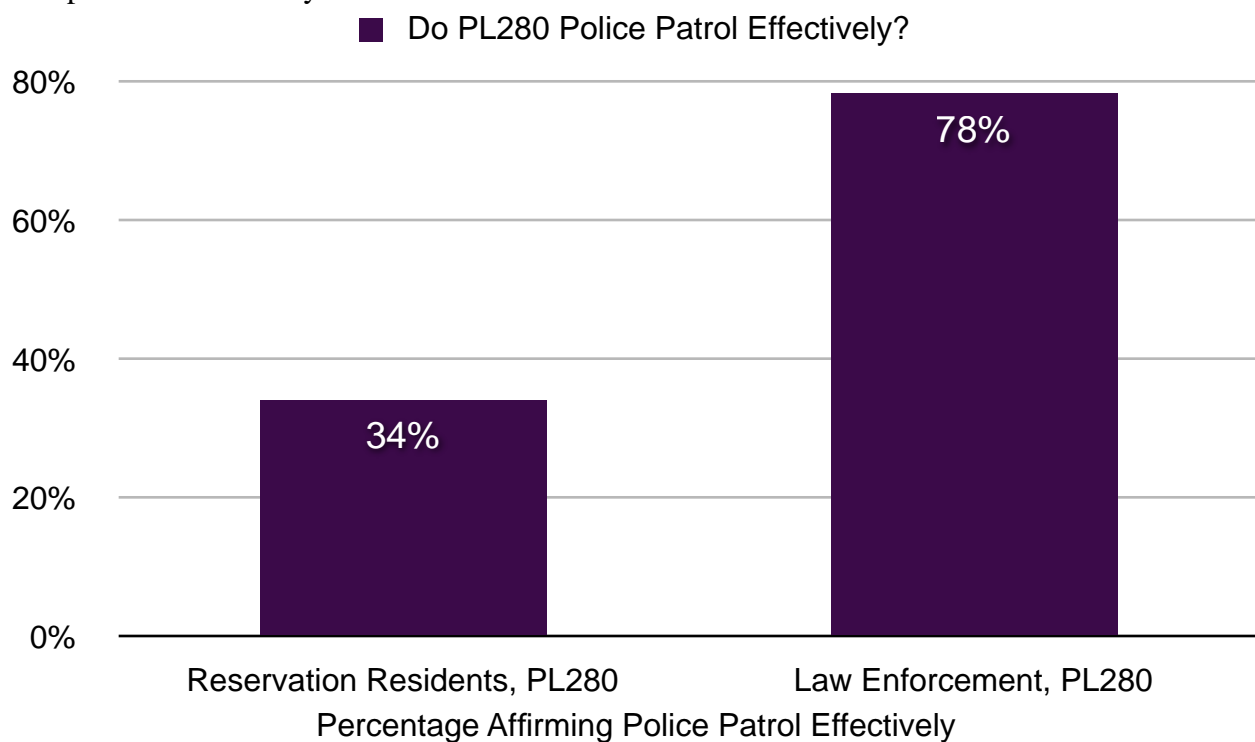


Figure 5.6

patrolling services. Only about one-third of Public Law 280 reservation residents believe that county law enforcement provide solid patrolling services to their reservation, while over three-fourths of county law enforcement believe without qualification that they contribute effective patrolling services to Public Law 280 reservations.

As presented in Figure 5.6, our sample of respondents indicates there are significant differences in the views of Public Law 280 reservation residents and law enforcement about the adequacy and completeness of county patrolling on Public Law 280 reservations (chi square =

<sup>4</sup> Eleven Public Law 280 reservation residents commented on patrolling by tribal police, a number that is too small to make reliable comparisons.



14.08,  $df = 1$ ,  $p = .0002$ ; Cramer's  $V = .31$ ). Law enforcement workers believe that they are providing good patrolling services to Public Law 280 jurisdictions, while about one-third of reservation residents believe that county patrolling of Indian reservations is sufficient. County law enforcement and Public Law 280 reservation residents have very diverse views of the adequacy of county police patrolling on reservations. One-third of Public Law 280 reservation residents believe they are getting adequate patrolling services from the county police, while three-fourths of county law enforcement believe they are providing good patrolling services to their local reservations.

The respondents were asked whether backup to police were available when police patrolled, but there were relatively few responses and not enough for comparison. State/county law enforcement officers made the most responses ( $n=23$ ). Three county police in non-Public Law 280 reservations remarked that federal-BIA police enjoyed backup, while 2 thought backup support was mixed, and 1 commented on the absence of enough officers to provide effective backup. Thirteen county or state police in Public Law 280 states remarked that backup was available, 3 observed that backup was not available in all instances, and 1 commented that backup was not available. Most county police (76.5%) believe that they have backup services when on patrol.

Three questions focused on the schedule, regularity, and hours of patrolling. Unfortunately, there were relatively few responses to these questions. The most responses came from state/county police ( $n=15$ ) on hours of patrol and regularity of patrols ( $n=11$ ), and Public Law 280 reservation residents ( $n=6$ ) on patrolling regularity. These data are probably too few to make reliable statements. They indicate that 54% of state/county police say their departments deliver 24-hour patrolling services to Public Law 280 reservations, while 46% say they provide less than full 24-hour/seven-day patrolling coverage. All 6 responding Public Law 280 reservation residents said they experienced less than full 24-hour state/county police patrolling coverage.

Reservation residents were asked: How does this community benefit from the patrolling? On non-Public Law 280 reservations, reservation residents commented on the patrolling benefits from both tribal and BIA police. Twenty-two non-Public Law 280 reservation residents expressed their views about the benefits of patrolling by BIA police. Five reservation residents (22.7%) said that the community did not benefit from BIA patrolling. The reasons given for absence of benefit from BIA patrolling included the BIA police lacked education, needed more officers, and were not responsive, and that the tribal government lacked control over the BIA police. Most non-Public Law 280 reservation-resident respondents (77.3%) affirmed that their reservation communities benefit from BIA patrolling. Some reasons given include traffic control, local control, and visible law enforcement presence as a deterrent to crime. Seven respondents (31.2%) said that the BIA police could do a better job of patrolling the reservation if they had more resources, mainly more police officers.

Forty-five non-Public Law 280 reservation residents commented on whether their reservation community benefited from patrolling by tribal police. Thirty-five non-Public Law 280 reservation residents (77.8%) affirmed that their communities benefited from tribal police patrolling of the reservation. The main reasons for benefiting from tribal police patrols were more coverage (22.2%), protection (20%), and the tribal police know the community (15.6%). Ten respondents (22.2%) said that tribal police patrols did not benefit the reservation community. They cited reasons that include the complications of multiple jurisdictions, lack of resources, and increasing crime. Among all respondents, 5 (11.1%) mentioned that tribal police patrolling could be improved with more resources, mainly more police officers. For non-Public Law 280 reservations, about three-fourths of the responding reservation residents believe that tribal and BIA police patrolling benefits their community.

Eighty-five Public Law 280 reservation residents commented on whether patrolling by state or county police benefited their reservation communities. Fifty respondents (58.8%) affirmed that patrolling by state/county police benefited the reservation community. The main reasons given were protection (11.8%) and deterrence of crime (9.4%). Ten respondents (11.8%) answered affirmatively that state/county patrolling benefited their community, but mentioned that they preferred tribal police, or that the state/county police patrols supported or cooperated with tribal police patrols. Eight Public Law 280 reservation residents (9.4%) answered affirmatively, but qualified their answers with comments about limited and selective coverage by state/county police patrols. If we subtract the affirmative but qualified responses, those preferring and centering on tribal police patrols, and those suggesting incomplete or selective state/county patrol coverage, then 37.6% of Public Law 280 reservation residents, who responded that state/county police patrols benefited their communities, were satisfied with state/county patrolling. The combination of state/county and tribal police generated more complete and satisfactory benefits from patrolling. Thirty-three Public Law 280 reservation residents (38.8%) said that patrolling by state/county police does not benefit their communities. The main reasons given to support their views include harassment by state/county police (7%), underservice by state/county patrols (21.2%), and preference for tribal police (8.2%). Underservice includes the wrong and predictable timing of patrols, responding only to calls or for delivering warrants, need for more coverage, distance, and inability to control drugs. One respondent did not give a view, and 1 said the benefits from state/county patrols receive mixed community responses. Only 5 Public Law 280 reservation residents commented on tribal police patrols, and all said that tribal patrols were beneficial.

Comparing the views of Public Law 280 and non-Public Law 280 reservation residents on the benefits of police patrols on their reservations suggests that non-Public Law 280 communities believe that tribal (77.8%) and BIA police (77.3%) patrols are more beneficial than state/county patrols on Public Law 280 reservations (58.8%). If we go further and subtract responses where tribal police are preferred or central to patrolling on Public Law 280 reservations, and subtract the affirmative but incomplete or selective services comments about state/county patrols, then 37.6% of Public Law 280 reservation residents affirm the benefits of state/county patrols. The non-Public Law 280 reservation residents do not make comparable

qualifying comments about the benefits gained from tribal or BIA police patrolling. As represented in Figure 5.7, our sample indicates there are significant differences among reservation residents about whether police departments provide good patrolling benefits (chi square = 24.21, df =2, 149,  $p < .0001$ ; Cramer's  $V = .40$ ). State/county police in Public Law 280 jurisdictions provide significantly less patrolling benefits than non-Public Law 280 federal-BIA police and non-Public Law 280 tribal police. State/county police patrolling Public Law 280 reservations provide half as much benefit as provided by Public Law 280 tribal and BIA police patrolling services, according to the observations of reservation residents. About one-third of Public Law 280 reservation residents believe that state/county police patrols deliver solid patrolling service benefits, while three-fourths of non-Public Law 280 reservation residents believe that tribal and BIA police deliver solid community benefits with patrolling.

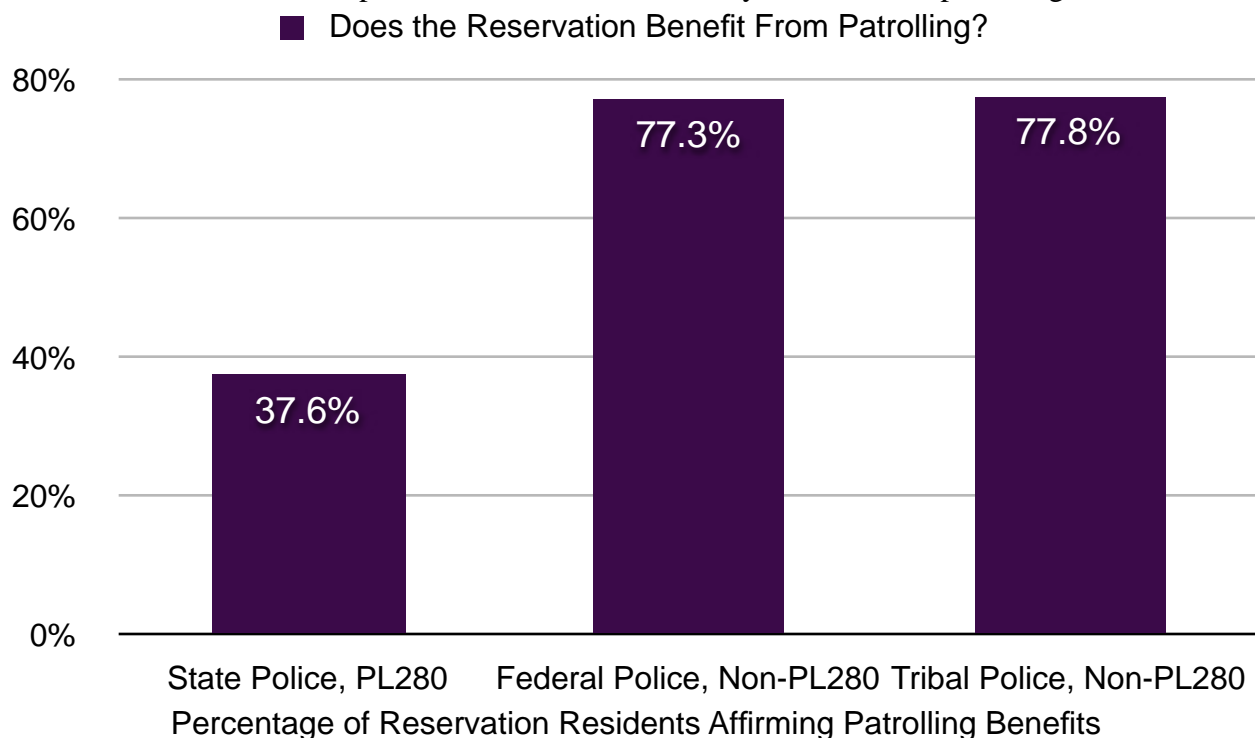


Figure 5.7

The last patrolling question asked reservation residents whether their community or tribal government ever requested patrols from state/county or BIA police forces. Nineteen non-Public Law 280 reservation residents answered this question, but 10 said they could not say whether their tribal government requested BIA patrols for the reservation. Of the remaining 9 respondents, 8 said no, that their tribal government did not request BIA patrols, and 1 said yes. It's difficult to gather reliable patterns from these data, but they indicate that reservation residents think the tribal government did not request BIA police patrols, and many reservation residents are not clear about how BIA police services are invited to serve by the tribal government.

Forty-nine Public Law 280 reservation residents commented about whether their tribal government requested patrolling services from county or state governments. Nineteen Public Law 280 reservation residents (36.7%) said that their tribal government requested state/county

police to patrol their reservations. Most of the affirmative answers were accompanied by qualifying comments. Four comments (8%) indicated that county governments asked for money when requested to patrol the reservation, and patrolling was denied on monetary grounds for at least one Public Law 280 reservation. A series of comments by affirmative Public Law 280 reservation residents focus on underservice. While affirming that their tribal governments requested patrolling services from county law enforcement, 8 (16.3%) commented on underservice issues including slow response, lack of support, understaffing, jurisdictional issues, and the need for education and discipline. Twenty-nine Public Law 280 reservation residents (59.2%) said that their tribal governments did not request patrolling services from state or county police. Many gave qualifying comments explaining their reluctance to request state or county patrolling services, and these reasons include fear of harassment (4%), sovereignty (12.2%), prefer to call (8.2%), and preference for tribal police (14.3%). One Public Law 280 reservation resident said s/he did not know whether the tribal government requested the state or county to provide police patrols on their reservation.

Most Public Law 280 reservation residents do not believe their tribal government requested patrols from state or county police departments. When state or county police respond to requests for patrolling, Public Law 280 reservation residents nonetheless believe they are underserved, or asked to provide financial support for county law enforcement.

## Distance

Distance may affect availability of police, and although it's often mentioned in responses to other questions, distance is not usually mentioned as a predominant issue that constrains police. Here we look at distance in more detail. We asked reservation residents: How far is the nearest (tribal, federal-BIA, county) law enforcement station located from you? This may seem like a simple question, but the answer may well depend on where the individual lives or works on the reservation. The availability of police services can vary considerably on reservations with large land bases depending on the location of the respondent.

Non-Public Law 280 reservation residents remarked about the distance to the BIA police station on their reservation. Twenty-nine non-Public Law 280 reservation residents responded, and (79.3%) said that the BIA police station is located in the main town on the reservation. Three respondents on a reservation with no BIA police said that federal-BIA agents are located in a town close to the reservation, a few miles from the reservation border. Two respondents said a BIA police station or substation is located within five miles. Most non-Public Law 280 respondents (96.6%) believe that BIA or federal-BIA police stations are located relatively nearby, either in the main reservation town, a nearby town, or within five miles. Twenty-six non-Public Law 280 reservation residents (88.5%) said that the nearest tribal police station or substation is located in the main town on the reservation. Three reservation residents (11.5%) were located over 15 miles from the nearest tribal station. Non-Public Law 280 reservation residents believe that tribal police are located relatively nearby. The relatively short distance to BIA or tribal

police stations may help account for the relatively higher reservation-resident evaluations of non-Public Law 280 police availability over Public Law 280 police.

Public Law 280 reservation residents (n=123) provided information about distance to the nearest state or county police station or substation. Thirty-one Public Law 280 reservation residents (25.2%) said that there is a local county or state police station or substation in the main reservation town or nearby off-reservation town. Thirteen respondents (10.6%) said they live or work within five miles of a county station or substation. Forty-nine (39.8%) live 10 to 20 miles away from a state or county police station; and 30 (24.4%) live over 20 miles from a county police station. Only 9 Public Law 280 reservation residents commented on distance to a tribal police station, and all said they lived within five miles.

Reservation residents on Public Law 280 reservations observed that they are farther away from county police stations than reservation residents on non-Public Law 280 reservations. Most non-Public Law 280 reservation residents are located within five miles of a tribal (88.5%) or BIA (96.6%) police station, while 35.6% of Public Law 280 reservation residents are located within five miles of a county police station or substation. As represented in Figure 5.8, the data

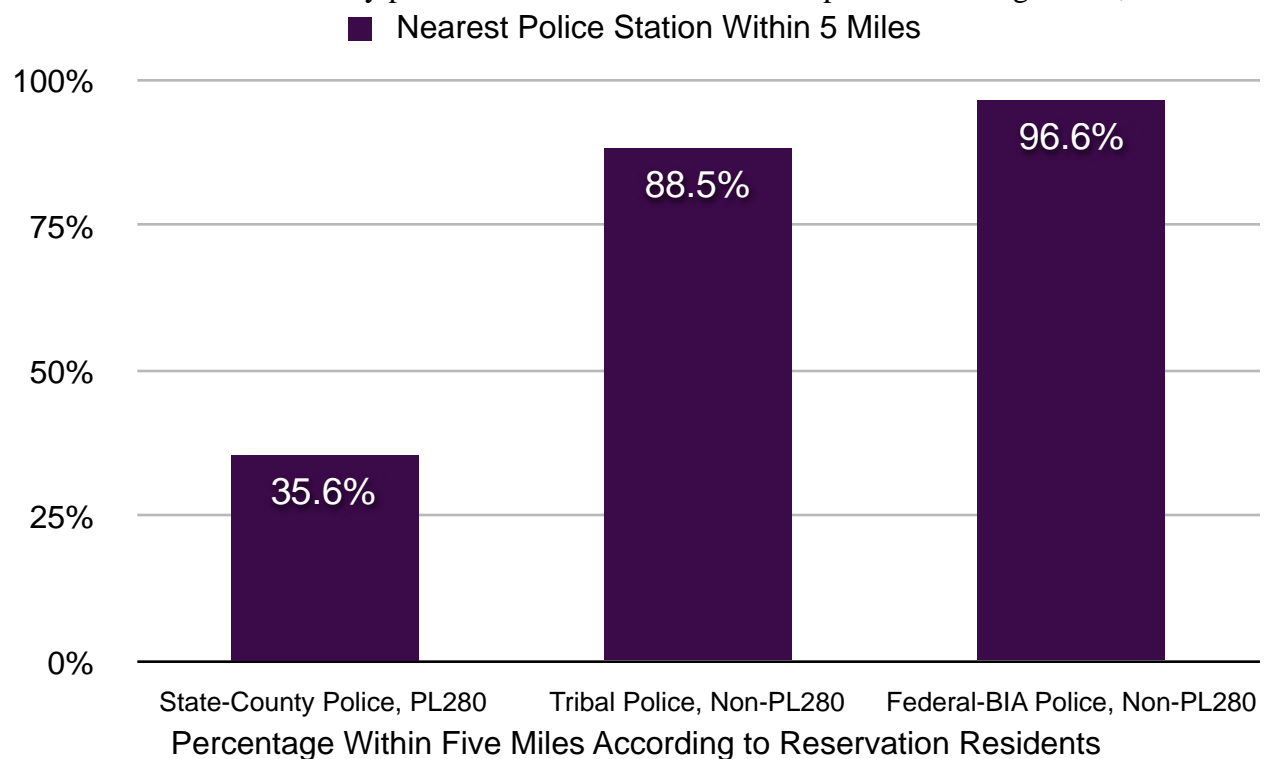


Figure 5.8

from our sample indicates that reservation residents believe there are significant differences in distance to the nearest police station between jurisdictions (chi square = 49.9, df = 2,  $p < .0001$ ; Cramer's  $V = .53$ ). Reservation residents say that Public Law 280 state/county police are significantly farther away than tribal police in non-Public Law 280 jurisdictions and federal-BIA police in non-Public Law 280 jurisdictions. Distance may be a reason for Public Law 280 reservation-resident preferences for tribal police over state or county police. Although

respondents often mention distance, most comments about police availability have to do with jurisdiction, community relations, under-service, and other issues. While physical distance is significant for police availability among Public Law 280 reservation residents, distance is not perceived as paramount in relations with county police or Public Law 280 reservation residents' perceptions of the delivery of police services by county police. Police availability is not seen as a simple function of distance by Public Law 280 reservation residents. Nevertheless, consideration should be given to physical distance, since distance most likely constrains the ability and costs for state and county police to deliver and make available services to Public Law 280 reservations. Tribal and BIA police stations on non-Public Law 280 reservations are closer and more centrally located, and probably, therefore, more available than state/county police serving Public Law 280 reservations.

### Jurisdiction, Remoteness, Resources and Public Law 280

Several questions were asked of respondents as to whether law enforcement refused to answer calls owing to lack of authority, resources, or remoteness, and, in Public Law 280 situations, whether Public Law 280 was perceived as responsible for any of the issues in question. The respondents were asked: Does law enforcement ever refuse to act because they say they lack authority? Does law enforcement ever refuse to act because they say they lack resources? Does law enforcement ever refuse to act because your community is too remote? And, for Public Law 280 respondents, Do (residents) ever attribute those problems to Public Law 280? The questions explore availability of law enforcement by addressing situations when police officers decline to act because of jurisdictional, resource, or distance issues.

Reservation residents (n=129) in Public Law 280 states commented on whether state or county police ever refused to provide services because they said they lacked authority to act. Fifty-nine Public Law 280 reservation residents (45.7%) said that state or county police will act even when they lack jurisdiction. Four said state/county police officers were cross-deputized with the tribal police and, therefore, were empowered to act, while 6 respondents said they had sufficient authority or obligation to act in most instances. Sixty-two Public Law 280 reservation residents (48.1%) said that state or county police sometimes will not act when they do not have sufficient authority. The main reasons for declining to act were: civil regulatory issues (7.8%), lack of jurisdiction (14%), less serious or victimless crimes (9.3%), or tribal law or internal tribal relations (3.9%). Eight respondents said they don't have enough information to answer the question. According to Public Law 280 reservation residents, state or county police are about equally likely to refuse to act on a call as they are to take action when they believe they do not have authority to act.

State/county police (n=23) responded to similar questions asking whether they ever decline to act in response to a call because of lack of jurisdiction. Fifteen state or county law officers (65.2%) said they will take an action when they do not have jurisdiction. Here are some sample responses:

Yes and no. Let's say this: The county has a curfew ordinance. Because this is a reservation, and Public Law 280 addresses state and doesn't address county ordinances, the curfew law doesn't apply on the reservation. In a sense that, if we say juveniles, that we wouldn't have the ability to issue a citation for curfew. That doesn't mean the we wouldn't stop and call the parents and say, "Do you realize your children are out late? Would you like them to come home?" But we still wouldn't have the authority to issue a citation. So, because it's a reservation, do we slow down a little bit on some things, like open container violations, things like that for the county ordinances? Certainly, but just because it's a reservation where our state laws are concerned.

Do you ever get into situations where you feel you can't act because you don't have authority under Public Law 280? And let me just give you some examples to frame the questions. Minnesota's been having a whole bunch of law cases involving issues about highway traffic laws. Does Public Law 280 include their speeding laws? Does Public Law 280 include their driving without proof of insurance laws? Does Public Law 280 include their driving with a suspended license because of actions inimical to public safety? You know, there are all these different offenses that are traffic related, and questions have been litigated in court about whether Public Law 280 actually includes those offenses. Have you had situations like that here where jurisdictional problems have caused you to be concerned about taking action? I don't think we have. And that's kind of backing into the answer, but I don't know of any situations out on the street, out on the road, where a particular incident with either a deputy or a tribal officer has said, "Do you have the authority to do this?" I don't know that that's ever come about. ... We have the ability under our agreement, our officers can cite tribal members into tribal court. ... Yeah, and tribal officers have the ability to cite into state court.

No. When it comes down to it, we are obligated to act, because it's still the state. What will happen is, we will sort out the minor details about jurisdiction later. We have stateside jurisdiction, so it doesn't matter to us. Maybe local police departments have a problem, but we (state troopers) don't.

No. You are not going to find that. Because, as a peace officer, if we see something wrong and we allow it to continue, then we are liable. So, what you are going to see is they respond to the call, regardless of jurisdiction matters.

Eight state/county law enforcement respondents (34.8%) said that they refuse to act when they lack authority. Some responses included:

A lot of times. I don't know that I can answer that because our people respond, and if they found out they have any, don't have the jurisdiction, then you take no

action. So, if that means refuse to act. ... If we don't have the legal right to arrest somebody who just went through a stop sign, we are not about to commit a wrongful act ... enforcing the law. ... So, many times we have to be there and then say, "Sorry."

We had two community members killed. ... The reservation members were, I suppose, not violating any law because it was civil regulatory. They were deciding to go through, drunk, through stop signs and jumping the road. ... The husband and wife were on their anniversary going to town to have supper. ... Killed them both on the spot on their anniversary. It's hard to believe that civil regulatory is not important. Now that civil regulatory, which is not a crime, which we couldn't enforce. ... Once they killed those people, it became vehicular homicide. Now we enforce, but people are already dead.

County law enforcement personnel (65.2%) said they will take action despite lack of authority more often than Public Law 280 reservation residents (45.7%) perceive county law officers take action when they lack authority. Reservation residents say that county law enforcement will conform to reservation jurisdiction more than county law enforcement believes it should. Most county police believe they should act when crimes take place, even though they do not have jurisdiction on the reservation, and sort out jurisdictional issues after action has been taken.

Reservation residents on non-Public Law 280 reservations (n=38) said that federal-BIA police prefer to take action rather than decline to respond to a call for assistance. Twenty-two non-Public Law 280 reservation residents (57.9%) said that BIA police do not refuse to act because they lack authority, while 13 (34.2%) believe that BIA police will decline to act if they perceive a case is outside their jurisdiction.

Non-Public Law 280 reservation residents (n=59) also commented on whether tribal police will refuse to act because of lack of authority. Forty respondents (67.8%) said that tribal police will not decline to act because of absence of jurisdiction. Some of their comments include:

Most officers respond right away because they don't want nothing to happen to their people, the innocent people. We need them. They come right now, and that is a good thing because it never existed before.

I am not aware of that happening. Again, I think the leadership over there is very well-versed in jurisdiction and what they can and cannot do. And I think they know they got officers that are cross-deputized so that they can act in about any situation. And there are general precedence that allow them to act to detain people and call whatever jurisdiction they need to call and turn them over. I have not heard of them failing to act.



Yeah, when we first started, we couldn't arrest non-tribal members on the road. The sheriffs would throw that out. Even if we held them, the sheriff would come and say, "You guys tainted this arrest." OK. They even grab their marijuana and beer and throw it away and tell the guy. "Go on." Here we stopped him because he was weaving around on the road. Pulled him over and hold him, and they said no. This law passed where we could hold them for the sheriffs or state patrol to come. So we quit calling the sheriff's. We would call the state patrol. The state patrol was glad to arrest them.

Sixteen non-Public Law 280 reservation residents (27.1%) said that tribal police will refuse to take action if they do not have jurisdiction.

I think they lack authority over non-Indians. ... Some people are left in limbo. Like if they are white people living on trust land, like our lessees. Nobody wants to go there.

Lack of authority. They will react to certain, you know, our reservation has allotted and non-allotted land. We have state lands within the jurisdiction. So those state lands, when a car crash, I have heard, occurred, police officers got that, and they notify the state immediately. I mean, they don't get there and then call the state. They call while that is on state land, and they have somebody that monitors that; it comes right out of the computer. ... And so they notify the state, they meet them out there. They don't just not go.

Non-Public Law 280 reservation residents (n=38) also commented on whether BIA police will act when they lack authority. Twenty-two (57.9%) said that BIA police will act even though they do not have authority, while 13 said BIA police will not act when they lack jurisdiction (34.2%). Non-Public Law 280 reservation residents responded that tribal police are slightly more prone to act than BIA police when they don't have jurisdiction.

As shown in Figure 5.9, the data from our sample indicates there are significant differences among police departments on whether they will take action when they don't have authority (chi square = 9.45, df = 3,  $p < .024$ ; Cramer's  $V = .19$ ). Reservation residents in our sample believe BIA (57.9%) and tribal police (67.8%) in non-Public Law 280 reservations are more prone to act when they do not have jurisdiction, while Public Law 280 reservation residents (45.7%) perceive that state/county police are less willing to take action when the police do not have jurisdiction. State/county police (65.2%), however, believe that they are more willing to take action when not having jurisdiction than Public Law 280 reservation residents believe. Do the police say they are not able to act because they lack resources? The latter question was answered by Public Law 280 and non-Public Law 280 reservation residents, who indicated that state/county police in Public Law 280 jurisdictions experience lack of resources slightly more often than non-Public Law 280 police. Public Law 280 reservation residents (n=128)

commented on whether state/county police sometimes decline to respond to calls because they do not have enough resources. Sixty-four Public Law 280 reservation residents (50%) said that state/county police do not have enough resources, and, at times, either slow down or temporarily refuse police services to an Indian community. Sixty-two Public Law 280 reservation residents (48.4%) said that lack of resources does not cause police to refuse services, although services may be slowed by lack of resources.

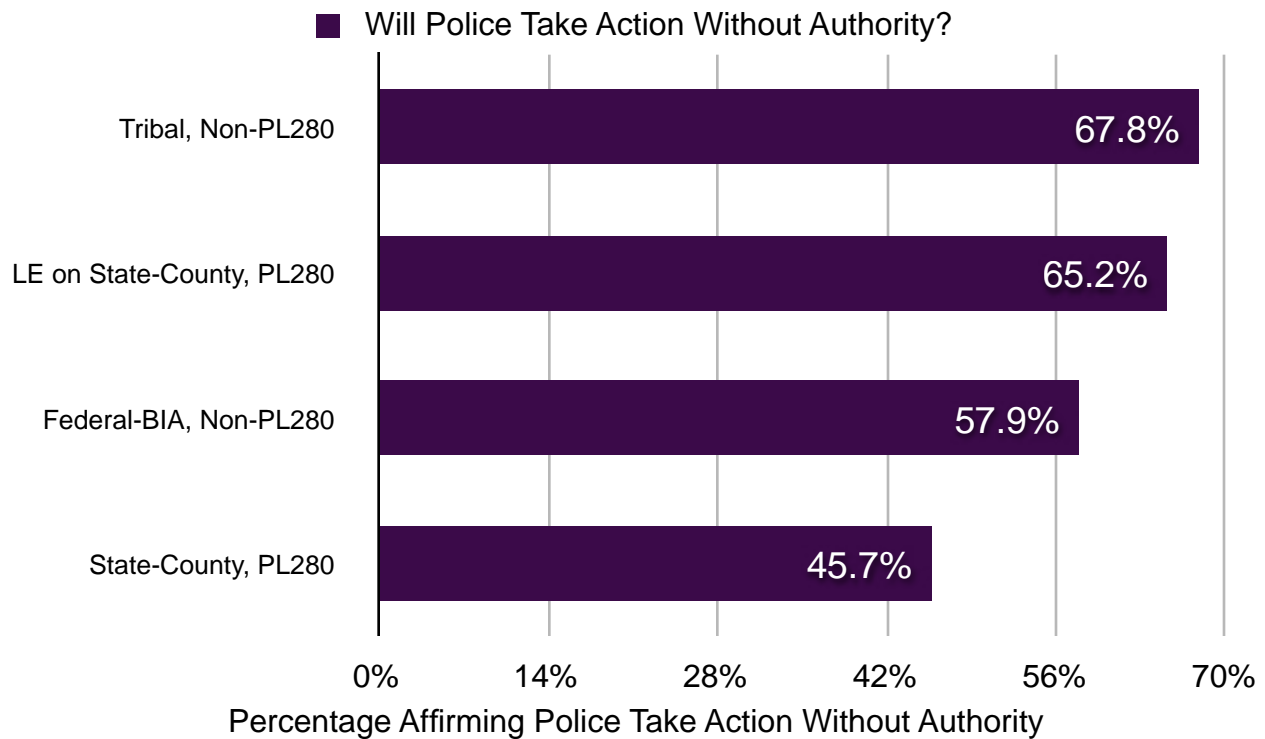


Figure 5.9

Non-Public Law 280 reservation residents (n=38) commented on whether lack of resources affected the availability of BIA law enforcement. Twenty respondents (52.6%) said that resource scarcities did not affect delivery of BIA police services to the reservation community. Fifteen non-Public Law 280 reservation residents (39.5%) said that BIA police suffer from lack of resources and police services are constrained. Forty-four non-Public Law 280 reservation residents commented on resource support for tribal police and the availability of tribal police services. Twenty-five of those respondents (56.8%) said that lack of resources does not cause tribal police to refuse police services. Nineteen non-Public Law 280 reservation residents (43.2%) said that lack of resources causes non-Public Law 280 tribal police to slow or temporarily suspend police services. Our sample yields no significant differences among police departments for refusing services because of lack of resources (chi square = 1.58, df = 2, p = .45, NS). Public Law 280 state/county police, non-Public Law 280 BIA, and non-Public Law 280 tribal police are about the same in using lack of resources as a reason for refusing delivery of services.

Do police ever refuse services because your reservation is too remote? Public Law 280 reservation residents (n=134) made comments about how remote they perceived their reservation is from state/county police services. Ninety-three Public Law 280 reservation residents (69.4%) do not believe that state/county police decline to deliver services because their reservation is too remote. However, 41 Public Law 280 reservation residents (30.6%) believe that their reservation is denied police services because the reservation is too remote for sustained police services. Non-Public Law 280 reservation residents (n=37) also commented on the relation between police services and remoteness of their reservations. Thirty-two non-Public Law 280 reservation residents (86.5%) said that BIA police do not refuse services because the reservation is too remote, while only 4 (10.8%) non-Public Law 280 reservation residents said that federal law enforcement, generally federal-BIA agents and not BIA police, are remote enough to inhibit delivery of police services. Forty-five non-Public Law 280 reservation residents commented on whether the remoteness of the reservation inhibited delivery of tribal police services. Thirty-seven non-Public Law 280 reservation residents (82.2%) said that the reservation is not remote enough to inhibit delivery of police services. Eight respondents (17.8%) said that tribal police are remote enough to inhibit delivery of police services. Reservation residents in Public Law 280 reservations (30.6%) said that state/county police decline police services to reservation communities due to remoteness more often than non-Public Law 280 BIA (10.8%) and non-

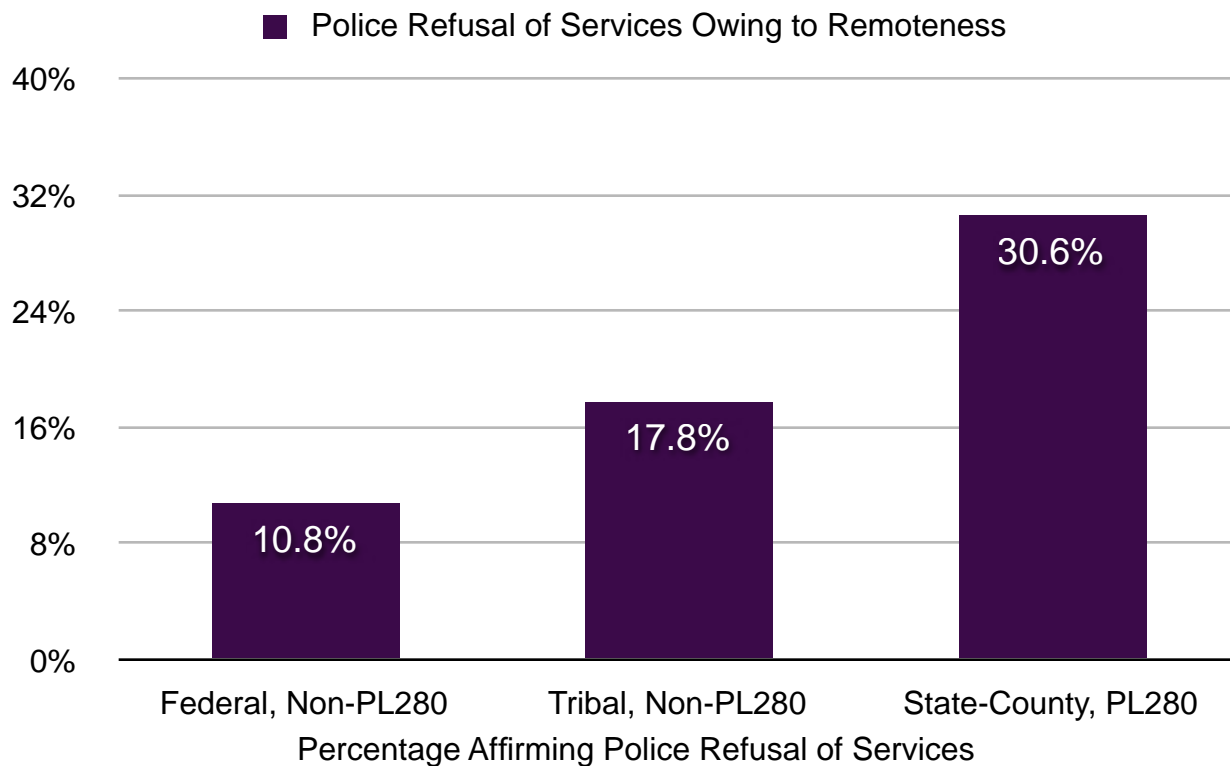


Figure 5.10

Public Law 280 tribal police (17.8%). As shown in Figure 5.10, our sample suggests, according to reservation residents, there are statistically significant differences in refusal of services owing to remoteness among police departments (chi square = 7.53, df = 2,  $p < .023$ ; Cramer's V = .19).

Non-Public Law 280 reservation residents believe they are getting stronger police coverage, in the sense of fewer occasions of refusal of police to take action, than are Public Law 280 reservation residents, who believe state/county police are declining to provide services because of reservation remoteness at relatively higher rates than non-Public Law 280 BIA and tribal police. According to our sample, state/county police in Public Law 280 jurisdictions tend to decline services to reservation communities because of remoteness more often than non-Public Law 280 police.

For Public Law 280 reservation residents (n=84), we asked whether any of the problems with remoteness, lack of resources or lack of authority were attributed to Public Law 280 by state/county police. Forty-one respondents (49.4%) said that state/county law enforcement did not attribute any problems with the delivery of police services to remoteness, lack of resources, or lack of authority, while 42 Public Law 280 reservation residents (50%) said that state/county law enforcement believes that problems with the delivery of police services are attributable to Public Law 280. Jurisdictional issues, funding, and absence of clear understanding of Public Law 280 were most mentioned by the respondents who believe that Public Law 280 inhibited delivery of state/county police services to tribal communities.

## Summary and Conclusion

Reservation residents in non-Public Law 280 reservations believe that their tribal and BIA police are more available and responsive than Public Law 280 reservation residents when rating state/county police responsiveness and availability. On a series of criteria, state/county police serving Public Law 280 reservations are rated by Public Law 280 reservation residents as less available, slower in response time, failing to equally attend to minor or serious calls, provide less beneficial patrolling services, less willing to act without authority, more frequently decline police services owing to remoteness, and are located farther away than federal-BIA and tribal police on non-Public Law 280 reservations. Public Law 280 reservation residents say that tribal police are more available and more responsive than state/county police. Community-relations issues, more so than lack of resources, are the main reasons for the lack of state/county police availability and responsiveness. Both community-relations training and additional resources are best combined in any plan to improve availability and responsiveness of police in Public Law 280 and non-Public Law 280 reservations. Where we have comparative data, state/county law enforcement disagrees with Public Law 280 reservation residents on the provision of adequate patrolling services. State/county law enforcement workers believe they provide more adequate patrolling services than Public Law 280 reservation residents give them credit for.

## CHAPTER 6

### The Quality of Police Services Provided to Tribal Communities

In this chapter, we measure the quality of police services in a variety of ways in order to understand respondent evaluations of law enforcement in both Public Law 280 and non-Public Law 280 reservations. Our survey posed questions regarding culture, social relations, and effectiveness of law enforcement. Most responses are from reservation residents and law enforcement, with questions about the quality of criminal justice services reserved for the next chapter. We are trying to determine, as one hypothesis, whether there are differences among measures of quality of police services between Public Law 280 and non-Public Law 280 jurisdictions. Do the police and legal environments of Public Law 280 and non-Public Law 280 jurisdictions lead to differing qualities of police services to Indian communities? We call jurisdiction effects differences between Public Law 280 and non-Public Law 280 jurisdictions. Alternative hypotheses are group effects: differences between law enforcement personnel and reservation residents; or differences between tribal and non-tribal (state/county and federal-BIA) police departments. Significant group effects mean law enforcement and reservation residents disagree about the quality of police services provided to Indian communities.

The main respondent groups for this chapter are reservation residents and law enforcement personnel. Most respondents work with crime-related issues and are generally well informed about crime, court, and policing issues on Indian reservations. Reservation-resident respondents are individuals who are employed on the reservation, an Indian person living on the reservation, or a tribal member. Most reservation residents are tribal members on the reservation in question, but non-Indian tribal employees and non-tribal member Indian employees and residents are also part of the reservation-resident sample. Reservation residents are chosen because they are community elders or leaders, or their work is engaged with police, court, social services, or related crime issues. Law enforcement personnel, generally, are police officers and related personnel who work for county or BIA police departments. Tribal police officers who work for and are funded by a tribal government are classified as reservation residents in the PL 280 jurisdictions, while police officers who work for the BIA or federal government, as well as tribal police in non-PL 280 jurisdictions, are classified as law enforcement personnel.

The key to the distinction between reservation residents and law enforcement is who has responsibility for criminal jurisdiction. In the PL 280 jurisdictions, where tribal police exist, they are treated as reservation residents because they are not generally exercising criminal jurisdiction. They may be enforcing state/county law under cross-deputization agreements or enforcing civil laws. However, where questions ask reservation residents in PL 280 jurisdictions to evaluate tribal police and courts, the respondents in those categories are excluded from the reservation-resident sample. In the non-PL 280 jurisdictions, in contrast, there are crimes over which the tribe has exclusive jurisdiction, and therefore where tribal police and courts exist, they are generally exercising criminal jurisdiction. Thus, in these jurisdictions, the tribal police are treated as law enforcement personnel.

Our assumption in constructing the reservation-resident category is that reservation residents will have different work, community, and government experiences than law enforcement personnel, and they may express these views and orientations with reference to their understandings and experiences with police. The groupings of reservation residents and law enforcement personnel are not based on racial or tribal membership. Many non-Indians work for tribal governments, and they are classified as reservation residents, except where they are policing or administering justice in non-PL 280 jurisdictions. Many tribal members work for county police departments, or work for BIA police departments or courts. The latter tribal members are classified as law enforcement personnel because their occupations are outside of tribal government management, and these tribal members are entrusted to carry out county, state, or federal laws and procedures, and not tribal government law and policing practices.

Differences in tribal and non-tribal police departments suggest respondents believe that one type of police department provides better quality police services than the other. The concept of quality of police services is operationalized through several measures.

The first group of measures for quality of police services to tribal communities provides evaluations of effectiveness and satisfaction. Questions on satisfaction, effectiveness, and community views enable analysis of how respondents evaluate police in both Public Law 280 and non-Public Law 280 settings. Reservation residents rate their satisfaction with police, positive or negative views about federal-BIA, state/county, or tribal law enforcement, while law enforcement personnel rate the views that reservation residents have about police, provide quantitative measures about police understandings of the effectiveness of state/county law enforcement on reservations, and rank the degree of respect tribal members have for police.

A second group of measures focuses on respondents' views about delivery of specific law enforcement services. Reservation residents and law enforcement are asked to rate the thoroughness of crime investigation, whether the quality of reservation law enforcement equals state/county police services delivery, the kind of relations law enforcement has with other agencies, and whether crimes are solved in a timely manner. These measures provide insight about how well respondents in Public Law 280 and non-Public Law 280 jurisdictions believe police services are provided to reservation communities.

A third group of measures of quality of police services asks reservation residents and law enforcement to rate how well law enforcement communicates with reservation community members, how well federal-BIA, state/county, and tribal law enforcement communicates with reservation residents, how communication can be improved, whether law enforcement understands local reservation culture, law enforcement's understanding of reservation cultures generally, commentary about new cultural awareness that law enforcement officers have gained in their experiences with reservation communities, and the degree of respect for reservation culture by police.

When data permit, each measure is analyzed according to the main hypothesis of searching for jurisdiction effects, differences between Public Law 280 and non-Public Law 280 jurisdictions. Alternative hypotheses of group and police department effects are also investigated when data permit. We seek to establish patterns of relations between the measures of quality of police services and the effects of jurisdiction, groups, and police departments on the quality of police services provided to Indian communities.

## Effectiveness and Satisfaction with Police

### Police Effectiveness on Reservations

Forty-nine law enforcement respondents ranked police effectiveness on reservations at 3.54, the highest overall ranking among the evaluations of law enforcement services. When we divide the law enforcement respondents according to jurisdiction, Public Law 280 law enforcement respondents (n=31) ranked police effectiveness on reservations at 3.7, while non-Public Law 280 law enforcement respondents (n=18) scored police effectiveness at 3.3. Law enforcement personnel in Public Law 280 jurisdictions ranked police effectiveness on Indian reservations higher than law enforcement personnel in non-Public Law 280 jurisdictions, but the differences are not statistically significant (Wilcoxon  $W = 381.5$ ,  $p = .12$ , NS). Law enforcement has a relatively high, above average, belief in the effectiveness of police services to Indian reservations. The police believe they are providing relatively high-quality services to tribal communities.

Similarly, law enforcement officers (n=48) rated the views of community members on the quality of police services at a relatively favorable 3.41. When controlling for jurisdiction, Public Law 280 tribal members are rated by law enforcement (n=31) at 3.4, a more favorable view about the quality police services than non-Public Law 280 tribal communities at 3.2 (n=17). The differences are not statistically significant (Wilcoxon  $W = 414.5$ ,  $p = .44$ , NS). Law enforcement believes police provide effective services to tribal communities and tribal community members share their belief in the effectiveness of police services. There are no significant differences between Public Law 280 and non-Public Law 280 jurisdictions; law enforcement personnel in both Public Law 280 and non-Public Law 280 jurisdictions report tribal members have similarly above average favorable views of the effectiveness of police services to tribal communities.

The ranking by reservation residents (n=225) of satisfaction with law enforcement on Indian reservations was 2.91. Reservation residents are very near the medium of 3.0 in terms of satisfaction and, therefore, as a group are not highly satisfied, but also not greatly dissatisfied. When comparing satisfaction between Public Law 280 and non-Public Law 280 jurisdictions, Public Law 280 reservation residents (n=161) ranked their satisfaction with law enforcement at 2.8, while non-Public Law 280 reservation residents (n=64) rated their satisfaction at 3.2. The difference in satisfaction with police services among Public Law 280 and non-Public Law 280 reservation residents is statistically significant (Wilcoxon  $W = 17161.0$ ,  $p = .015$ ). Public Law

280 reservation residents report more dissatisfaction with police on reservations than non-Public Law 280 reservation residents.

In addition to the rankings offered by the respondents, the survey investigates community evaluations of police services through an open-ended question: Do tribal community members have a positive or negative view of law enforcement? The answers to this question, as with the other opened-ended questions, were coded and then sub-coded to search for patterns in the answers. Fifty-three (n=53) respondents provided comments. Among Public Law 280 respondents (n=34), 53% expressed the view that community members have positive views of law enforcement, and, among non-Public Law 280 respondents, 53% think tribal members have positive views of law enforcement and 16% believe tribal members have mixed views about law enforcement. If we restrict the analysis to law enforcement respondents, which total forty-one, then 50% (n=8) of non-Public Law 280 police believe that tribal community members have a positive view of law enforcement, and 71% (n=20) of Public Law 280 police believe the same. The differences between Public Law 280 and non-Public Law 280 police in their interpretations of positive or negative views on law enforcement are not statistically significant (Wilcoxon  $W = 407.5$ ,  $p=.83$ , NS). Law enforcement personnel in Public Law 280 and non-Public Law 280 jurisdictions have relatively similar perceptions of how reservation residents feel about local police. Police believe that most reservation residents have relatively favorable views about the quality of police services.

Here are some comments from Public Law 280 jurisdictions where law enforcement respondents believe that tribal community members have positive views about the quality of police services. While many respondents gave positive evaluations to police services, they often remarked about difficulties and issues in need of improvement.

Respondent One (R1): "I think the individual community is positive." Respondent Two (R2): "I think very positive. ... I look at a community as those that make up the whole. And if that is the case, yes." (R1) "Yes ... they tell us they want us to be their law enforcement. ... I have had people that I have arrested numerous times who are tribal members, who have told me the next day. ... And they say, I really appreciate when you arrested me, you treated me with respect. I didn't like going to your car ... But at least you treated me like you would anybody."

Well, I would have to say that they have a positive (view). I think that we have a lot more room to continue to improve our relationship living in Indian country.

Again, that is a tough one. I think, overall, they have a positive outlook towards law enforcement, in general. I think there's some things that they don't like about maybe the way the county does things. And, I think, that, again, speaking on behalf of the county without really being in a position to, I think, maybe there is some more communications that could be done between the tribe and the county that would put some of those things at ease. But, I think, overall, from our



experience, that we have a good understanding as to why. They may not agree with it, but they have an understanding.

I think it would be, it's hard to say. I think its probably positive. There are some things that I am sure they don't like, or, within some segments of the reservations there is probably a negative view. I think it's because of the way we do business. I don't know that it's unique to the reservation ... I think as an agency, we have tried hard to provide the same level of service that we would anywhere. And at the same time, we try to be cognizant of what their needs may be.

I believe that, actually, in the last three or two years, that the view of law enforcement has become very positive. We have people that are looking around saying, hey, look at this has been going on for a long time, and it's not right. I am going to tell you about it. ... Just recently, we caught a person that had two pounds of marijuana in his house, along with a bootlegging operation. And when I was at my other job working, his (relative) came up and told me. ... So we ran an investigation and caught him with 14 pounds of marijuana in his house. His bootleg operation was selling over \$100,000 of illegal alcohol a year on the reservation.

Well, ever since community policing came on the reservation, people have been talking to us, people have been turning in other people. As far as before: "Well, I don't want to say anything because I might become the next victim." But now, a lot of people are coming forth, you know, ever since we have started communicating better.

Some negative comments from state/county law enforcement in Public Law 280 jurisdictions include:

It depends on if you're a criminal or not, I guess. I will say that it's split. The law-abiding side probably think we do a good job. The criminals probably don't like us. There are times when the community has a negative (view), depends on what is happening ... When we busted our biggest drug dealer in town, everybody in the community loved the police department for six months to a year after that. And there is another time when a police officer ended up having to pick up an elderly lady, and everybody frowned upon us for six, seven months. So it comes and goes.

BIA no. BIA was lazy. We had problems with officers. They would bring them in from the outside and place them here. So, when it came to trial, we had a hard time getting them summons. They didn't have a good rapport with the community because of just history. The tribal police, especially with the new acting chief of police, he is going into community policing, requiring his officers to be out there and be seen, to talk with the community, to have some type of interaction. That is the problem we had with BIA. They were just cops. Whereas

these guys go out and talk to people. ... So, they are trying to build that rapport back up with the community. I see a big difference between the tribal and BIA.<sup>1</sup> I think they have a misunderstanding of law enforcement,... but I think the acceptance for the laws is a problem. It's such a rigid enforcement when you are doing enforcement. If you can teach less rigidity, but then there becomes an officer-safety issue. ... You have so many catch-22s in law enforcement, it's hard to get acceptance by the public. Maybe not acceptance, but a general like for law enforcement.

Do tribal members respect law enforcement? Law enforcement personnel were asked to rank the degree to which tribal members show respect for police. Forty-nine law enforcement workers responded and gave an overall rank of 3.47. Police believe that tribal members are relatively respectful toward police, since they provide a collective ranking above the medium level. Comparing rankings by law enforcement personnel who ranked Public Law 280 tribal community members for respect for police (3.58, n=31) and non-Public Law 280 tribal community members for respect for police (3.28, n=18) does not yield a statistically significant difference ( $t=1.09$ ,  $df=47$ ,  $N=49$ ,  $p=.28$ , NS). Law enforcement personnel believe that tribal community members are above-medium respectful toward police in both Public Law 280 and non-Public Law 280 jurisdictions. Tribal community members are above-average respectful toward police, regardless of jurisdiction, according to law enforcement personnel.

### Thoroughness of Crime Investigation

Both (n=259) reservation residents and law enforcement personnel gave ratings on the thoroughness of crime investigations. Their combined rating was 3.08, about the medium of the scale, indicating overall about-average follow-through for crime investigations — not excellent, but not poor. When controlling for jurisdiction, reservation residents (n=158) in Public Law 280 jurisdictions scored thoroughness of crime investigation at 2.85, while non-Public Law 280 reservation residents (n=63) gave a collective rating of 2.95. The difference is not statistically significant (Wilcoxon  $W = 17275.0$ ,  $p=.52$ , NS). Law enforcement personnel (n=31) in Public Law 280 jurisdictions gave a rating of 4.26 for thoroughness of crime investigation, while in non-Public Law 280 jurisdictions, law enforcement personnel (n=17) gave a 3.47 rating. The differences between the thoroughness of crime-investigation ratings of Public Law 280 and non-Public Law 280 police are statistically different (Wilcoxon  $W = 304.5$ ,  $p<.008$ ). Law enforcement personnel rank police services higher than reservation residents, and Public Law 280 law enforcement personnel believe police are providing significantly more thorough crime investigations than non-Public Law 280 police believe they are providing.

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<sup>1</sup> The respondent is from a Public Law 280 jurisdiction and refers to past experiences with BIA police before Public Law 280 was established on their reservation.

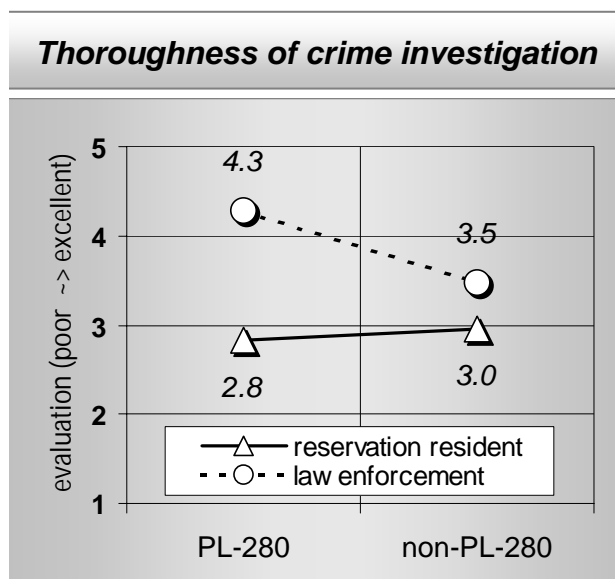


Figure 6.1

The thoroughness of crime investigation data lend themselves to a nonparametric 2X2 analysis of variance for ranked rank-transformed data,<sup>2</sup> which yields two statistically significant results: the main effect of reservation residents versus law enforcement and an interaction effect. As shown in Figure 6.1, for our sample, the main effect of Public Law 280 versus non-Public Law 280 jurisdictions is not significant. Public Law 280 and non-Public Law 280 jurisdictions do not have a direct effect on whether the police are properly and completely investigating crimes ( $F = 3.9$ ,  $df=1$ ,  $p=.056$ ). Whether crimes are well investigated does not differ or is not caused by differences in Public

Law 280 or non-Public Law 280 jurisdiction

locations. The differences between the evaluations of reservation residents and law enforcement personnel are statistically significant ( $F = 33.67$ ,  $df = 1$ ,  $p < .001$ ). Law enforcement personnel give significantly higher marks to police for effective and complete management of crime investigations than do reservation residents. Police believe they are doing a better job investigating crimes than do reservation residents. The ANOVA analysis contains a statistically significant interaction effect ( $F = 5.97$ ,  $df = 1$ ,  $p < .015$ ). Jurisdiction and group effects interact in accounting for thoroughness of crime investigations. In other words, the differences in thoroughness of crime-investigation ratings between law enforcement personnel and reservation residents is significantly enhanced in Public Law 280 jurisdictions, but not in non-Public Law 280 jurisdictions. Law enforcement in Public Law 280 jurisdictions rate thoroughness of crime investigations significantly higher than Public Law 280 reservation residents, while there is relative consensus among reservation residents and law enforcement ratings within non-Public Law 280 jurisdictions. The ratings for thoroughness of crime investigations show increased differences between reservation residents and law enforcement personnel under Public Law 280 jurisdiction. While jurisdiction does not have a main effect, jurisdiction has a significant interaction effect that results in greater differences or less agreement among reservation residents and law enforcement within Public Law 280 jurisdictions, while there is significantly more consensus among reservation residents and law enforcement in non-Public Law 280 jurisdictions. The lack of consensus over effectiveness and completeness of crime investigations

<sup>2</sup> As first suggested by Conover and Iman in 1981, in many cases, when the data do not meet the assumptions of ANOVA, one can replace each original data value by its rank from 1 for the smallest to N for the largest, then run a standard ANOVA calculation on the rank-transformed data. "Where no equivalent nonparametric methods have yet been developed such as for the two-way design, rank transformation results in tests which are more robust to non-normality, and resistant to outliers and non-constant variance, than is ANOVA without the transformation." See Helsel, D.R. and R. M. Hirsch, 2002. Statistical Methods in Water Resources: Techniques of Water Resources Investigations Book 4, chapter A3. U.S. Geological Survey. pp. 177, 522. See also Conover, W. J., Iman, R. L. (1981). Rank transformations as a bridge between parametric and nonparametric statistics. American Statistician, 35, 124-129.

in Public Law 280 jurisdictions suggests that reservation residents and county police in Public Law 280 jurisdictions have significantly different perceptions of how well crimes are investigated. Reservation residents in Public Law 280 jurisdictions give low ratings for thoroughness of crime investigation, while Public Law 280 law enforcement personnel give significantly higher ratings for police thoroughness of crime investigations.

A next step is to investigate open-ended questions asking reservation-resident respondents in Public Law 280 and non-Public Law 280 jurisdictions to comment on police thoroughness in crime investigations. Reservation residents in Public Law 280 jurisdictions comment on county and tribal police, while non-Public Law 280 reservation residents comment on tribal police and federal-BIA police. Reservation residents in non-Public Law 280 jurisdictions provided comments about the thoroughness of crime investigation for federal-BIA police (n=44) and for tribal law enforcement (n=54). When discussing crime investigations by federal-BIA police, 70% of non-Public Law 280 reservation residents say that crime investigations are not thorough, while 18% say investigations are thorough, and the remainder say they are mixed or the respondent could not address the issue. Twenty percent of Public Law 280 reservation-resident respondents emphasize lack of training as a contributing factor to less-thorough crime investigations. Non-Public Law 280 reservation residents rated the thoroughness of crime investigation at 3.0, about average, but the pattern of the comments indicates that most non-Public Law 280 reservation residents do not believe the federal-BIA police are doing a thorough job in crime investigation. The commentaries suggest that crime investigation is less satisfactory than indicated by the quantitative rating scales. Here are some comments from respondents who did not believe federal-BIA law enforcement was strong in crime investigations:

I really can't say. I think there is a sense in the community that if it's just on the local level, maybe it's not as thorough as it could be. But most times, especially when the crimes are serious enough, the FBI gets involved, and I think the people are more confident ... although there are some things that it takes awhile for the FBI to get involved with.

No. Well, I don't know. From what I understand it's not thorough because a lot of times the other party is not interviewed. It's, like, law enforcement gets their view really open and broad, but the victim or the other party that is making the complaint, it's not the same ... I don't think that is fair. When BIA had it, I had somebody break in my house, and I kind of know who it was because their dog was there, and they went out the window. Stole some of our property. But nobody filed it ... the person never went to court, never went to jail. ... So, I can't really say, but from the investigations through our law enforcement, it's taken a long time.

I don't agree with them when they do their reports. They might have done a good investigation, I shouldn't say that, I guess, but their report writing, I guess, is very minimal. Where to me, if you got everything in there, you would have a better

case for the prosecutor or the judge, even, to make a decision. ... Oh, we have had it on domestic violence once ... because we get to read the report where there is about one paragraph, and it don't really tell us nothing, don't give the victim's name, you know, anything like that. And I think you need to. And what I personally want to see is the detailed reports on, you know, even if it's an assault, where the injuries are.

I guess my only experience has again been from clients. And the one-sided, the not being willing to listen. Coming in with an opinion about what took place, rather than sitting down and methodically checking some things out. ... It's just asking the questions, going slow, not getting carried away with cuffing you and getting you out of there. But stop and check out what the witnesses saw or what other people saw.

I think they have a reputation of, they are not too well liked. And people are not going to be willing to say anything to somebody that they don't like, rather than I don't know. One of the doctors here says, if you ask for something politely just to get an answer; if I were to just jump on you and just calling, I would rather not respond to that than I would respond to a subtle way of asking.

They don't do a good job. ... I think it's a basic lack of training.

Probably not. I don't think they have the ability to do it. Personal abilities to do it. Some of them may. They call in a criminal investigator, and he is from the BIA, I don't look at him as law enforcement, but he does a good job. As far as the local police officers, probably not. If I were in a situation, I probably wouldn't depend on them ... they are not going to carry through with this, or they are not going to ask the right questions, or they are just going to do something that is not right here. Then that person is going to get away with it.

In my experience, I think a lot of things could have been prosecuted if they had a good investigation team. But because of the lack of know-how and lack of enthusiasm to do the job, there were a lot of things they could have, justice could have been done if the investigation was done correctly.

They don't have, I think, the forensic science training in that I think more training needs to be in the area of criminal. Because you don't hear of enough drug busts. You don't hear of enough. They need to be more equipped in that area.

Comments from reservation residents in non-Public Law 280 jurisdictions about thoroughness of crime investigation by tribal police also indicate general dissatisfaction. Fifty-five percent (57%) of reservation residents (n=31) say that crime investigations are not thorough enough, while 31% (n=17) report tribal police are thorough, and the remainder cannot say. Some

comments suggest that crime investigations are limited by lack of training, family relations, and inefficiencies. Again the strength of dissatisfaction with crime investigations indicates greater concern from the open-ended questions than is revealed in the rating scales, where non-Public Law 280 reservation residents rated thoroughness of crime investigations about average, at 3.0 on a 5-point scale. Most reservation residents in non-Public Law 280 jurisdictions do not think that either tribal or federal-BIA police are providing thorough crime investigation services. Some comments on crime investigations by tribal police include:

No, I don't feel like they do. They get what they want or what they are looking for, and then that is the end of that. ... From my personal experience, no. It's like they just wanted to get their paperwork taken care of so they could leave, kind of. That is how they made me feel ... I never felt safe after they left my home. I never felt like I was going to be OK. And I would have liked to have been reassured a little bit just because I was younger.

I don't really know. I have been only involved in one investigation, and they are still doing it. They kind of go off on different tangents. ... No. I was not happy. It was theft. You kind of knew who did it, but they blamed other people ... a lot has to do with politics. ... Yes, families. Its better to blame an outsider than to look at your problem you have. The person that was doing the thefts is involved in drugs, and they are not looking at him.

I have a few things I've been noticing. They tend to get personal. Because they are either related to the victim or a good friend ...

No. There are some cases that don't go anywhere. ... It seems like it's usually nobody with no lifestyle or political connections. They are just downtrodden, just regular people, and their cases get investigated, but not to the full extent of the investigation, and those ones are unresolved murders. ... Well, the FBI come in and investigates it, and sometimes the people clam up and don't say nothing. They won't say nothing, and they are not going to put themselves on the spot...One of our local Indians was charged with murder, but he put out the word if anybody shows up in court, they are dead. ... So, on the day of the trial, zero witnesses against him showed up, but it was a guy that way, just a regular bad guy.

I don't think so. ... I can only tell you from what I know ... when a person was being investigated for an alleged rape. It was ridiculous. I mean, it was. But anyway, these investigators came in and made this huge scene, you know, like everybody look at us, look at what we are doing. And everyone was looking. ... I don't even know what to say about that. I just don't really think they know what they are doing locally, as investigators, as crime-scene investigators or whatever you call them ... the ones who come out and do investigations, a lot of times they

don't even want to hear, you know, a complaint. They want to keep it local. And if they got involved with the indictments on (tribal officials) ... they don't want to have nothing to do with anything if it wasn't that major, you know, at that level. And then here at this level, it's like they are not equipped to investigate crimes. ... It didn't seem to be investigated properly. And it was made into, like, a circus, you know. And a lot of that has to do with politics and the people who are involved in those positions. And the politics, and, you know, it just goes back to that here in every case.

There was a case dismissed. A couple of cases dismissed. ... The prosecutor was saying it's not my job to do this. The police officer was saying, "Well, we do our job." But the prosecutors were saying they wouldn't file the cases based on the fact that ... the officer was not knowledgeable enough to write the complaints in a fashion that [was usable by the prosecution].

I don't think so. I think they get the call and do a report, and that is it. I don't think they investigate the whole issue. ... Yeah, child sexual abuse. I know they do that investigation, but I think everything else they just take the call, they do their report, and then I don't think anybody's ever questioned. It just goes by the report, nothing more. That is just what I see.

In Public Law 280 jurisdictions, reservation residents commented on the thoroughness of investigations by both state/county and tribal police. Comments on county-police crime investigation (n=145) by reservation residents yields 52% who believe county law enforcement does not manage crime investigations well, and 34% who say county police are good crime investigators. A relatively large proportion of Public Law 280 reservation respondents (14%) say they cannot comment on how well county law enforcement investigates crimes. Most reservation residents do not believe that county law enforcement does an adequate job investigating crimes. The commentaries indicate a higher degree of dissatisfaction with crime investigation services than suggested by the numerical ratings, which gave the county police a slightly below medium score of 2.8. Public Law 280 reservation residents are somewhat more satisfied with crime investigations from county police than non-Public Law 280 reservation residents are with federal-BIA (18% satisfied) and 31% satisfied with tribal police investigations. Some comments by Public Law 280 reservation residents about state or county crime investigations include:

I don't know if you have wandered around here very long, but you will see a sign, this picture of a young man who was related to several of our staff here that was a victim of hit and run. It has been a year, and there is a reward for information. That case has never been solved. I think the fact that the family's got a reward out kind of indicates to me that it's not a high priority because it's something that happened on the rez. It's a year later, and it has not been solved.

I got a call from a very distraught individual who said he had been burglarized ... it was a home-invasion burglary by a woman who was a drug dealer, and she had come in and assaulted him ... he called the tribal police. And they refused to take any action, and it was a really odd thing. ... But, I actually walked him through a jurisdictional analysis saying, cause he said, that the county won't do anything because they said it's tribal law enforcement, tribal law enforcement said they can't do anything and it has to be county, and so he was very frustrated. And so, the discussion we had really was focused on jurisdictional analysis in terms of who is responsible for responding and following up with investigation ... and then it's further complicated by politics, where there are reports that, even in situations where investigations have been worked out, tribal police is then told this is not your purview, you should not be looking at this, so just back off, and nothing comes of the investigation ...

Well, I don't know that they use forensic techniques. I can think, I think they do preliminary stuff, like these robberies and stuff. I never have ever seen anybody dust for prints like you see in the movies.

No, I don't think they do a thorough job. I think, after awhile, they kind of let it go if they have not heard anything about it. ... There has not been a thorough investigation of that. The tribal member from our end, the tribal members have gone free and have had no responsibility attached to them. Now, the person who was beat up apparently did not press charges.

My answer on behalf of the tribe would suggest there are plenty of people in the tribe, some government and some just membership, that do not believe they adequately investigate really serious matters that might be circumstances where Indians are victims of non-Indians. ... They are not sure they really looked. So, that is where the people have that attitude.

They do a very thorough job of getting the wrong people lots of time.  
No. We have some unresolved cases here yet. ... We have deaths that they say are alcohol related, and word has it that it wasn't alcohol related, and it just goes no further than that. We have hit-and-run cases where it has not been resolved yet. They had someone in jail for a long period of time that was found not guilty. Whoever did it is still out there.

No. And I have seen the same thing working with housing, and then have to report vandalism and graffiti and breaking-and-entering and stuff into the vacant homes. The sheriff just comes over and looks it over, and maybe he will take a picture or that will be the end of it, and usually our tribal police, they come over and do a more thorough job following through. But there is a lack of investigation there.



I guess they probably do the best they can, but I still have a (relative) that was murdered going on two years in September, and we have not gotten heads or tails on it. I just don't think they are working with her because she is an Indian girl, and they really don't care.

There has been some concerns as far as different cases, and I would prefer not to go into the different individual cases, but I do know of one case that was over a year ago where an infant had died, and there was zero investigation. The word on the street is that one kid beat the kid to death was not investigated by the former sheriff's department. I want to make it clear, that it was before this sheriff, [cases] are not pressed forward by the county attorney, the former attorney either, and that is real disheartening, too, when you have a young child die, and the reports are that such and such had beat the child to death, and there is no investigation. It's disheartening to hear that.

Public Law 280 reservation residents (n=82) also commented on crime investigations conducted by tribal police. Sixty-six percent (66%) of responding Public Law 280 reservation residents stated that tribal police are conducting thorough or satisfactory crime investigations. Twenty percent (20%) of Public Law 280 reservation residents say they believe that tribal police do not conduct thorough crime investigations, and a relatively high proportion of 15% say they cannot say whether or not tribal police conduct thorough crime investigations. Public Law 280 reservation residents give very high marks to tribal police crime investigation when compared to state/county police, and also when compared to reservation residents' evaluations in non-Public Law 280 jurisdictions for federal-BIA and tribal police. If we withdraw the reservation residents who are law enforcement workers to avoid a self-evaluation bias, then 72 Public Law 280 reservation residents commented and 41 (57%) say that tribal law enforcement investigates crimes thoroughly.

A majority of Public Law 280 reservation residents believe that tribal police are conducting thorough and satisfactory crime investigations. The commentaries indicate that Public Law 280 reservation residents believe that their tribal police are good investigators, much higher than the 34% Public Law 280 reservation residents who say that state/county police conduct thorough investigations. Nearly double the proportion of Public Law 280 reservation residents say tribal police conduct thorough crime investigations than the proportion of Public Law 280 reservation residents who observe the same of state/county police crime investigations. The belief by Public Law 280 reservation residents in the crime-investigation skills of tribal police is at odds with most commentary on crime investigation, which tends to express dissatisfaction with federal-BIA, state/county, and tribal crime investigation skills, procedures, and results. The following commentaries by Public Law 280 reservation residents concentrate on positive comments about tribal police crime investigations:

Yes. When our community health workers and our community outreach workers have some complaints on, say, elder neglect or abuse or something of that nature. I know that our community health nurses and staff have said good things about the involvement and participation that the police department has in helping them. ... But as far as support from the police department, yes, there is good rapport there and good support, good response.

They had better. We have a complaint process in, and it's been put in the newspapers, and I get calls at home sometimes at midnight to tell me. I call the chief and ask what is up. It's then followed up on, and a written report is given to us. So, they better be doing what they agreed to do.

I don't think in the past they have, but we have just hired an investigator in the last six months. He is very (good), in fact, he was instrumental in a big bust here recently.

Yeah, tribal police do an excellent job, I believe. They are all new officers, they are all willing to work hard, and they are doing an excellent job, and they are learning their job from working with us.

I believe so. Whatever they are not able to handle, they don't do cases without [county] assistance on criminal matters. They do that under the jurisdiction of the county.

The public don't think so, but we do. Basically, it's not so much our investigation. It's more the process, that it goes for the DA (district attorney) to take the case or whoever takes the case. It's kind of a slow deal, I guess, in their minds. We got a bunch of good guys that take all the cases and go as far as they can. And if they get stuck or bogged down and ask someone for help or "what should I do next?" or "this is where I'm at." (The most senior officer fields the questions).

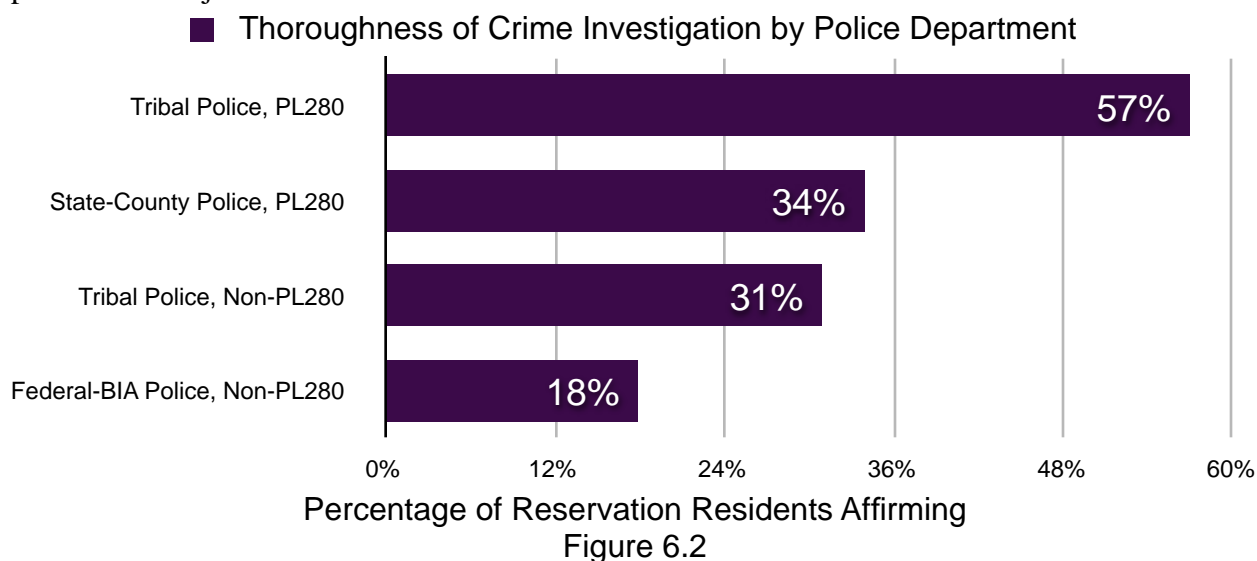
They do. I don't know how to quite say this, but any community, if it's your family member and you happen to be on the police force or you happen to be on the Council, you may not write it up as strenuously. Or you may just believe, a little bit more, one side than the other. You may be biased. I mean in a small community, there is room for bias, particularly if you are a cop of the reservation, and a family member of the reservation. I would not want to be that cop. He has moved off the reservation. And they are happy as can be.

Occasionally, something falls through the crack. But, overall, I think it's probably as good as can be expected.

I would have to say yeah, usually. Well, I guess there has been a couple of times when things have happened where there was, now this is my understanding, that there was a jurisdictional issue. I don't think it's necessary that the state wanted to manage it. It was just that the police didn't have jurisdiction (over criminal cases).

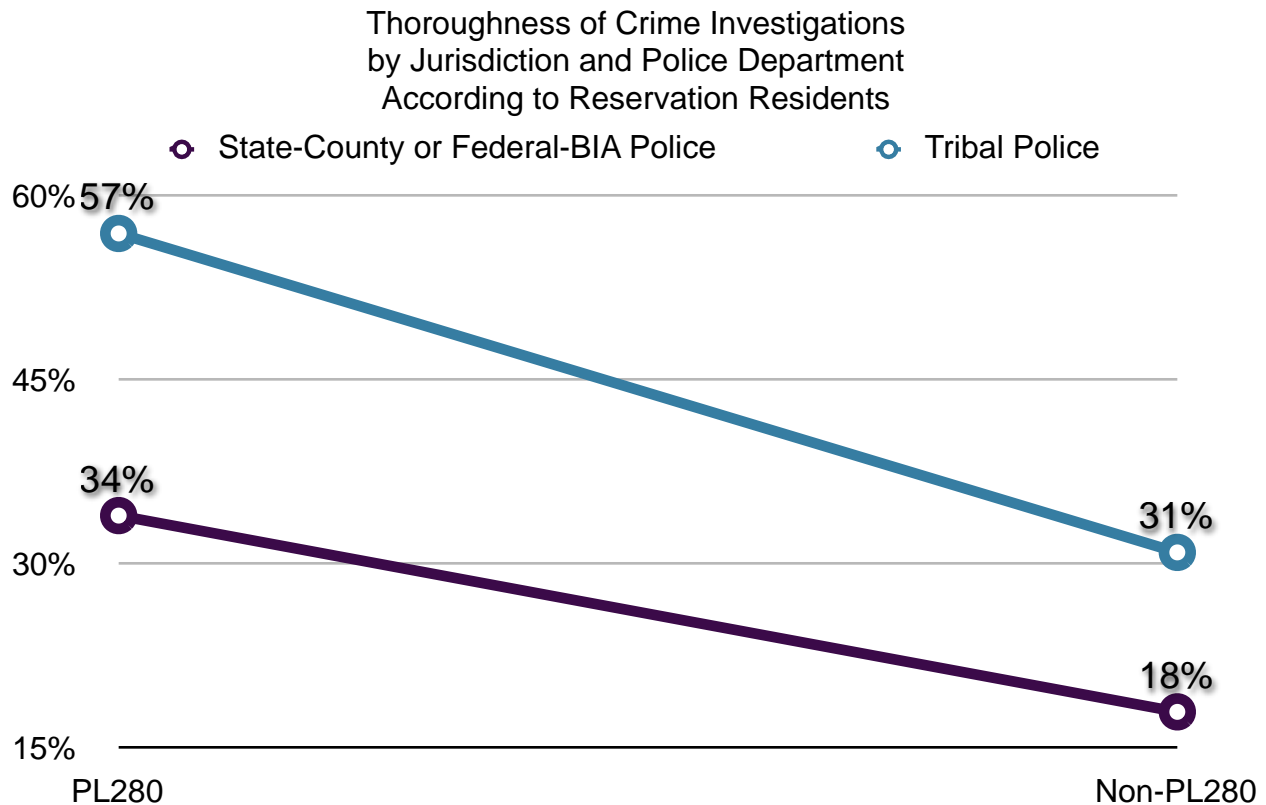
The result that tribal law enforcement in Public Law 280 jurisdictions is highly evaluated by reservation residents is unexpected. Let us explore this finding with some comparisons with reservation-resident evaluations of federal-BIA, state/county, and tribal police crime-investigation work in non-Public Law 280 and Public Law 280 jurisdictions.

Figure 6.2 shows the percentage of reservation residents who believe that the police are thoroughly investigating crimes. We are using the sample where law enforcement workers are withdrawn from the Public Law 280 reservation-resident sample when commenting on tribal police to avoid any bias of self-comment by tribal police or workers. Our sample of reservation residents indicates police departments provide significantly different degrees of thoroughness of police investigations (chi square = 20.4, df = 3,  $p < .0001$ ; Cramer's  $V = .25$ ). There are significant differences in how reservation residents evaluate the thoroughness of crime investigations among federal-BIA, tribal, and state/county police in Public Law 280 and non-Public Law 280 jurisdictions. According to our sample, reservation residents in Public Law 280 jurisdictions believe that tribal police thoroughly investigate crimes significantly more often than non-Public Law 280 reservation residents say about their tribal police. Within Public Law 280 jurisdictions, reservation residents say that tribal police are more thorough at crime investigations than state/county police. More Public Law 280 reservation residents say tribal police are thorough investigators than non-Public Law 280 reservation residents say about federal-BIA police. Public Law 280 reservation residents have a high opinion of the investigative skills of tribal police, significantly higher than federal-BIA, state/county, and tribal police in other jurisdictions.



It's hard to believe that tribal police in Public Law 280 jurisdictions have better training and equipment than state/county, federal-BIA, and non-Public Law 280 tribal police. Under Public Law 280 and cross-deputization agreements, tribes and states have concurrent jurisdiction, and tribal police can take on investigative responsibilities along with state/county police. In the analysis of thoroughness of police investigations for scaled data in Figure 6.1, Public Law 280 tribal police are not part of the measurement of police investigation activities, since the scale measures the respondent ratings of state/county law enforcement personnel. While Public Law 280 reservation residents rated county law enforcement slightly below medium, the open ended interview data indicated that tribal police in Public Law 280 jurisdictions rank significantly higher than state/county law enforcement. The open-ended interview data suggest that state/county, federal-BIA, and tribal police in non-Public Law 280 jurisdictions are providing relatively less satisfactory crime investigation services than was indicated by the overall rating of 3.08, which suggests about-average thoroughness of crime investigation by police in our sample.

The thoroughness of crime-investigation data lends itself to a 2x2x2 log-linear analysis, where we can compare the interaction effects of two levels of jurisdiction (Public Law 280 and non-Public Law 280) with two levels of police department (tribal and non-tribal) with two levels



Percentage Affirming Thorough Crime Investigations

Figure 6.3

of thoroughness of criminal investigation (thorough or not thorough). In Public Law 280 jurisdictions, there are state/county police and tribal police, and in non-Public Law 280

jurisdictions there are federal-BIA and tribal police. Figure 6.3 shows the percentage of reservation respondents who express views on police thoroughness of crime investigation. For our sample, reservation residents say there is a significant interactive relationship between police department, jurisdiction and thoroughness of crime investigations ( $G \text{ square} = 31.64$ ,  $df = 4$ ,  $p < .0001$ ). The thoroughness of criminal investigation depends on the type of police department and type of jurisdiction. Tribal police departments in Public Law 280 jurisdictions receive the highest rankings from reservation residents for thoroughness of criminal investigations. Non-tribal police departments, or federal-BIA police, in non-PL 280 jurisdictions receive the lowest rankings from reservation residents in our sample for thoroughness of police investigations. Reservation residents say tribal police in Public Law 280 jurisdictions provide more thorough police investigations than state/county or federal-BIA police in non-Public Law 280 jurisdictions. We can make several observations from the data displayed in Figure 6.3. Tribal police, as reported by reservation residents, conduct significantly more thorough police investigations than state/county and federal-BIA police ( $G \text{ square} = 9.18$ ,  $df = 1$ ,  $p = .002$ ). Public Law 280 reservation residents report significantly more thorough police investigations than are reported by non-Public Law 280 reservation residents ( $G \text{ square} = 6.72$ ,  $df = 1$ ,  $p = .001$ ).

Why do reservation residents say tribal police provide more thorough investigations than state/county or federal-BIA police. One possibility is that the only PL 280 tribes that can afford to operate tribal police departments that investigate crimes are those with significant resources from gaming or otherwise. Another possibility is that, given the hurdles to developing tribal police and courts in PL 280 jurisdictions, only those tribes with a strong consensus in favor of tribally-provided law enforcement will have tribal police investigating crimes. Another possibility is that tribal police are more focused on crimes and investigations on the reservation, know the people better, know how to investigate within the community, and are willing to work longer on a case, doing so with greater cultural and community understanding than most federal-BIA and state/county police investigators. Reservation residents may appreciate tribal police investigative methods and community interactions more than the methods and tactics of federal-BIA and state/county police who have little understanding and knowledge of tribal communities.

### Are Cases Solved in a Timely Manner?

We next investigate respondent perceptions of whether crimes are solved in a timely manner. We analyze the perceptions of reservation residents on the timeliness of crime-solving by federal-BIA, state/county, and tribal police in Public Law 280 and non-Public Law 280 jurisdictions.

Thirty-seven non-Public Law 280 reservation residents gave comments in response to the question whether crimes are solved in a timely manner by federal-BIA law enforcement, and 24% affirmed that federal-BIA police solve crimes quickly, while 63% said crimes were not expeditiously solved. The remainder said they could not judge the question or thought that the time to solving crimes was mixed. Most non-Public Law 280 reservation residents believe that

crimes are not solved in a timely manner by federal-BIA law enforcement. Comments by non-Public Law 280 reservations residents include:

No. And I still say no. We have some investigations going on through the feds. We know they are going on (through our) court personnel. And we have been hearing that for 14, 15, 16 months. We don't know exactly when they started ... so if they say, well don't bother doing that, there is already an investigation going on, wait and see what happens with that one. You are always told to wait and see. But when you wait and see, you never hear it again.

No. Right now we do have some problems with that. We also have our tribal prosecutors, too, so we are working on those issues. To get those things done in a timely manner. We have problems with the police officers doing their reports, and then, likewise, with the criminal investigator to get in a report.

No. Just observing from a distance, there was a case of child abuse, molestation, I think. And the guy was just roaming around here. That is, like, three people who were known perpetrators, but there was nothing. They were just roaming around here. They were still free to access and perpetrate, batter, whatever they (wanted). So there is no protection. I just thought there should have been some sanctions on them. I think now two of these guys are in jail, but the other one is free. ... Then we have all these policemen around, and FBI and the criminal investigator. We have all these people, and yet these three were out in the community.

I don't think so. It depends on who you are. It's a terrible thing to say, but it depends on who you are, how fast things happen. Some things go on forever. No. I don't think so. They drag out quite a bit. There is a bit of a lag. I think they are trying to make some improvements, which is good, but I still think there is a drag here as far as from the time you call, make a complaint, time the police comes, time that it's investigated, and time you go to court. I think there is a bit of a lag between the processes.

Perhaps it's not, because like I said, it takes a year for anything to get to the federal court. I don't know if it's because they have not done their investigation or it sits waiting in line on the federal desk.

I have had kids sit in jail anywhere from three months to six months and just be let go for lack of evidence. I don't know if it's for lack of evidence in that they never get any or because there was none out there.

Forty-nine non-Public Law 280 reservation residents commented on whether tribal law enforcement solve crimes quickly, and 31% believe crimes are solved expeditiously by tribal police, while 63% say that crimes are not solved quickly enough. Another 6% of the respondents

did not venture to say whether crimes were solved in a timely manner. Most non-Public Law 280 reservation residents believe that crimes are not solved in a timely manner on their reservation. Some comments on timeliness of tribal police solving crimes from non-Public Law 280 reservation residents include:

I wouldn't necessarily know that. My guess would be probably 50-50. And the 50 that aren't, it's because of the bureau's (BIA police) own processes.

No. I can say that because not only those deaths resulted from violent crime, but some deaths occurred, some with firearms, we don't know where they are, in that case. Is it dead, is it ongoing, or do they even care? This is the attitude of the membership. Because I have been in law enforcement, and they are the ones coming to me and telling me these things.

I think they take their investigations too long. For example, there is a case out there regarding children and sexual abuse, and it still has not been forwarded to the prosecutor's office. They are still investigating it, and it's, like, a month and a half, two months later. That is not acceptable. These are children, and they are still in a dangerous situation.

No. It can go on. If there is something happening, they keep saying that it's still under investigation, and sometimes it goes on forever.

Reservation residents in Public Law 280 jurisdictions (n=125) responded to whether state or county police solve crimes in a timely manner, and 29% answered in the affirmative, while 58% said that crimes are not solved in a timely manner, and 14% declined to provide an opinion. Following the pattern in the non-Public Law 280 jurisdictions, most Public Law 280 reservation residents are not satisfied with the speed at which crimes are solved. Similarly, Public Law 280 reservation residents (n=11) commented on the timeliness of solving crimes by tribal police, and 55% do not believe that tribal police are solving crimes expeditiously, 45% say they do solve crimes quickly enough. Most reservation residents in both Public Law 280 and non-Public Law 280 jurisdictions do not believe that federal-BIA, state/county, or tribal police are solving crimes in a timely manner.

The differences in timely solving of crimes among Public Law 280 tribal and state/county police, and non-Public Law 280 federal-BIA and tribal police as viewed by reservation residents are not statistically significant (chi square = 2.08, df = 3, p = .56, NS). Reservation residents do not perceive any significant differences among federal-BIA, state/county, and tribal police in timeliness of solving crimes. Most reservation residents do not believe that crimes on the reservation are solved in timely manner, whether the police are federal-BIA, tribal, or state/county.

## Do Police Overstep Their Authority?

Another measure of the quality of police-services delivery is the extent to which citizens' rights are protected by police officers. We asked the open-ended question whether police on the reservation ever overstep their authority. Thirty-eight non-Public Law 280 reservation residents commented on whether federal-BIA law enforcement ever overstepped their authority: 24% said yes, while 63% said no. The remaining respondents say they cannot give a view on whether federal-BIA police ever overstep their authority. Most non-Public Law 280 reservation residents do not believe that federal-BIA law enforcement ever oversteps its authority. Some comments about federal-BIA police when they do overstep authority include:

Yeah, lots of times. That is pretty much the area where I hear. That they came to my house, and they barged in without a search warrant, or with this, and then they arrested my son for something that he had nothing to do with, or he arrested my whoever for this. I hear stories of that all the time, where they overstep their bounds.

They do. Just like any law enforcement. You know. There are decisions that are made on the ground. When you consider all things, you have to be able to give a little. I mean, there are stories from law enforcement throwing old women on the ground, holding guns to their heads — a 65-year-old woman. To the rumors that you hear, problems in jail.

The question of overstepping authority by tribal law enforcement in non-Public Law 280 jurisdictions drew comments from 51 reservation residents. Twenty percent (20%) of non-Public Law 280 reservation residents believe tribal police sometimes overstep their authority, while 76% of non-Public Law 280 reservation residents do not believe that tribal law enforcement oversteps its authority. Most non-Public Law 280 reservation residents do not believe that tribal law enforcement ever oversteps its authority. Some comments about tribal law enforcement when they do overstep authority include:

Yes. And you are talking about tribal police when you say that, right? Yes. ... They use their uniforms as their authority, and they take it out of context. They abuse their rights wearing that uniform, I feel. And the one instance would be, an incident I know of, where it was a domestic violence case. And they tried to settle the man down and couldn't. And so they used a great deal of force on him, which wasn't needed. And they did it in front of children. It's uncalled for.

I don't know. Miranda rights are a big one that never (is acknowledged and is an) issue with people getting stopped or pulled over. I think that's kind of, like, a situation with everything now. Miranda rights, and the next thing you know, somebody's giving their life story, and by then, the police have a case and a police report and everything to fabricate from there.



Well sometimes they do, I think. I have a lot of it. I've got a whole binder full about him. His authority went to his head. Abusing authority, right.

Public Law 280 reservation residents (n=140) comment on whether tribal or state/county police ever overstep authority. Forty-nine percent (49%) of Public Law 280 reservation residents say state/county police sometimes overstep their authority, while 46% of Public Law 280 reservation residents say that state/county police have not overstepped their authority. The primary ways in which Public Law 280 reservation residents say that state/county police overstep authority are use of excessive force (9% of total responses), no respect for tribal law (11%), discrimination (5%), and arrests without proper warrants (6%). Comments from Public Law 280 reservation residents about state/county police overstepping authority include:

My feelings say yeah, but I can't think of specific things to cite as examples. Or unequal dispensation of their services harshly towards our community, just being judgmental towards our community. Yeah, and then aggressiveness, and I guess it's inflammatory ...

They followed your mom home one night, right? That was the state. The highway patrol followed her from the casino, tailgated her all the way up to this road out there at midnight. Blinding her. They pulled her over four times in one month. That was the same officer that pulled her over.

Again because of "the man" up on top and because of their perception as to Indian-white relations, cowboy attitude. I have come to visit, see my cousins, you know, I go over to see them, and they are in bed, and I would say, "Why are they in bed?" Because they got beat up last night. Well, I said, "Why? Who were they fighting?" Because they were in jail, and sheriffs beat them up or something. And I saw that all the time. And because we were whipping boys ...

I had a case where I guess I actually just assisted a little. There was a burglary, and it was thought to be an Indian burglar. And so they don't just detain. There is a person Christmas shopping with his family, and you just don't get detained. You get your head slammed to the ground, and you get handcuffs put on you, humiliated in public with your face to the ground for 20 minutes. And you are not even guilty. That is not, to me, investigation, or proper stop and detain and inquire. ... So, yeah, we have some really brutal cops, I have to say.

Yes. They just did on that certain day, I believe. Yes. I always thought that if he has a warrant issued and they want him, I mean, when he goes there, well then they can pick him up. But you just can't come in here and just come full force just like that, and, you know, without proper notification of the tribal government

or, you know, show a warrant or search warrant or something that gives them the right to come out.

I believe they do. I think that a lot of it has to do with the fact that their idea of what Public Law (280) is and their idea of what their jurisdictional authority is, is greater than what is mandated by law. And they are not sensitive, culturally sensitive, but they are also not respectful of the government that they are coming onto.

All the time. Like burglary investigations or say, a suicide investigation. We will come in, and the officers have determined it's a suicide or have determined there was potentially, maybe there was foul play involved. They will step in, and they will act like we don't have any ability to make those decisions. So, they will do stuff like that all the time.

Reservation residents in Public Law 280 jurisdictions (n=92) also commented on whether tribal law enforcement ever overstep their authority, and 33% say tribal police have overstepped their authority, while 64% say that tribal police generally do not overstep their authority. If we withdraw tribal law enforcement workers from the analysis to avoid a self-evaluation bias, then 77 Public Law 280 reservation residents commented and 23 (29.9%) say that tribal police have overstepped their authority. The most commonly cited reasons for overstepping authority by tribal police in Public Law 280 jurisdictions are use of excessive force, which is cited in about 17% of all statements, and unclear jurisdiction (8%). Some comments include:

Yeah, merely by being in existence.

Yes. Yes, in many cases, we have overstepped our authority to the point of being unlawful. And I say that as our old regime has left, as who was part of the old regime that was, how would you put it, very *gestapo*-ish on day shift, and that is why a lot of us like to be on the night shift when we get a chance. I wouldn't work the day-shift people because they get people in here in handcuffs and threaten them to put them in prison, and kids and stuff like that, and don't read them their rights until they got a verbal confession out of them, and then read them their rights ... I stood up and reported it to the county. I reported it to the district attorney: ... Never happened. Other officers had seen it here.

Well, minor things I would say. We had some run-ins with some of the young cops and their kind of cowboy-ish kind of thing. (They) come onto private property, not tell the owner why they are there. My stepson was always getting harassed ...

They probably do, but I don't know if either part really knows for sure what authority each other has. I can come sit here as a tribal member and say, "Well,

they don't have a right to come and do this." Da da da. But I don't know what they have a right to do, either. There is minimal, very minimal clarity.

Shouldn't mention any names. Not since (deleted) was fired. But, while he was there, yes, it happened quite often. But that is why he is no longer with us. He liked to respond to calls off the reservation. ... He would listen to the scanner, and a deputy would be getting called out, and he would think, "Well, he is way down there, and I am right here. So let me go to it." And he was almost arrested once.

Respondent: "Yes, and I tell them to. Because I tell them, like in these counties, we are told we don't have civil regulatory, but I tell them we have criminal jurisdictions." Interviewer: "Overstepping its authority in terms of what the state and federal government might say your authority is, but not what you think your tribal authority is." Respondent: "Yes, exactly."

As presented in Figure 6.4, the differences in the percentage of reservation residents who believe that Public Law 280 and non-Public Law 280 police have overstepped their authority is significant (chi square = 18.98, df = 3, p = .0003; Cramer's V = .25). We are using a sample for Public Law 280 reservation residents that excludes tribal law enforcement workers to avoid a self-evaluation bias. Reservation residents say that tribal, state/county, and federal-BIA police do not overstep authority at the same rate. Public Law 280 reservation residents believe that state/county police overstep authority more often than non-Public Law 280 reservation residents

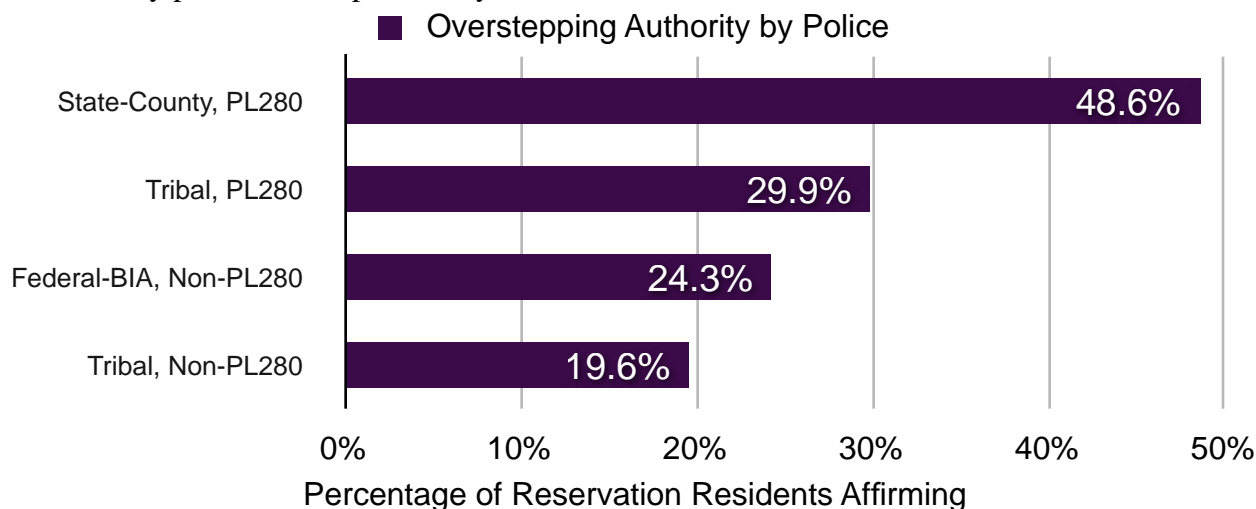
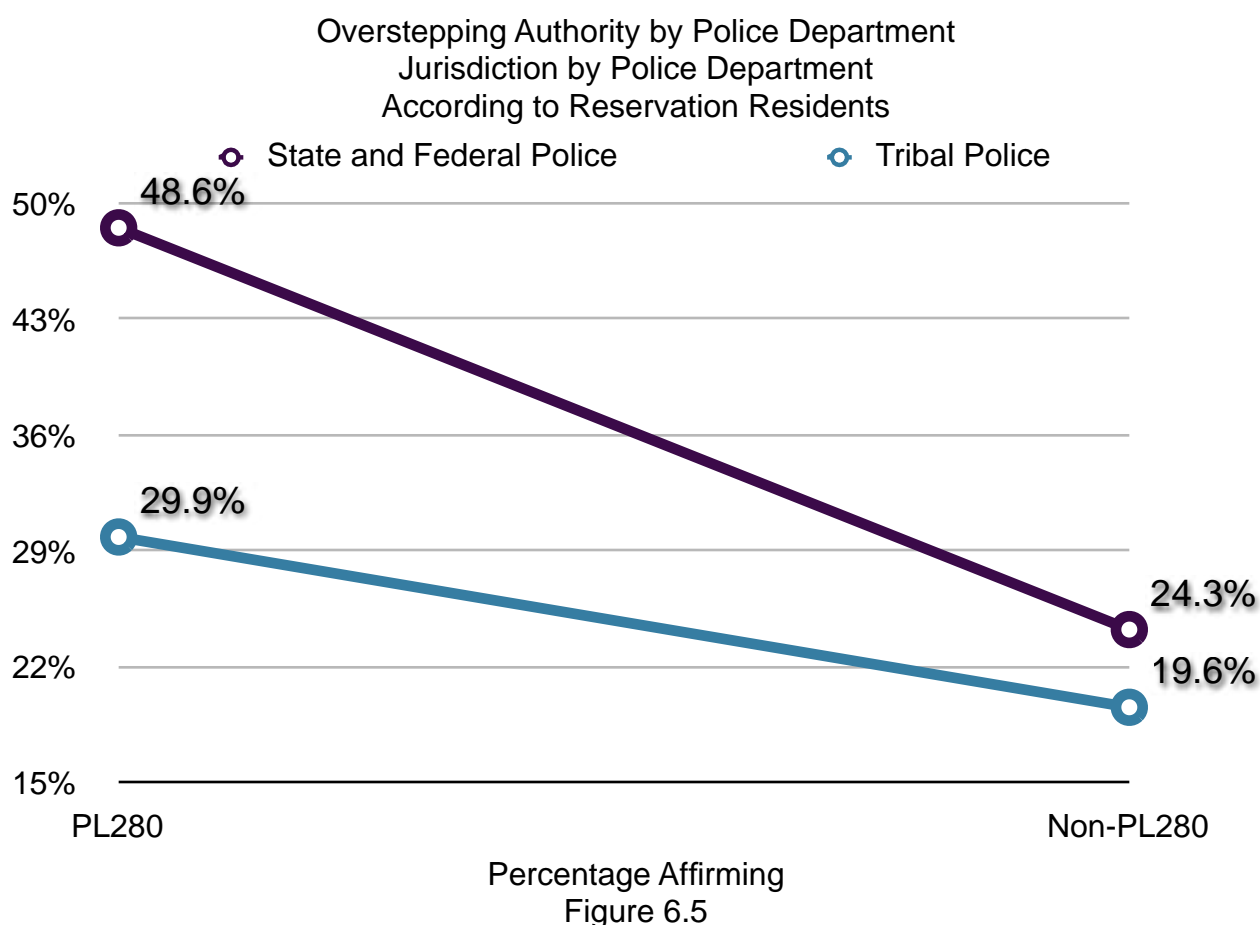


Figure 6.4

view federal-BIA police overstepping their authority. Also, Public Law 280 reservation residents say that state/county police overstep authority more often than non-Public Law 280 tribal police. We investigate further in a 2X2X2 log-linear analysis of relations between the overstepping of authority by police, jurisdiction effects (differences between Public Law 280 and non-Public Law 280 jurisdictions) and police department (differences between tribal police and non-tribal police, state/county, and federal-BIA police). Figure 6.5 represents the percentage of reservation-resident respondents who say they met with incidents of police overstepping their

authority. For this sample, there is a statistically significant interaction effect between overstepping authority, police department and jurisdiction (G square = 32.32, df = 4,  $p < .0001$ ). According to our sample of reservation residents, Public Law 280 state/county police overstep authority most often, while tribal police in non-PL 280 jurisdictions overstep authority least often. Reservation residents report that state/county and federal-BIA police overstep authority significantly more than tribal police (G square = 10.32, df = 1,  $p = .0013$ ). Reservation residents report that Public Law 280 jurisdictions have significantly greater incidents where police overstep authority than non-Public Law 280 jurisdictions (G square = 11.86, df = 1,  $p = .0006$ ). According to reservation residents, significantly more incidents of police overstepping authority occur with federal-BIA and state/county police and in Public Law 280 jurisdictions than among tribal police and in non-Public Law 280 jurisdictions.



Most respondents interpreted the question about overstepping authority to mean violations of civil rights or abusive action toward community members. Some also interpreted the question to encompass issues of jurisdiction between police departments, mainly tribal and state/county police in Public Law 280 situations. The breaching-jurisdiction issues are primarily mentioned about police in Public Law 280 jurisdictions and account for 8% of the total comments for Public Law 280 tribal police and about 13% for state/county police. If we subtract out the 5% of reservation-resident comments over jurisdictional ambiguities for Public Law 280

police officers, and 13% for state/county police, then overstepping authority focuses on perceived violations of police codes, civil rights, and insensitive police actions. The relative high rate of overstepping authority for Public Law 280 jurisdictions is, in part, accounted for by the increased ambiguities of administering relatively less well-understood jurisdictions between state/county and tribal government and law enforcement.

If we focus on the general comments about insensitive police actions, then we have a somewhat different pattern, where Public Law 280 tribal police are perceived less unlike non-Public Law 280 jurisdictions. As represented in Figure 6.6, the differences between police departments for overstepping non-jurisdictional authority is not statistically significant (chi square = 6.38, df = 3, p = .09, NS). When we exclude jurisdictional issues and concentrate on the remaining forms of overstepping authority, there is no significant difference between tribal, state/county, and federal-BIA police in Public Law 280 and non-Public Law 280 jurisdictions. The overstepping of jurisdiction in Public Law 280 reservations is a major issue for Public Law 280 reservation residents, who otherwise view state/county and tribal police as similar to non-

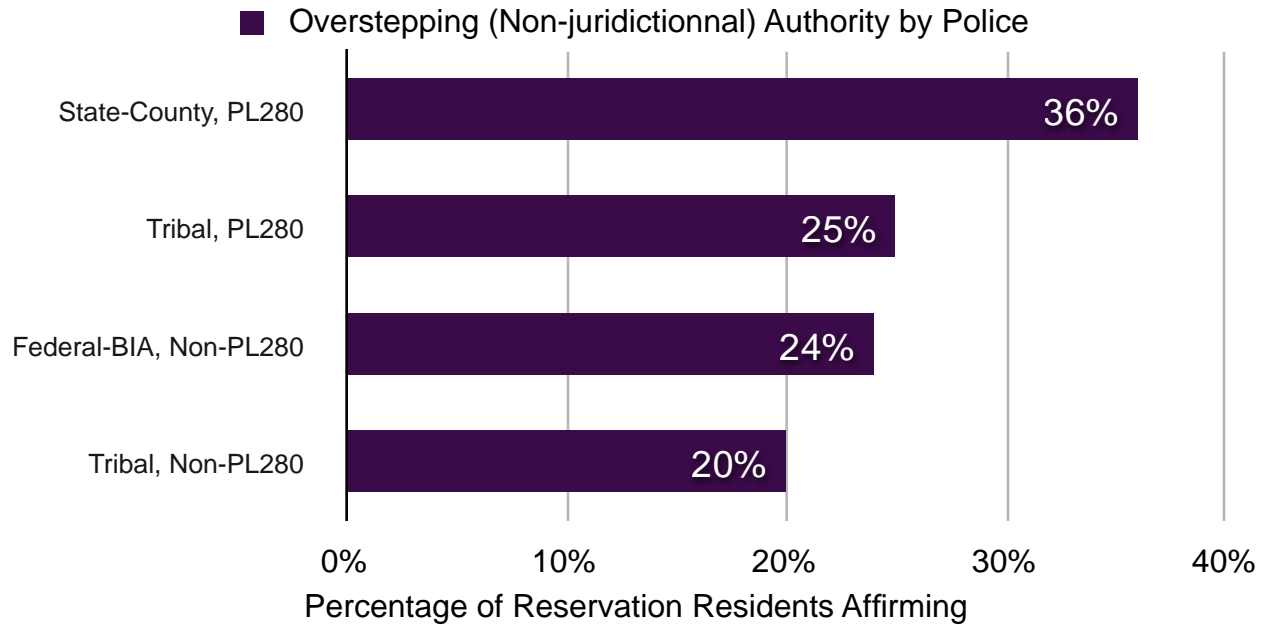


Figure 6.6

Public Law 280 police. The combination of Public Law 280 jurisdictional issues and other forms of overstepping authority contribute to reservation-resident perceptions that Public Law 280 state/county police overstep authority more often than non-Public Law 280 tribal and federal BIA police.<sup>3</sup> Greater uncertainty about concurrent tribal jurisdiction in PL 280 states contributes to initially higher ratings for state/county police overstepping authority.

<sup>3</sup> A log-linear analysis of the data on overstepping non-jurisdictional authority by police yields a significant interaction effect for police department, jurisdiction, and overstepping authority (G square = 15.02, df = 4, p = .005). State/county police overstep non-jurisdictional authority more often than other police departments. According to the present sample, non-tribal police, state/county and federal-BIA police, overstep non-jurisdictional authority more often than tribal police (G square = 4.08, df = 1, p = .04). The main effect for jurisdiction is not significant, police in Public Law 280 jurisdictions do not overstep non-jurisdictional authority more often than police in non-Public Law 280 jurisdictions (G square = 3.14, df = 1, p = .076).

## Are Reservation Policing Services Better or Worse Than Non-reservation County Services?

Another way to measure the quality of police services provided to reservation communities is to compare reservation police services with surrounding non-reservation policing. We do not have direct data on county police, or interviews from county residents on this question, but we asked Public Law 280 reservation residents to express their views about whether reservation police services are better or worse than services provided to county non-reservation residents. Among Public Law 280 reservation residents (n=158), 23% say that county police serve the reservation community as well as they serve the county, while 63% believe that the reservation community is underserved by county police. The remaining respondents (14%) say they cannot offer an assessment whether the reservation community receives police coverage equal to the services provided the rest of the county. Most Public Law 280 reservation residents believe that county police coverage on their reservations is not as good as the services provided to the rest of the county. The main points expressed by dissenting reservation residents are better coverage off the reservation (16% of total respondents), prefer or rely on tribal police (8%), and slow response or too remote (9%). Comments by Public Law 280 reservation residents include:

You know, I want to say no. It's just a feeling that I have, having lived here. At one point, before there was a tribal police department, we have a lot of phone calls for domestic abuse, drunkenness, public drunkenness. And I suppose, through the years, they have gotten literally hundreds and thousands of these calls. And they are just, "Gee, should we go over there again to deal with this?" I am not saying that is the entire community, but we have our handful that still do it all the time.

I don't know, I guess, if I had to guess it probably be that this part of the county is probably a step-child situation. We are ignored every time until something has to be done.

No. I guess because I see more prosecution and incidents being pursued by law enforcement off the reservation, and yet I know from just living here so darn long that there is a fair amount of crime that goes on the reservation that is never prosecuted.

No. Lack of presence.

No. You know, I don't see the programs that they offer to off-reservation communities; even if it be small, like "cop watch" or "neighborhood watch" or something like that. I don't see them coming out to the reservation and trying to offer those types of programs. I don't see, again, the responsiveness of law enforcement to calls. The same sort of responsiveness they would give to non-

reservation calls. ... And I just don't see them including reservations in these sorts of programs at all.

No. I think the law enforcement is directed more to the non-Indian than ours. Just by appearance, you don't see them here. You hardly see them here. They are like a little ghost, see them shooting through quick, and they are gone.

I think there is a big difference. I think they just view the tribes as being more dangerous. I can remember, we had a shooting. ... They sent an army down there, and they wouldn't let any of the family members go in and talk to the young man who was having the difficulty. They had a standoff, I think, for three or four days because of that. And then it stayed on the radio for three months. ... It was just blown up, and it was just sensationalized. ... It was just like we are the invaders, instead of, like, I don't know. I don't want to think about it anymore.

No. Yeah there is one specific incident. A non-Indian was intoxicated and on drugs, was going on a road, ran into an Indian man, killed him, people watched him throw his alcohol bottles over the hill. He was not even given a breathalyzer. He wasn't given any kind of test at all, he was never charged, and the man was a DUI and killed somebody. That man was never charged with anything.

No, partly because we are rural and partly because we are an Indian reservation. I think it's mainly because we are an Indian reservation.

It's different. Back to the sensibilities and the cultural sensitiveness to the community. It's more meaningful, certainly, to have tribal officers who are familiar with the extended families and who belongs to who, and can step into a situation and maybe understand the real dynamics of what is happening versus somebody from the outside. So it's just different. The quality is very different.

If we did not have our own tribal police department and we had to rely solely on county and state for the law enforcement services in the community, then I would say no. That it's not adequate, and it's not comparable to the services provided to the surrounding non-Indian communities.

### How Well Do Police Forces Work Together?

Working relations between tribal police and state/county and federal-BIA police are investigated with a question in the interview. Non-Public Law 280 reservation residents (n=40) were asked to comment on relations that tribal police have with federal-BIA police and agencies. Sixty-eight percent (68%) of non-Public Law 280 reservation residents say that tribal police have good relations with federal-BIA police and agencies, and 15% say those relations are difficult. The remaining respondents do not provide an evaluation of tribal and federal-BIA policing

relations. Those respondents who thought tribal and federal-BIA police relations were not good emphasize some conflict and lack of respect. Most non-Public Law 280 reservation-resident respondents believe that tribal and federal-BIA police work relatively well together.

Non-Public Law 280 reservation residents (n=44) were also asked to comment on relations between tribal police and state/county police. Half (50%) of non-Public Law 280 reservation-resident respondents say that tribal police have good relations with state/county police, and 36% say that tribal police do not have good relations with state/county police. The remaining respondents do not venture to make a comment. Most commentators who characterized tribal and state/county police relations as difficult emphasize lack of communication, cooperation, respect, and discrimination, amounting to 16% of all comments. When non-Public Law 280 comments say that relations are good, they emphasize good cooperation and communication 14% of the time. Thirty percent of comments focus on communication and cooperation issues as key to good relations. Some comments on communication and cooperation include:

I think our tribal (police) could work with the state if the governing body would agree to it. And evidently they don't. I don't think our law enforcement has a problem working with the state. I think it's the council that has trouble. And you know, you see a disaster. You know, I think the more help you can get the better off you are, and you need to have good communications with them.

I don't know. I know some of the county and others make fun of our police department. Because they are inexperienced. I thought they are not any better at it, so don't be making fun of ours.

It seems like it's growing, that the relationship is developing. You have drug dealers. You have, like, I said non-Indians married to Indian people, and without those agreements (so tribal police can enforce state law against non-Indians on the reservation), but I think now we are moving towards those agreements that those will be less of an issue.

Well, as near as I can tell, we have the county drug task force, and they work together with the tribe, and the cooperation has been good as far as I can tell... As far as I know, they get along well.

Here, I believe, they help each other if they can. ... But there is not written cooperative agreement. It's a verbal agreement. And they seem to work, if needed. They help each other. But different times, the tribal police have gone up to help the county, too.



With the state? I think it's pretty good. Just from what little I can observe, the actions of the police officers, they all seem to respect one another in their profession. It looks pretty good from where I am standing.

Public Law 280 reservation residents (n=90) comment on tribal police relations with state/county police and agencies. Sixty-one percent (61%) of Public Law 280 reservation residents say that relations between tribal and state/county police are good, 22% say tribal and state/county police relations are bad or difficult, 9% think those relations are mixed, and the remainder do not venture an opinion. Most Public Law 280 reservation-resident respondents say that tribal and state/county police relations are good. When commentators thought relations were difficult between tribal and state/county police, Public Law 280 reservation residents emphasized lack of communication, lack of cooperation, lack of respect, or need for agreements combining for 28% of all comments. Similarly, commentators who emphasized good relations between tribal and state/county police also focused on strong cooperation and communication 23% of the time. Cooperation and communication are seen a central to forming relations between tribal and state/county police. Fifty-one percent (51%) of the commentators emphasized cooperation or communication themes as critical to understanding relations between tribal and state/county police forces. Where cooperation and communication are good, then relations tend to be good; when cooperation and communication are not good, then tribal and state/county relations tend to be difficult. Some comments on cooperation and communication include:

We have kind of a shaky relationship. I think, with the officers, we have a good relationship. With the supervision of the sheriff's office, deputies that are in this area, we have problems dealing with that person. And a lot of it's just, I think, closed minded towards tribal police, I think, a lot of that we could sit down, if there was some of the stuff we could sit down and actually talk to where it was not one-sided, and you will do this, and we are doing to do this. If we could just sit down and work things out to where we are going to have a working relationship, and, you know, maybe once a month we will do training together, you know, those types of things. There is no communication of that. ...

Not very good. They are always bad-mouthing each other.

I think right now it's forced. It's forced due to the legal ramifications that the tribal does have the sovereign right to do this. But I know the county board of commissioners was against it. Everybody was against it when they first started out.

It's a lie. They are not there to help us; they are there to help the county. It's like, whatever the county says goes, no matter if it's true or not.

It falls back onto, you know, individuals. Most tend to be (cooperative), but there are select people that choose not to want to get involved, not to have anything to

do with the reservations. So, that is a continuing battle that we have to deal with, either day-by-day or week-by-week or however long it may be addressed.

Well, one thing I really try to understand is why the tribal police department is going through an agreement with the county instead of an agreement with the state. I am not really clear on how Public Law 280 would apply to that. It's kind of a situation that they really do not need an agreement with the counties. It should be an agreement with the state. More a government-to-government relationship. I am not sure everyone shares that perspective.

It's rocky because of their attitude toward us. Even their dispatchers are the same way. ... And so there is no respect from the dispatchers ...

I would say the working relationship with the county is about 25%, and the tribe is 100%. We are in a situation whereas, we have to be nice to the sheriff's department, and we have to work with the sheriff's department. We just can't say, OK. Here he is. Bye. That doesn't work for us. But for them, it does. So basically, they are giving us 25% effort. We have to give 100% every time, otherwise we end up with a delayed response. "Sorry, no one is available right now." ... So now, we start to become low priorities ... if we gave them the attitude they give us, they would never come here again.

I think it's pretty good. ... It was always very cooperative. But we may have even learned to be one-sided cooperative as far as us cooperating with them, and our willingness on the tribal police side to cooperate with the county ... it might have been a little more lopsided that way. ... We were finding ourselves offering our assistance and making ourselves available more than they would ask.

Excellent. We have excellent cooperation. I think it took time to build it. It's certainly a trust issue. And as time has passed, they have gotten to know that we are just as qualified.

Well, we have talked about it before. We will have some officers that know other officers because they went to the same academy. We have some officers who I know because of friends through high school. And, if you don't know them, usually that is when you have problems with communication, education, and just working together.

Most reservation residents believe that tribal police have good relations with federal-BIA and state/county law enforcement. Public Law 280 reservation residents (61%, n=55) say that tribal police have good relations with state/county police, a higher proportion than non-Public Law 280 reservation residents (50%, n=22) who say their tribal police have good relations with state/county police. Tribal police in Public Law 280 jurisdictions appear to have somewhat better relations with state/county police than tribal police in non-Public Law 280 jurisdictions.

Somewhat more non-Public Law 280 reservation residents (68%, n=27) report that tribal police have good relations with federal-BIA law enforcement than reservation residents report for tribal and state/county police relations. The differences among reservation residents on whether tribal police have good relations with state/county or federal-BIA police are not statistically significant (chi square = 2.81, df=2, p=.25, NS). Tribal police have similar relations with state/county and federal-BIA police in both Public Law 280 and non-Public Law 280 jurisdictions. Most reservation residents believe that tribal police have good relations with state/county and federal-BIA police. Reservation residents tend to believe that good relations among federal-BIA, state/county, and tribal police departments are dependent on cooperation and communication. Higher levels of cooperation and communication among federal-BIA, state/county, and tribal police departments appear associated with good interdepartmental police relations.

### Culture, Communication and Respect

We investigated several issues about social and cultural relations of law enforcement with reservation communities. How well does law enforcement communicate with tribal members? How can communication be improved? Does law enforcement understand local tribal culture? Does law enforcement have respect for tribal culture? Does law enforcement have respect for tribal authorities? Do tribal members respect law enforcement? This list of inquiries enables investigation of police understanding of tribal culture, flows of communication, and respect that law enforcement has for tribal government and culture.

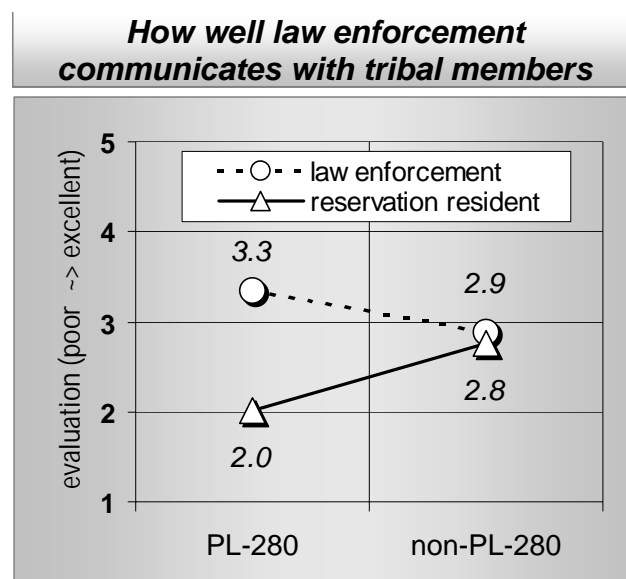
### Police Communication With Tribal Members

Both law enforcement and reservation residents, totaling 259 responses, provide a ranking of 2.53 for how well law enforcement communicates with tribal members. Overall, respondents believe that police do not communicate well with tribal community members. Law enforcement personnel rate police communication with tribal members below medium.

Ratings by reservation residents (n=161) in Public Law 280 jurisdictions are 2.0, while non-Public Law 280 reservation residents (n=64) scored how well police communicate with tribal members at 2.77. The difference in ratings between jurisdictions is statistically significant (Wilcoxon W = 16312.5, p<.001). Reservation residents in Public Law 280 jurisdictions believe that police engage in less communication with tribal members than reservation residents in non-Public Law 280 jurisdictions. Police in Public Law 280 jurisdictions are less communicative with tribal communities than in non-Public Law 280 jurisdictions. The average scores for both jurisdictions is below the medium of 3.0 indicating reservation residents rate law enforcement's communication with tribal members below average. Public Law 280 reservation residents believe police communication with tribal members is significantly lower than non-Public Law 280 reservation residents report police communication with tribal members in non-Public Law 280 jurisdictions.

Law enforcement personnel (n=31) in Public Law 280 jurisdictions rated police communication with tribal members at 3.36, an above-medium score. Non-Public Law 280 law enforcement (n=18) rated their communication with tribal members at 2.89, slightly below medium. The difference in ratings by law enforcement in Public Law 280 and non-Public Law 280 jurisdictions is not statistically significant (Wilcoxon W = 392.0, p=.2, NS). Law enforcement tends to see about the same level of police communication with tribal members, about average, in both jurisdictions. Law enforcement personnel in Public Law 280 jurisdictions report that police communicate with tribal members at an above-medium rate.

As shown in Figure 6.7, our sample data lend themselves to analysis in a nonparametric 2X2 ANOVA with transformed ranks. The main effects of differences between Public Law 280



and non-Public Law 280 jurisdictions are not statistically significant. Differences in Public Law 280 and non-Public Law 280 jurisdictions do not affect how well law enforcement communicates with tribal members ( $F = .89$ ,  $df=1$ ,  $N=274$ ,  $p=.35$ , NS). The main effects for the differences in the ratings between reservation residents and law enforcement are statistically significant ( $F=19.67$ ,  $df = 1$ ,  $p<.0001$ ). Reservation residents rank the level of law enforcement's communication with tribal members significantly lower than do law enforcement personnel. The interaction effect between groups (reservation residents and law

Figure 6.7

enforcement personnel) and jurisdiction (Public Law 280 and non-Public Law 280 jurisdictions) is statistically significant ( $F = 11.0$ ,  $df = 1$ ,  $p<.001$ ). The rankings for strength of communication among tribal members and police depend on jurisdiction. There is relative consensus about the level of police communication with tribal members in non-Public Law 280 jurisdictions, but disagreement in Public Law 280 jurisdictions. Law enforcement personnel in Public Law 280 jurisdictions believe they are communicating with tribal community members at a much higher level than reservation residents suggest. The ranking of police communication with tribal members is contingent on both jurisdiction and respondent group. There is relative consensus about police communication in non-Public Law 280 jurisdictions but significant disagreement in Public Law 280 jurisdictions. Differences between law enforcement and reservation residents on police communication are statistically significant, but most of these differences appear in the Public Law 280 jurisdiction, with little difference in perception in non-Public Law 280 jurisdictions. The main effect of reservation-resident and law enforcement perceptions of communication with tribal members is manifest primarily in Public Law 280 jurisdictions. Perceptions about the level of police communication with tribal members are significantly different in Public Law 280 jurisdictions, while police and tribal members are in relative agreement in non-Public Law 280 jurisdictions.

The nonparametric ANOVA analysis in Figure 6.7 establishes some interesting relations and we can further investigate relations of police communication with tribal members with comments from reservation residents and law enforcement personnel. We asked the respondents: Does law enforcement communicate with tribal members regarding law enforcement issues and needs? This question was asked about federal-BIA, state/county, and tribal police, where appropriate.

Eighteen (18) non-Public Law 280 law enforcement personnel responded, and 72% said that federal-BIA, state/county, and tribal law enforcement communicate their issues and needs to tribal members. For non-Public Law 280 jurisdictions, 99 reservation residents responded, and 55% agreed that police communicate with tribal members about reservation needs and issues. The difference of views on communication between police and reservation residents is larger than the rankings, where respondents rated how well law enforcement communicates with tribal members on a scale from 1 to 5. The qualitative data suggest that law enforcement in non-Public Law 280 jurisdictions believe that police communicate with tribal members at a higher rate than reservation residents do in non-Public Law 280 jurisdictions. In other words, the qualitative data indicate less consensus in non-Public Law 280 jurisdictions between law enforcement and reservation residents on whether police are communicating with tribal members about reservation needs and issues.

In Public Law 280 jurisdictions, 24 law enforcement personnel answered the question, and 83% said that police are communicating with reservation residents about their needs and issues. This result is consistent with previous data that police in Public Law 280 jurisdictions believe they are delivering good services, and Public Law 280 police believe they are communicating at a very high and effective rate with tribal community members. However, Public Law 280 reservation residents (n=236) responded to the same question, and 39% say that police are communicating well with tribal communities. As graphed in Figure 6.8, we use 2X2X2 log-linear analysis to analyze the relations between jurisdiction (Public Law 280 and non-Public Law 280), group (law enforcement personnel and reservation residents), and good and not-good communication between police and reservation communities. According to our sample, the interaction between communication, jurisdiction and group is significant ( $G \text{ square} = 29.68, df = 4, p < .0001$ ). How well police communicate with tribal communities is contingent on whether the police are in Public Law 280 or non-Public Law 280 jurisdictions and differ by whether the respondents are reservation residents or law enforcement personnel. Police and reservation residents in Public Law 280 jurisdictions differ significantly about how well police communicate with tribal communities, while there is more agreement among non-Public Law 280 police and reservation residents. According to our sample, most Public Law 280 police personnel believe they have good communication with tribal communities, while most Public Law 280 reservation residents believe police do not have good communication with tribal communities.

The main group effects, the views of reservation residents versus law enforcement, show a statistically significant difference ( $G \text{ square} = 19.16, df = 1, p < .0001$ ). Reservation residents and law enforcement personnel significantly disagree about how well police are communicating with tribal communities. Law enforcement officers believe they are communicating better about their needs and issues than do reservation residents, who rate them significantly lower in communicating with reservation communities. The main effect of jurisdiction (Public Law 280 versus non-Public Law 280) is statistically significant ( $G \text{ square} = 6.52, df = 1, p = .01$ ). Police are communicating significantly less well in Public Law 280 jurisdictions than in non-Public Law 280 jurisdictions. For this sample, there is significant consensus among law enforcement and reservation residents in Public Law 280 jurisdictions when compared to non-Public Law 280 jurisdictions. In both Public Law 280 and non-Public Law 280 jurisdictions, police and reservation residents disagree over the whether police are communicating well with tribal community members. These data suggest that reservation residents in both jurisdictions are in disagreement with police over how well police communicate, although the Public Law 280 jurisdiction shows the greatest amount of disagreement.

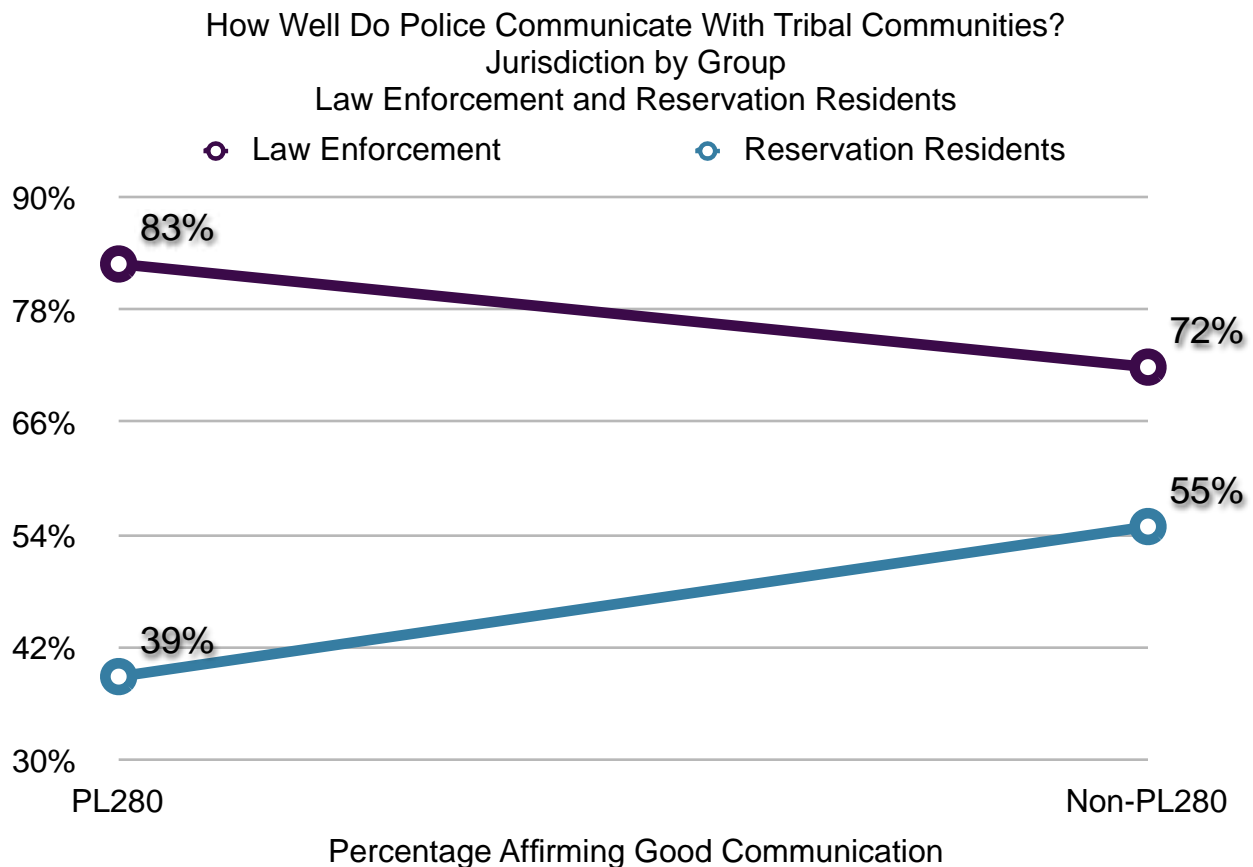


Figure 6.8

Non-Public Law 280 reservation residents commented on how well tribal and federal-BIA police communicate, while Public Law 280 reservation residents commented on tribal and state/county police. Among non-Public Law 280 reservation residents ( $n=37$ ), 54% say that federal-BIA police communicate their needs and issues to tribal members. Similarly, non-Public Law 280 reservation residents ( $n=54$ ) commented on how well tribal police communicate their

needs and issues, and 57% affirm good communication with tribal police. Among Public Law 280 reservation residents (n=91), 54% say that tribal police communicate their needs and issues to tribal members. If we drop the tribal police from the Public Law 280 reservation resident respondent sample to avoid bias in self evaluation, then there are 79 Public Law 280 reservation respondents and 49.4% report that Public Law 280 tribal police communicate with community members about their need and issues. However, among Public Law 280 reservation residents (n=145) commenting on communication with state/county police, 30% say that state or county police are good at communicating with the reservation community. As shown in Figure 9, according to his sample, reservation residents say good communication differs by police department (chi square = 17.22, df = 3,  $p < .0006$ ; Cramer's  $V = .23$ ). Public Law 280 jurisdiction state or county police has the low score of 30% from reservation residents who affirm that state/county police communicate well with their tribal communities. Tribal police in non-Public Law

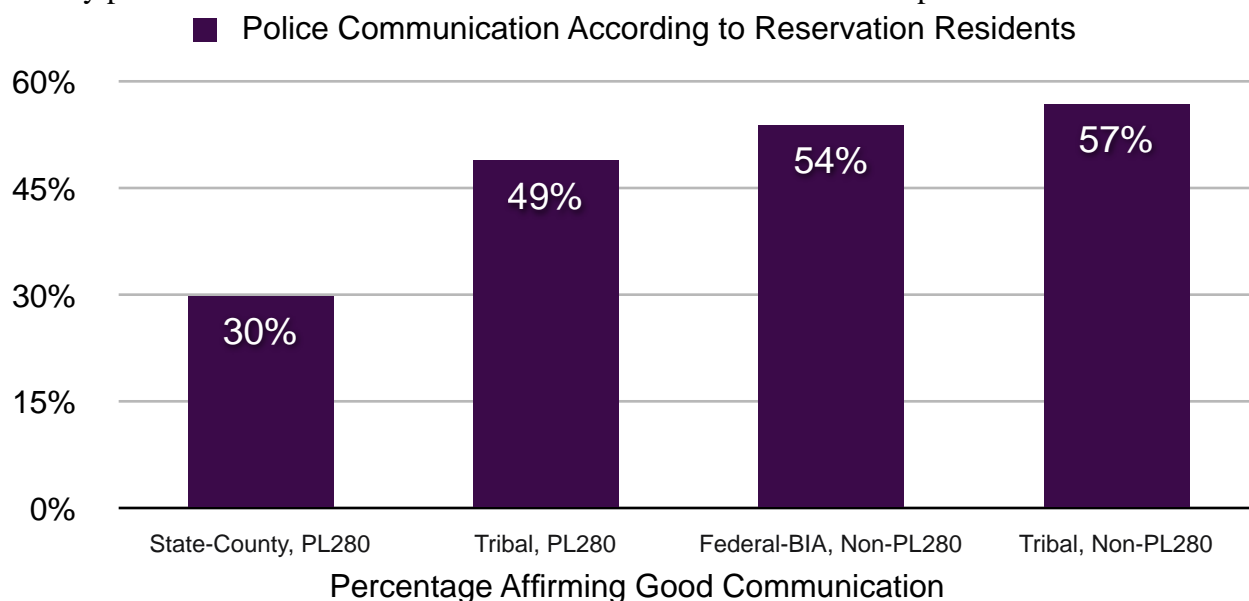
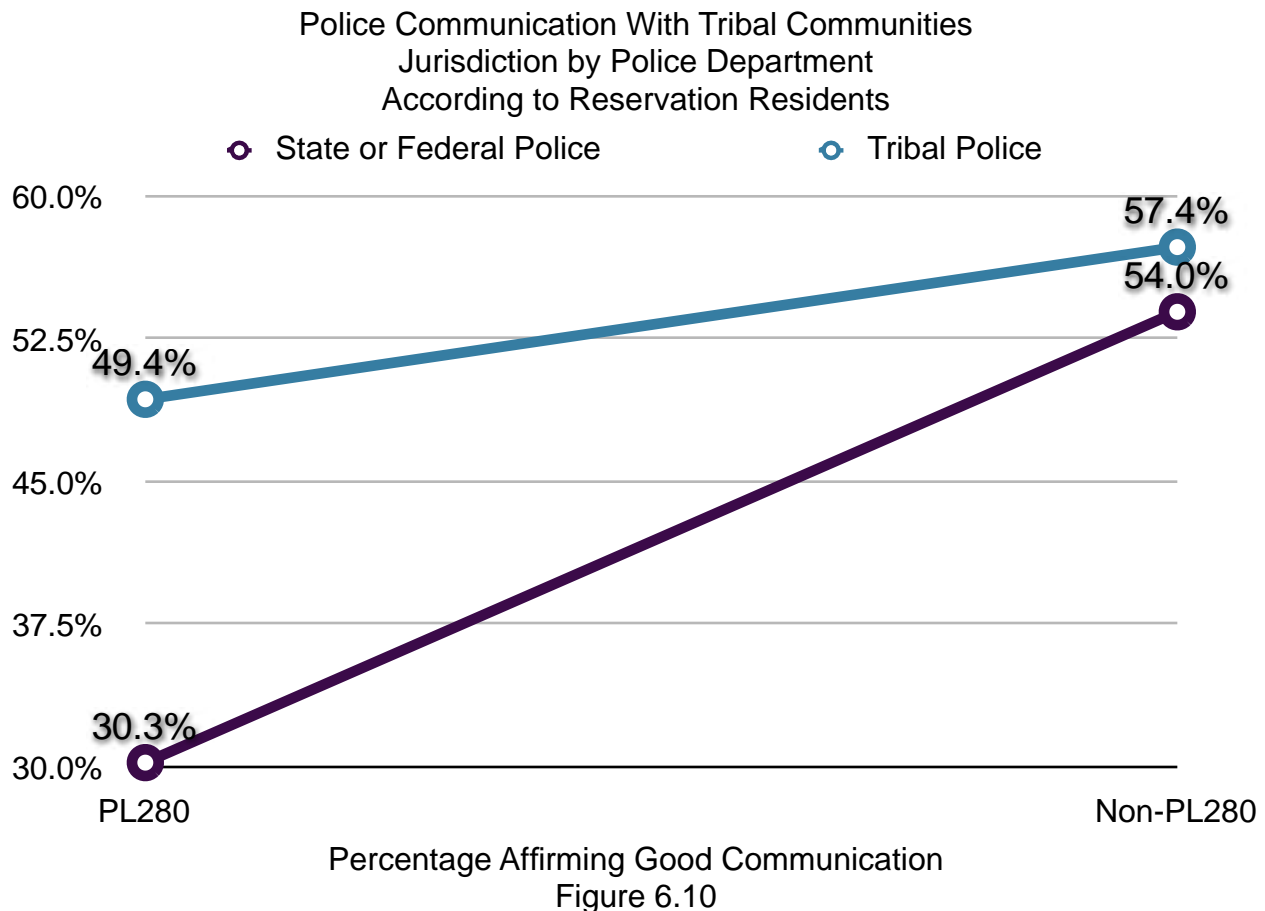


Figure 6.9

280 jurisdictions communicate significantly better than Public Law 280 state/county police. Federal-BIA police in non-Public Law 280 jurisdictions communicate with tribal members significantly better than Public Law 280 state or county police. Tribal police in Public Law 280 jurisdictions (49%) communicate significantly better with tribal community members than do Public Law 280 state or county police at 30%, although the trend is highly favorable toward greater communication by Public Law 280 tribal police. However, reservation residents say Public Law 280 state/county police do not communicate with tribal community members about reservation policing needs and issues as well as federal-BIA and tribal police do in non-Public Law 280 jurisdictions. According to reservation residents, state or county police in Public Law 280 jurisdictions are less communicative than Public Law 280 federal-BIA and tribal police forces. Public Law 280 state/county and tribal police communicate with tribal members about equally well.

The reservation resident comments on police communication lend themselves to further and more powerful analysis by 2X2X2 log-linear analysis. According to reservation-resident

responses, we can test for relations between jurisdiction, Public Law 280 and non-Public Law 280, and police departments, tribal police versus non-tribal police — state/county and federal-BIA police — according to good or not-good evaluations of police communication with tribal communities. Figure 6.10 gives the percentage of reservation-resident respondents who say that police communicate well with tribal community members across jurisdiction and type of police department. For these data, the statistical analysis is significant for an interaction or relation between communication, police department, and jurisdiction ( $G \text{ square} = 32.68$ ,  $df = 4$ ,  $p < .0001$ ). Police communication is dependent on both the effects of specific levels of jurisdiction and police department. In Public Law 280 jurisdictions, our sample of reservation residents say



tribal police have better communication with tribal communities than state/county police, while communication is better and similar among non-Public Law 280 police departments. Reservation residents report significantly more often that tribal police communicate with tribal community members better than state/county and federal-BIA police ( $G \text{ square} = 9.58$ ,  $df = 1$ ,  $p < .002$ ). Tribal police communicate their needs and issues to tribal communities better than federal-BIA and state/county police. Police in non-Public Law 280 jurisdictions are significantly better at communicating with reservation residents about community needs and issues than are police in Public Law 280 jurisdictions, according to reservation residents ( $G \text{ square} = 9.48$ ,  $df = 1$ ,  $p = .0021$ ). According to reservation residents in our sample, tribal police and non-Public Law



280 jurisdiction yield better police communication with tribal community members than federal-BIA and state/county police and Public Law 280 jurisdiction.

Returning to the analysis comparing jurisdiction, police communication by group (law enforcement and reservation residents), we use a 2X2X2 log-linear analysis to test for relations. Figure 6.11 gives the percentage of respondents who say that police are communicating well with tribal members. This sample suggests there is significant interaction or relation between group, jurisdiction and police communication ( $G \text{ square} = 37.22, df = 4, p < .0001$ ). For these data, in Public Law 280 jurisdictions, law enforcement ranks police communication with tribal communities very high, while reservation residents rank police communication significantly lower. In non-Public Law 280 jurisdictions, law enforcement and reservation residents rank

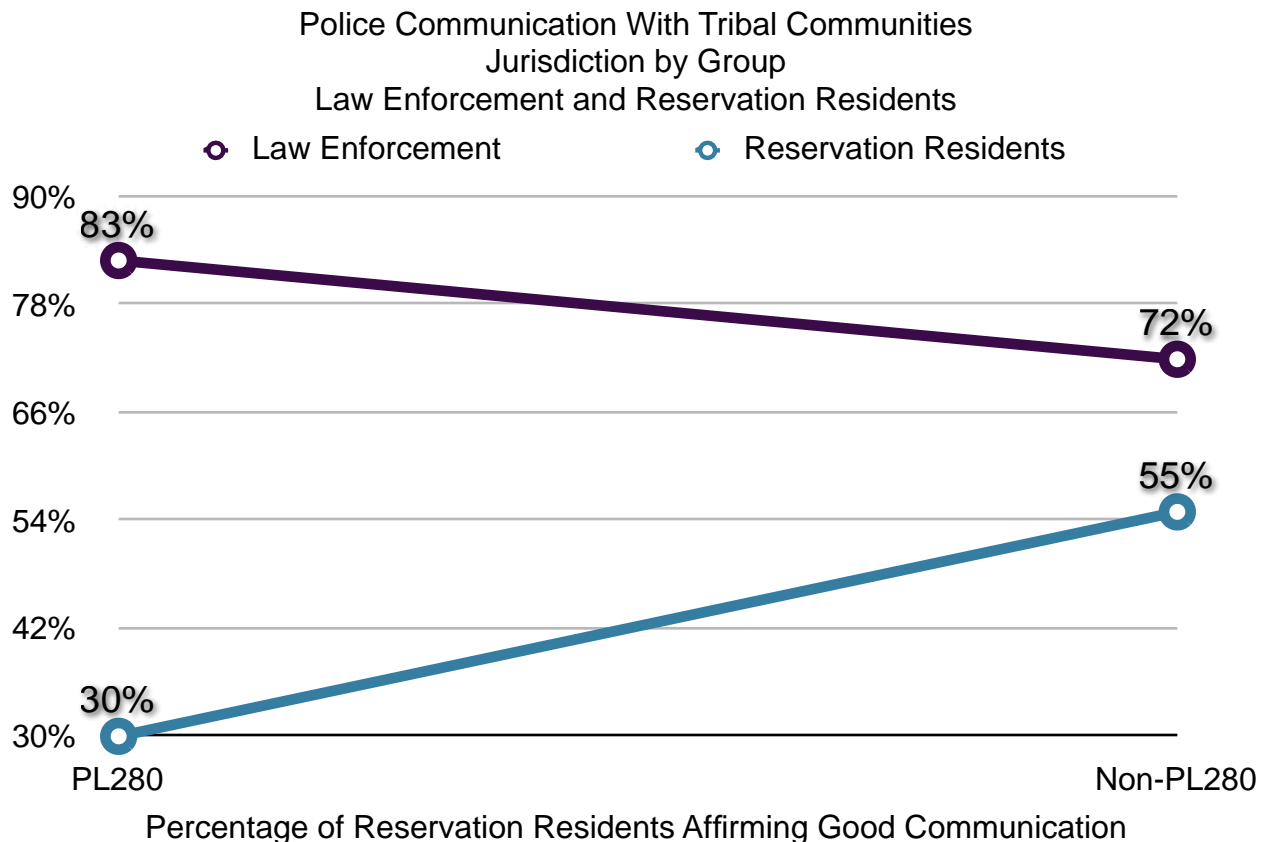


Figure 6.11

police communication closer together, but law enforcement ranks police communication higher than do reservation residents. The main group effects between reservation residents and law enforcement is statistically significant ( $G \text{ square} = 22.06, df = 1, p < .0001$ ). Law enforcement self reports that police are significantly more communicative with tribal members than is reported by reservation residents. Reservation residents and law enforcement personnel significantly disagree about how well law enforcement communicates with tribal members. Law enforcement personnel say police communicate relatively well, while reservation residents say that police communicate less well. Jurisdiction (Public Law 280 versus non-Public Law 280) effects are statistically significant ( $G \text{ square} = 10.5, df = 1, p = .0012$ ). Non-Public Law 280 respondents

report significantly higher evaluations of good tribal-community communication by police than is reported by Public Law 280 respondents. Police communication with tribal members is significantly better in non-Public Law 280 reservations than in Public Law 280 reservations. Group effects (differences between law enforcement and reservation residents) and jurisdiction effects (difference between Public Law 280 and non-Public Law 280) are significant for understanding how well police communicate with tribal members.

Here are some comments by Public Law 280 reservation residents who rate communication with state/county police significantly lower than federal-BIA and tribal police:

It depends on who is the sheriff. See, I used to do all the law enforcement stuff as treasurer, too. We didn't have a director over that department for a lot of years, so I did that, too, as far as administration and meeting with the sheriff and his assistant deputy. So, I always had to meet with them and work out agreements, and it depended on who was the sheriff, I mean, there was some that we had a pretty decent relationship, but then there are some who just looked at us as subhumans or something, and I couldn't get across to them.

No, I myself, have had, certainly, several discussions with our local sheriff, helping him to get his current excellent understanding of concurrent jurisdiction. We also made him, we had a very terrible past sheriff ... we helped him get unelected, and part of the campaign promise of the sheriff was to promote tribal police and tribal court jurisdiction. So, he got our votes on that promise, and he has been fair to his word.

No. Usually, the only time we see the sheriff present at, say, a town hall meeting or council meeting, is when the sheriff, or the somebody who is running against him, is running for office and give their little dog-and-pony show about what we can do, and, you know, that is usually the time, only time, you hear or see from them.

Not effectively. I think individual officers may interact with people, but I don't believe that systems or departments or agencies or branches effectively are talking with each other in any comprehensive, cohesive way.

I have seen some of the issues concerning the community they wanted discussed with the sheriff. ... And the sheriff had no time to come down to the community to make that time for that workshop. He is not sheriff now, but he couldn't make the time. He said he would send a deputy. If the sheriff was concerned about the communities where he is sheriff, that should be a priority.

No. That is where I just said the cultural sensitivity would make them realize they need to participate in our community some. It could take different forms, but we think they should.

I don't think they have that kind of program. They come to the powwow to arrest you. Yeah, then at election time.

I don't think they do an outreach program. I don't think they do enough. They may talk to me, they may talk to council members. But I don't really know if the information is really disseminated much past the (council members).

No. Not that I have ever seen. I don't think they care.

Never. They would rather just come and arrest you than talk to you.

No. I don't see them talk to anybody. They just come out here sometimes, and they will take somebody away.

I don't think that happens as often as it should, it needs to happen much more often.

No. Our reservation police say they are just swamped because they have a small force, and then we have never really had any communication with county that I know of, except to be arrested or whatever.

Most Public Law 280 law enforcement personnel believe police are communicating with tribal members and their comments include:

Sure. I do regularly with concerns from citizens that call here, especially as the supervisor, answering ... they just have questions as to why certain policy and procedure is in place. And I deal with a lot of those. I deal with a lot of concerns with neighborhood problems or drug trafficking problems or areas that start having an increase in criminal activity. ... So we have regular communication. Last year, I got to be assigned to the senior nutrition center where the seniors would go for their lunches in the afternoon, and we would go once a week and sit down with the elders of the community ... and address the concerns of those folks. We do that. I spent quite a bit of time in Indian country talking to people. Our jobs, as an officer, I believe, you have to get out of your cars and talk with people. Get to know your beat areas, your assignments, your community. That is the way it used to be years ago, community policing. And I think we kind of lost track of that. And so this is my philosophy to our officers. And so, my relationship in Indian country, I have a real good relationship, I think.

Yeah. (Our investigators) maintain a pretty good relationship with them up there. (One officer) lives on the reservation, so he can get a pretty good feel as to what is

going on out there. And there are times when we have had problems obviously. And it's a two-way street. Sometimes we have caused problems, sometimes the problem has come off the reservation. I think the biggest issue is timeliness and bringing an issue to the other person's attention.

There has been times when our administrators have gone up there to meetings. It's usually not the officers; it's usually administrators that will go there at certain times of the year if anything does come up.

Pretty well. We have public meetings. They are notified in the newspapers. ... They are scheduled meetings. There is one coming up with the agreement between the tribe and the county law enforcement.

Many many forms. We pride ourselves to be very attached to the community. I have personal friends that reside up there. It can be as formal as having a meeting and a briefing with tribal council or a presentation at a general council meeting to the public that attend the meeting of our official statistics on the reservation and discussing something local. We are very, very involved with the local school out there.

I would suggest the answer is yes, to what quality and level, I really couldn't speak. You would have to be with every officer at every moment at every conversation. There is a flow, it's not perfect by any means. But it's not perfect between my deputies, either. So it's gonna vary between, say you and I with one another. What level of communication? How receptive are you to me? Me to you. Are you listening? That type of thing.

We have a couple of forums where we will go to schools. I maintain a good working relationship with some of the tribal members that has kind of carried over when I was involved with their police force.

What I have seen is some of our guys really work hard, wherever they are assigned, to know the people they work with. They will get out of their cars and walk around and talk to people that work with kids ... it depends on the officer's motivation as to how he views his role in the community. I think the age and experience on that particular officer or deputy plays a key role. Deputies who are in the unincorporated area of the county tend to be better at it than the ones that are in the city, and there is a reason. The reason is, if you are 30 minutes out, you are more diplomatic with the group than you are if you are in a city when, you know, pick up the microphone and squeeze the button, five people are behind you in five seconds, in terms of roll time. So, I think relationships are case-by-case, deputy-by-deputy.

## How Can Communication Be Improved?

Following on the queries investigating police communication in tribal communities, we asked respondents to suggest ways in which communication can be improved. Public Law 280 reservation residents, who say that communication with state/county police is lower than other policing arrangements, made 120 comments about how communication with state or county police can be improved. Their comments fall into several groups. Forty-two (35%) say that communication can be improved by more meetings between state or county police and tribal community members. The Public Law 280 reservation residents suggest regular tribal and state/county meetings or committees, local summit meetings of tribal and police leaders, town hall meetings, and police attendance and participation in tribal council meetings. Thirty-four Public Law 280 reservation-resident respondents (28%) suggest that communication can be improved with state or county police if the police have greater community involvement and relations with the tribal community. The respondents suggest direct involvement in community activities, more personal contact, and a greater show of mutual respect. Ten respondents (8%) suggest more

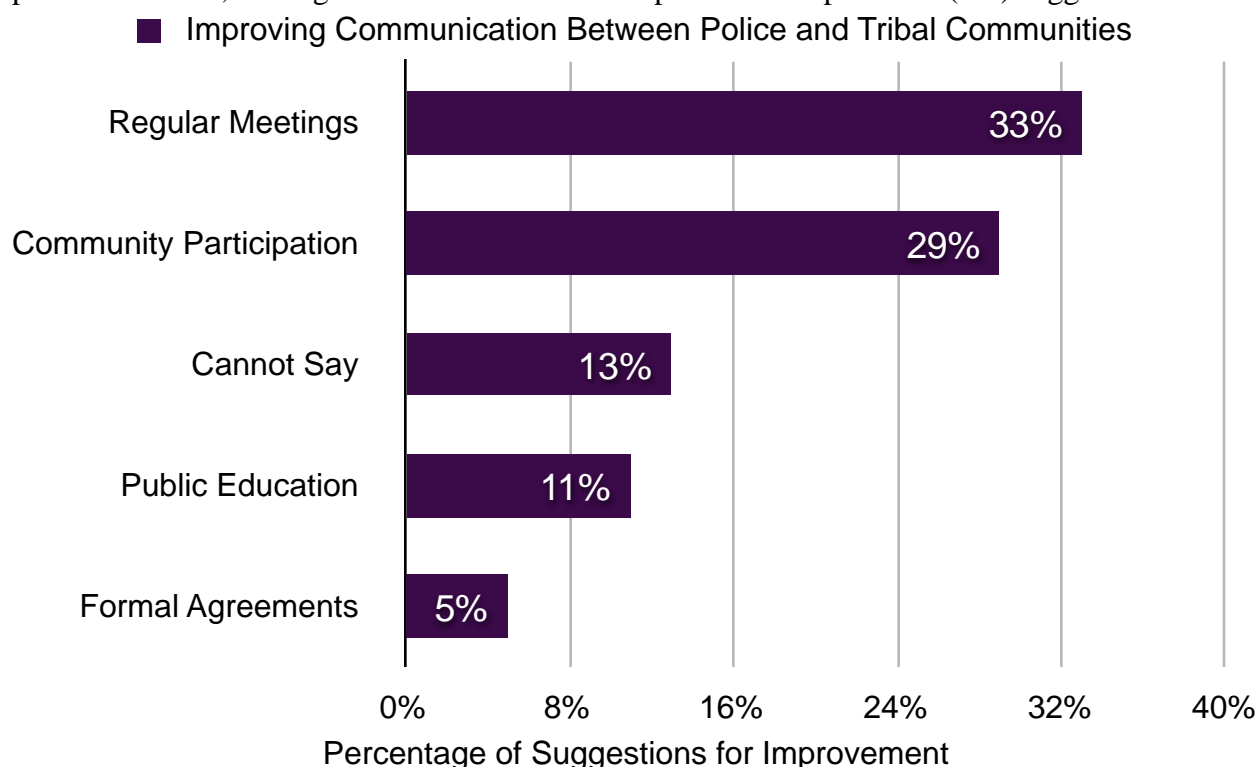


Figure 6.12

education and training of state and county leaders, and police officers. Six Public Law 280 reservation residents say that communication with state/county police can be improved with creation of a county liaison officer to the tribal community and with MOU agreements. Nineteen respondents (16%) suggest that nothing should be done, do not venture an opinion, or believe existing relations are good enough, or say that more communication with state or county police is not desirable.

Fifteen law enforcement personnel say that more meetings, community involvement, and formal agreements will improve communication by state/county police with tribal community members. Four criminal justice workers responded, and they also agree that more meetings and community involvement will improve communication with tribal communities. When Public Law 280 reservation residents (n=10) comment on improving communication with tribal police, they emphasize more meetings, community involvement, and greater visibility.

Reservation residents in non-Public Law 280 jurisdictions made 57 comments on how to improve communication with tribal, state/county, and federal-BIA police. Thirteen respondents (23%) suggest that communication with police can be improved with more regular meetings. Ten Public Law 280 reservation residents (18%) suggest that public education will improve communication with police. More participation in community activities and organizations by police will lead to greater communication in the view of 28% of non-Public Law 280 reservation residents. A small number of law enforcement (n=9) and criminal justice workers (n=1) in non-Public Law 280 jurisdictions also commented and agreed that more regular meetings between police, tribal leaders and community members, and greater participation in reservation community activities will improve communication.

Overall, by gathering all comments for improving communication between police and tribal communities, there are 216 suggestions, most coming from Public Law 280 reservation residents who account for 130 suggestions. Combining all suggestions for improving communication between reservation communities and police, the respondents emphasize several themes. More regular meetings (33%) and greater participation in the community activities and organizations (29%) are most often suggested as ways by which police can improve communication within reservation communities. Public education or training (11%) and formal liaison positions or agreements (5%) are less often mentioned. Some respondents (13%) do not make suggestions, believe communication is currently good, or do not believe that more communication with police is desirable.

### Police Understanding of Tribal Cultures

We continue to investigate the quality of police services provided to tribal communities by examining the extent to which police understand the cultures of the Indian communities that law enforcement serves. Law enforcement and reservation residents were asked to rank on a 5-point scale how well law enforcement understands local reservation culture. The rankings of all law enforcement and reservation residents yields a score of 2.48 (N=273), a ranking below the medium, suggesting that law enforcement does not understand reservation cultures well.

Public Law 280 reservation residents (2.0, n=160) rank police understanding of reservation cultures significantly lower than non-Public Law 280 reservation residents (3.22, n=64). Reservation residents in Public Law 280 jurisdictions believe that state or county police do not understand their cultures very well, while non-Public Law 280 reservation residents believe that federal-BIA and tribal police have better than average understanding of their cultures

(Wilcoxon  $W = 15150.0$ ,  $p < .001$ ). Public Law 280 law enforcement (2.95,  $n=31$ ) rank police understanding of reservation cultures slightly below average, while non-Public Law 280 law enforcement workers (3.17,  $n=18$ ) rank police understanding of tribal cultures slightly above average. The difference between Public Law 280 and non-Public Law 280 law enforcement rankings is not statistically significant (Wilcoxon  $W = 742.5$ ,  $p = .49$ , NS).

As represented on Figure 6.13, we gain a more comprehensive analysis with a nonparametric 2X2 ANOVA with transformed rank data, where we can test for the effects of jurisdiction (Public Law 280 versus non-Public Law 280), group effects (reservation residents versus law enforcement personnel) and examine any interaction effects. Here we have significant main and interaction effects. The main jurisdiction effect is significant ( $F = 12.2$ ,  $df = 1$ ,  $p < .001$ ), where Public Law 280 jurisdictions rank police knowledge of reservation cultures lower than non-Public Law 280 jurisdictions. Police in Public Law 280 jurisdictions are perceived to have less understanding of reservation cultures than police in non-Public Law 280 jurisdictions. The main group effect, reservation residents and law enforcement, is significant ( $F = 5.2$ ,  $df = 1$ ,  $p < .02$ ). Law enforcement personnel report that police understanding of Indian cultures is good more often than reservation residents. Reservation residents rank police knowledge of reservation cultures significantly lower than law enforcement personnel rank

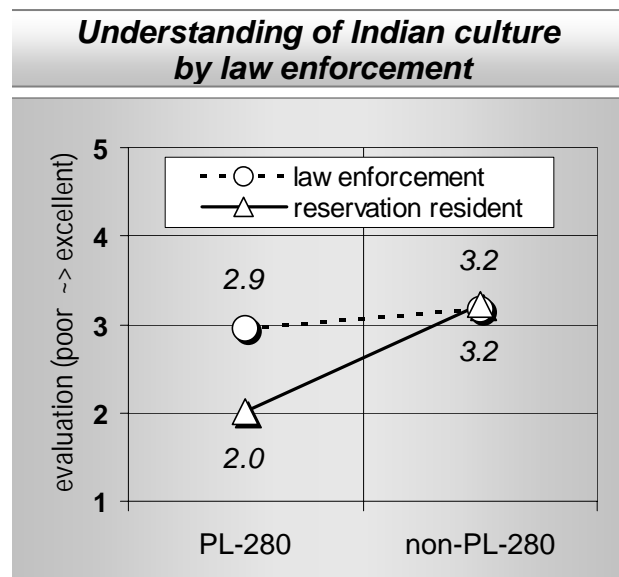


Figure 6.13

Public Law 280 police understand reservation cultures. Public Law 280 reservation residents rank Public Law 280 police understanding of reservation cultures relatively low, while Public Law 280 police rank themselves slightly below average; but non-Public Law 280 respondents agree on the level of police understanding of Indian culture.

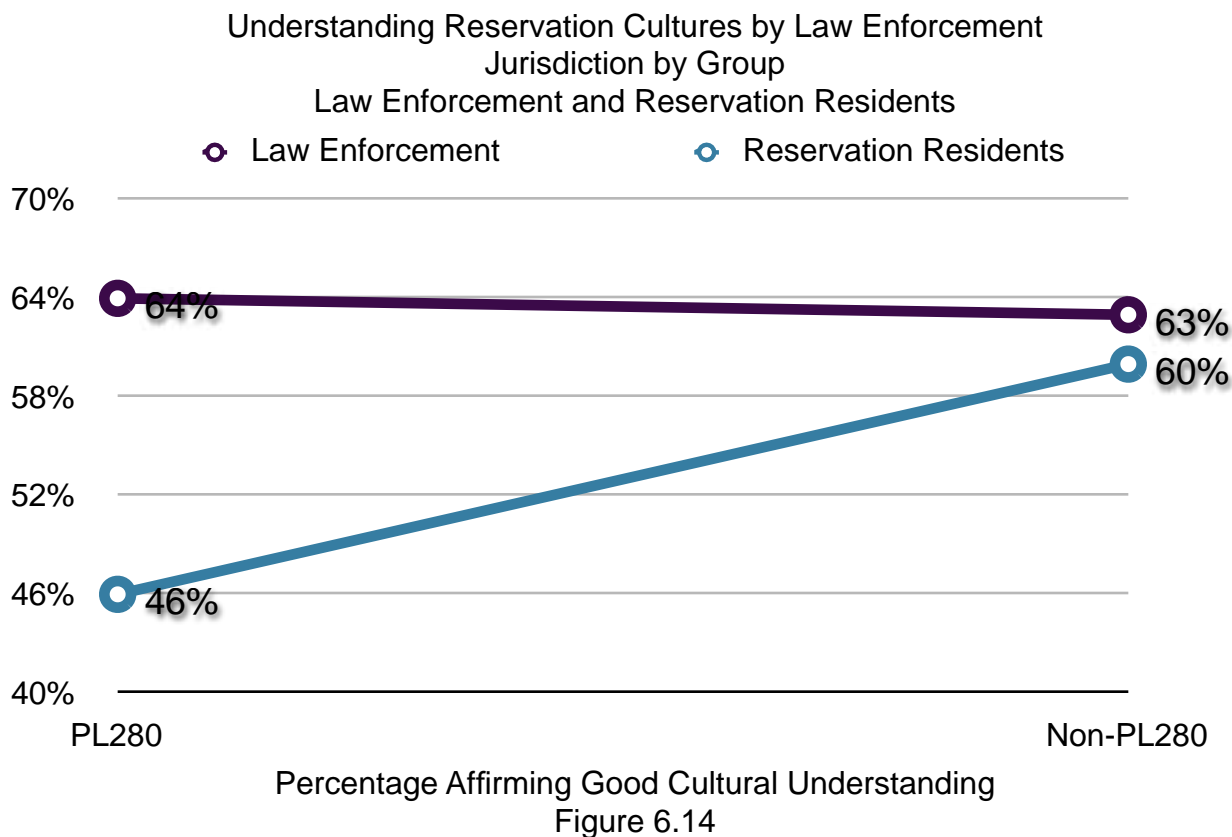
police understanding. Law enforcement personnel and reservation residents disagree about how well police understand reservation cultures. Police give themselves significantly higher marks for understanding reservation cultures than do reservation residents. The interaction effect between jurisdiction and respondents is also statistically significant ( $F = 9.66$ ,  $df = 1$ ,  $p < .002$ ). Reservation residents in Public Law 280 jurisdictions have significant disagreement with Public Law 280 law enforcement personnel about how well police understand reservation cultures. However, non-Public Law 280 reservation residents and non-Public Law 280 police show agreement, both giving the somewhat

above-average 3.2 rankings for how well non-

In the interviews we asked: Does law enforcement have a good understanding of (local reservation) culture? Respondents provided comments on federal-BIA, state/county, and tribal police. We can investigate the qualitative answers and compare them to the findings gained from

the rankings analyzed in the above paragraph. Most respondents answered the question with a yes or no, but provided additional qualifying comments.

Non-Public Law 280 law enforcement respondents (n=19) commented on federal-BIA, state/county and tribal police, and 63% said that police have a good understanding of tribal cultures. Non-Public Law 280 reservation residents (n=95) commented on federal-BIA and tribal police, and 60% said that police have a good understanding of reservation cultures. Law enforcement in Public Law 280 jurisdictions (n=25) commented mainly on state or county law enforcement, and 64% say that police understand tribal cultures well. Public Law 280 reservation residents (n=238) commented on both tribal and state/county law enforcement, and 46% say that police have a good understanding of reservation cultures.



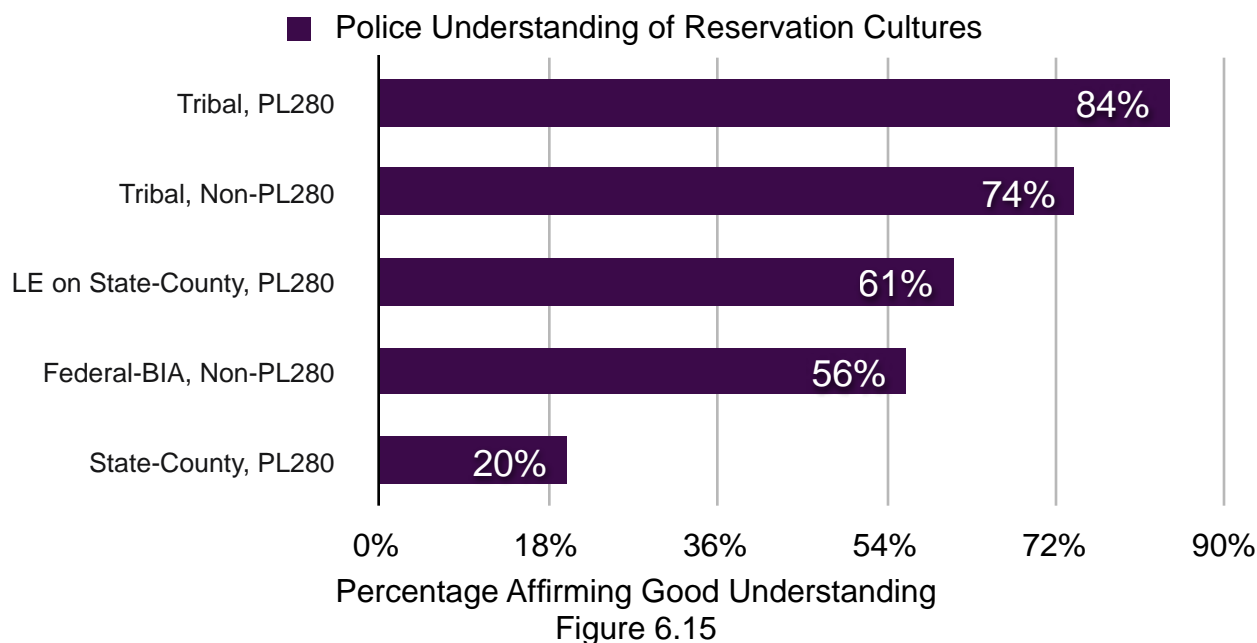
We can analyze the comments on how well police understand reservation cultures in a 2X2X2 log-linear analysis of good understanding of tribal culture by jurisdiction and by group. Figure 6.14 provides percentages of respondents who say that police have a good understanding of tribal cultures. For this sample, there is an interaction effect between group and jurisdiction, the relation between how respondents report good understanding by police of reservation cultures depends on specific group and jurisdiction relation. In Public Law 280 jurisdictions, reservation residents and police significantly disagree about how well police understand reservation cultures, while in non-Public Law 280 jurisdictions there is agreement about police understanding of reservation cultures ( $G \text{ square} = 12.62, df = 4, p = .013$ ). There is no significant difference for the group effect or in other words between how reservation residents



and law enforcement evaluate police understanding of reservation cultures ( $G \text{ square} = 3.12$ ,  $df = 1$ ,  $p = .08$ , NS). The main effect of jurisdiction (Public Law 280 versus non-Public Law 280) is significant ( $G \text{ square} = 5.72$ ,  $df = 1$ ,  $p < .017$ ). Police in Public Law 280 jurisdictions have less understanding of reservation cultures than do police in non-Public Law 280 jurisdictions. This result may suggest that federal-BIA and tribal police in non-Public Law 280 jurisdictions are more familiar and understand reservation cultures better than tribal police and state/county police in Public Law 280 jurisdictions. We will investigate these possibilities more below.

There may be a confounding effect from the mixing of tribal police in the analysis, so we investigate this possibility further. Among Public Law 280 reservation residents, if we separate evaluations of tribal police and state/county police, and we also withdraw all tribal police from the sample to avoid self evaluations, then 79 Public Law 280 reservation residents provided evaluations, and 84% (66) say that tribal police have a good understanding of reservation culture. However, 147 Public Law 280 reservation residents evaluated state/county police, and 20% say that state or county police have a good understanding of reservation cultures. Public Law 280 reservation residents believe that tribal police have very good understanding of reservation cultures, but rank state/county police understanding of tribal cultures very low. Furthermore, in non-Public Law 280 jurisdictions, 50 reservation residents commented on tribal police's knowledge of reservation cultures, and 74% say that tribal police have a good understanding of reservation cultures. Thirty-six non-Public Law 280 reservation residents commented on federal-BIA police understanding of reservation cultures, and 56% say that federal-BIA police have good understanding of tribal police. There were 8 comments in the analysis of non-Public Law 280 evaluations of state/county police, with only 1 (16%) affirming that state or county police had a good knowledge of reservation cultures. We eliminate the non-Public Law 280 evaluations of state or county police from the analysis since it gives a downward bias and focus on the evaluations of federal-BIA police knowledge about culture. Unfortunately, if we separate out evaluations of tribal police from state/county and federal-BIA police, the number of responses declines to such low numbers that a reliable statistical analysis is not possible. However, there are 23 Public Law 280 law enforcement self-evaluations of cultural knowledge of state or county police in Public Law 280 jurisdictions, and these data enable statistical comparisons.

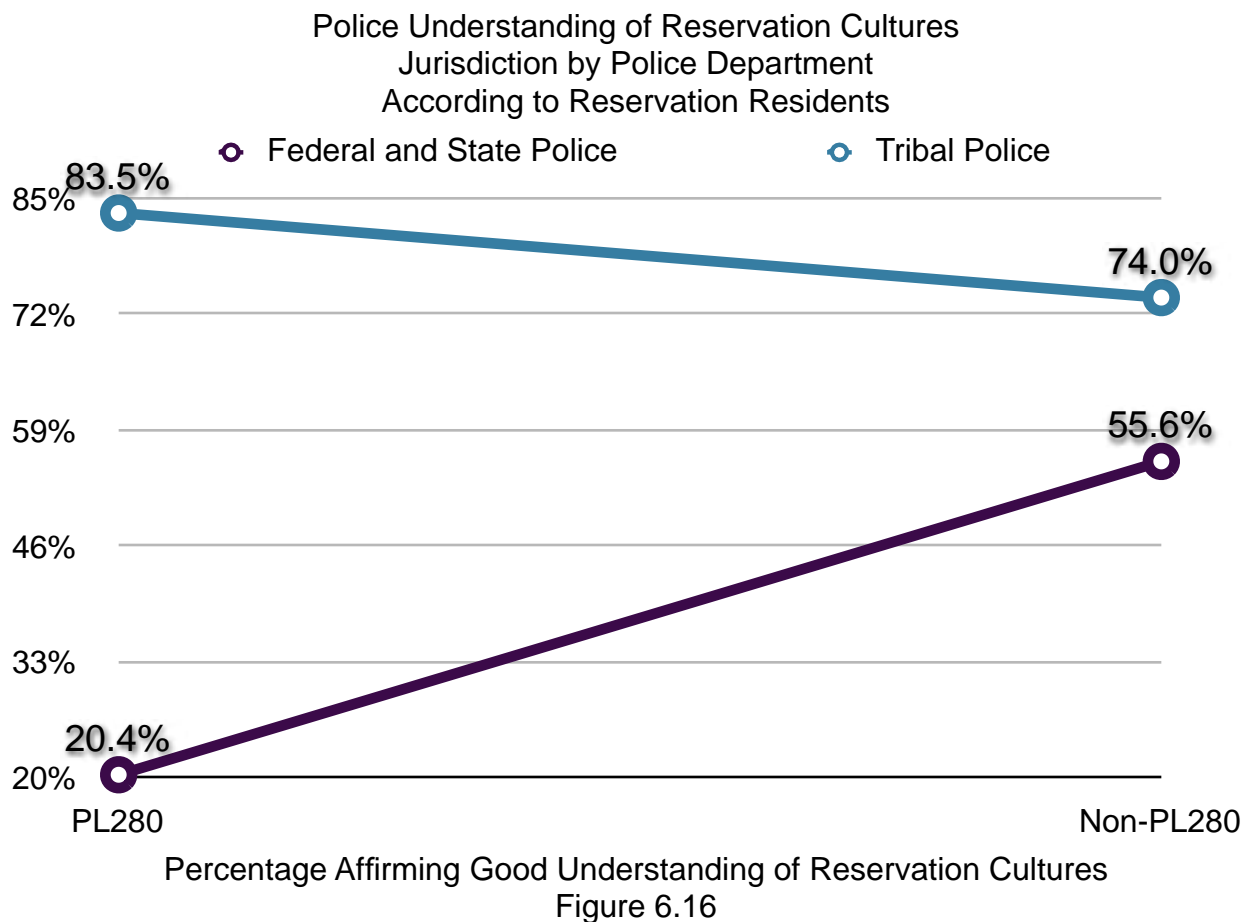
Among reservation residents, we can compare evaluations of federal-BIA (56%), state/county (20%) for police understanding of reservation cultures; and 71% for non-Public Law 280 tribal law enforcement, 84% for Public Law 280 tribal law enforcement, and state/county law enforcement evaluations of their own cultural knowledge (61%). Sixty-one percent of law enforcement respondents ( $n = 14$ ) say that state/county police have good understanding of reservation cultures. As shown in Figure 6.15, there are significant differences in respondent evaluations of police understanding of tribal cultures ( $\chi^2 = 100.1$ ,  $df = 4$ ,  $p < .0001$ ; Cramer's  $V = .55$ ). Tribal police in non-Public Law 280 jurisdictions are evaluated by reservation residents to have significantly greater cultural knowledge than state or county police in Public Law 280 jurisdictions. The tribal police in non-PL 280 jurisdictions also are not significantly different from state/county police self evaluations. Tribal police in Public Law 280



jurisdictions have significantly greater cultural knowledge than federal-BIA police in non-Public Law 280 jurisdiction and Public Law 280 state/county police, but are not significantly greater than state/county law enforcement's self evaluations. Reservation residents in non-Public Law 280 jurisdictions rate federal-BIA police knowledge of reservation cultures significantly higher than Public Law 280 reservation residents rate state or county police. According to reservation residents, state/county police in Public Law 280 jurisdictions have significantly less knowledge about reservation cultures than all other federal-BIA and tribal police; and reservation residents' ratings of state/county police in PL 280 jurisdictions are in significant disagreement with law enforcement's self evaluation of cultural understanding about reservation communities. Reservation residents in Public Law 280 jurisdictions rank state/county police understanding of tribal cultures as very low, while there is otherwise relative consensus among reservation residents and law enforcement about the degree of knowledge police have about reservation cultures.

Additional, and more powerful, analysis can be gained with a 2X2X2 log-linear analysis comparing police cultural understanding for main and interaction effects of police understanding (good or not-good) of reservation cultures jurisdiction, Public Law 280 versus non-Public Law 280, and police departments, tribal police versus state/county and federal-BIA police. For our sample, as shown in Figure 6.16, the statistical test yields significant results for both main effects, jurisdiction and police departments ( $G \text{ square} = 88.14$ ,  $df = 1$ ,  $p < .0001$ ), and also significant for an interaction effect ( $G \text{ square} = 119.94$ ,  $df = 4$ ,  $p < .0001$ ). Figure 6.16 provides percentages of reservation-resident respondents who say police have a good understanding of tribal cultures. According to reservation residents, tribal police have a significantly different understanding of tribal cultures than state/county and federal-BIA police. Significantly higher proportions of reservation residents report that tribal police have a good understanding of tribal cultures than reservation residents report for federal-BIA and state/county police. Tribal police

have a better understanding of reservation cultures than federal-BIA and state/county police, according to reservation residents. Police understanding of tribal cultures is significantly different between Public Law 280 and non-Public Law 280 jurisdictions ( $G \text{ square} = 14.32$ ,  $df = 1$ ,  $p < .0002$ ). According to reservation residents in our sample, police have better understanding of tribal cultures in non-Public Law 280 jurisdictions than police in Public Law 280 jurisdictions. Reservation residents in non-Public Law 280 jurisdictions say the federal-BIA and tribal police understand tribal cultures about the same, while Public Law 280 reservation residents observe that state/county and tribal police in Public Law 280 jurisdictions understand tribal cultures significantly differently. This significant interaction effect suggests that police understanding is contingent both positively and negatively on Public Law 280 jurisdiction depending on tribal police or state/county police. State or county police are negatively affected in understanding tribal cultures by Public Law 280 jurisdiction, while Public Law 280 tribal police are positively



affected toward understanding tribal cultures in Public Law 280 jurisdictions. Reservation-resident reports on Public Law 280 state or county police understanding of tribal cultures are significantly lower than all other groups: Public Law 280 tribal police, non-Public Law 280 tribal police, and non-Public Law 280 federal-BIA police. Public Law 280 state/county police have less understanding of tribal cultures than Public Law 280 tribal police and federal-BIA and tribal police in non-Public Law 280 jurisdictions. Public Law 280 tribal police have greater understanding of tribal cultures than Public Law 280 state or county police, and non-Public Law

280 federal-BIA police, but have an understanding of tribal cultures similar to non-Public Law 280 tribal police. Non-Public Law 280 federal-BIA police and tribal police have comparable understandings of tribal cultures; although their differences are not statistically significant, there is a strong trend toward tribal police having greater understanding of tribal cultures. According to reservation residents, the relative similarity by non-Public Law 280 police departments for understanding tribal cultures contrasts sharply with the strong dissimilarity between Public Law 280 state/county and tribal police for understanding reservation cultures.

Since, in Public Law 280 jurisdictions, reservation resident evaluations of state/county police knowledge about reservation cultures is significantly lower than all other groups, we present some comments from the interviews:

Probably no. I would say, as a whole, probably not. For example, they might not appreciate family relations and go to somebody for something when it would be pretty clear if you understood the families that it wouldn't be a good place to go. Or they might disrupt some ceremonial activity or not show respect for certain elders in the community. Those are just some examples of how it might manifest itself.

I really don't think so, except for maybe the rare officer who grew up here and may have gone to school with tribal members. They have an understanding of the reservation, and I think they have an understanding of the Indian community, but I don't think it's a real understanding of the traditional.

There is only a few, and if you are a local person that was born and grew up among the people here, yes, you would have a fairly good understanding. No, I don't think that they take the time to understand the community that they have to serve, and I think that the state needs to take this type of thing into consideration.

I think the sheriff wants to understand, but they don't have an understanding. I think they don't really know. I mean they know there are "Indians" here, but I don't think they understand what sites are sacred here, and sites you know you are supposed to be at, bad things go on, I don't think they understand that, you know.

No. They don't spend time here. And other ways that I think it might happen is how they initiate conversations or how they initiate confrontation, how they do not know that native people usually will not look you in the eye when you speak to them, and, as an authority figure, the officer wants you to look at him. They don't, and so that may cause something there. And I keep going back to saying how could they know and understand our culture. They are not around. I don't think so. ... They are really not in touch with the tribal community and culture.

I would say no. Not to any great degree. The non-Indian law enforcement people that I know have a very limited knowledge about the (local) culture, or understanding. And I say that based on conversations with them about Indian issues, where there may be cultural or social or otherwise, always seem to have a stereotypical image. Even today they have a stereotypical image of who Indian people are and what they are, and that is pretty common.

No. I think it was last year. We had our powwow. They came in and used it as a time to arrest our (former council member). She was a prior council woman — long, long-term — and was running again for office. They took her right off the (powwow ground). With a charge related to Indian child welfare. ... They were in a dispute about the child, and they charged him and his mother with interfering with child proceedings or something like that. But they waited until that time. ... Handcuffed. It's a wonder they didn't throw her down on the ground. And she is in her seventies.

I would think no. And it's surprising sometimes. People who you think would be aware of it, at least, aren't. They will ask stupid questions, or they will make comments like they don't understand why you do stuff like that or whatever. I don't think, generally, that they even have any kind of a sensitivity course to culture or traditions here on the reservation. I think if they have grown up around here, they probably still believe all the stuff they believed since they were growing up.

We have a church here. It's called the Shaker Church. It's the religion we have here. It's the religion that is in Washington, Oregon, Northern California, and Canada. We use candles and bells and chants. We are at church one time, and they are looking for somebody, and they just came in there. Disrupted the whole service. ... I think they think we are less than human, and we have no feelings. They disrupted the service. I don't think it happened again after that.

No. Absolutely not. I think there is a difference of opinion all the way down to culture, generally — clothes, what kids eat, how kids behave, what their home environment looks like, the supervision or lack of supervision ...

No. Well, tribal government, as a whole, wants to be considered and wants to be recognized as a government entity. Deputies should be treating tribal government as they treat a city council person. I think tribal government deserves the respect, to have a good relationship between the two departments.

Very little, very little. I think they don't understand what our elders do and the respect that we have for elders and the respect that we have for nature, and I think they don't understand the makeup of the extended family, because that is really critical in our communities, that they don't understand that somebody is staying with grandma and grandpa, and it's OK, and that if they are not staying at home and those things have been worked on talking to about (child protection services) and, you know, the county and how it deals with Indian child welfare and Indian Child Welfare Act, and those kinds of things and all that.

No. It's a generalized no. If I were asked to weigh between yes and no, I will pick no. ... It's based on examples, based on experience, what I have seen over the course of the years. It's based on the current situation with the county government and the unwillingness to enter into other agreements with us. Based on the governing body of the county. That backs up my statement as to why I say no. It's just due to an unwillingness in all. And the majority of them, they just don't want to know. They don't want to cooperate. They don't want to know what our culture is. They don't care. They are out milking cows and picking corn and whatever, doing the polka and whatever. Then they don't want to know.

### New Understanding of Reservation Cultures

Law enforcement respondents were asked about what aspects of Indian culture had they learned since working with a tribal community. More formally we asked: Can you name a few aspects of tribal cultures that you have become aware of since working with reservation communities? Thirty-six law enforcement officers provided a response, and 5 (14%) said they did not learn anything new about culture or could not respond to the question. Thirty-one law enforcement officers gave a wide variety of responses, often mentioning several cultural features that were picked up while on duty and through interaction with members of tribal communities. The learned aspects of culture are difficult to form into a pattern, but the most frequently mentioned learned cultural features are: ceremonies or religion (10), family (10), elders (5), respect (5), and a variety of items such as reciprocity, code of silence, language, tribal government, community, and funerals are also mentioned (7). Police officers are learning through personal contacts and interaction, and appear to have little guidance or instruction about how to understand or use cultural knowledge for the benefit of their work. Some comments on learning culture by law enforcement workers include:

Very strongly family-oriented. Top-to-bottom. In other words, the older you are in the tribe, the better off you are as far as what kind of respect you are going to get. The elders are very, very important. If you don't treat an elder with respect, you have got a problem. From my own personal experience, if you don't, maybe you didn't intend to not respect somebody. But if you didn't verbalize it at that time, they took it as meaning you didn't respect them, and you got treated accordingly. Just a simple thing like going to the oldest person there. (We once

had a baby die). And I responded to the scene. We had jurisdiction still. Went out, got there, and it was a very traumatic event, and we knew that. We were trying to treat it as best we could with a family that is grieving. We couldn't understand why there were so many cars parked in front of this house. And people were coming all the time. Well, this is one great big extended family, and they are all coming there to be with the family members who have lost this baby. I mean, you see that off the reservation, but not to the extent you see it (on this reservation). Didn't understand what was going on. And when I went into the house, the person who was addressing me was the grandmother. Not the mother, the grandmother. Well, I want to go right to the mother. No, I have to go through the grandma if I want to get to the mom. And I didn't understand that. And I went, "Bye, Grandma," and I went to the mom. And they didn't like that. They didn't say anything. It's not their way to stop you. But I just did what I thought was my job. The next day, I am getting a barrage of complaints from the tribe because I didn't respect. I treated them poorly, and I couldn't understand what I had done wrong. Well, I walked by the grandma; I did not pay my respects. And that was insulting to them. And I learned that you don't do that. ... And I learned to treat them differently. I have learned over the years tribal culture is to respect their elders, number one. Be as courteous as I can, and try to understand that they are very strong family-oriented. And if you arrest one of their family members, you might as well expect to see half-dozen of them standing there. Make the arrest or call you the next day and want to know what is going on. And it was easy for us to blow it off, we are not going to tell you. I have learned now that no, you have got to tell them, or least tell one of them. And when I attend the council meetings, be very, very respectful of that body. They are very sensitive to tradition, and I am still an outsider. ... One of the issues we are still dealing with is to understand their family culture. And we need to train our guys a little bit better in that area so they understand: Well, why is there 15 screaming relatives out there in the precinct really upset at us? Well, you arrested their brother yesterday. Well who cares? The guy was burglarizing a house. ... To understand, you need to sit down and talk to them about it, because very strongly family-oriented. And the other issue with me is I really admire the way they treat their kids, and I have a huge amount of respect for the way that tribe treats their children.

Yes. One of the first ones that I became aware of, is if you are going to enter into a residence or enter into a crime scene and there is no extenuating circumstances and there is no dangers and there are elders there, speak to the elders if it's not boiling over. Make sure you speak to the elders and see how their feelings are and how their well-being is. One of the hardest things is to get past the family. If you have got a guy or person who has broken the law, everybody is mad at them. We had a person who stole baskets from the elders. They weave baskets, the elders do. She did it for a drug habit. Even though they wanted to string her up, they wouldn't turn her in. They wouldn't tell us about it because it was family.

And that is very hard for me. It's always been the hard one for me. ... My theory is that law enforcement as we know it's a European development. We developed it. And it comes natural to us. Now, in the last hundred years or so, we forced that system on the Indian people. It's not their system. It's our system. That is my theory. There is resentment because of that. And there is the family thing. You don't talk. And I can only say for this group of people.

I would never go to, say, a function at the Longhouse, which is an Indian church. For whatever reason that function is going on — be it a wedding or a funeral or a celebration or dancing — and do an arrest (it's) disrespectful. There are other times or places that that arrest could be made and that person may be right there and I may have full knowledge that there is a warrant for them or something, those are things you do not do. Those are things that non-tribal police officers would question. If I was at a county fair and saw a person and there was a warrant, I would hook him up and arrest him, but here you wouldn't do that. I would not go down and force an arrest on an elder at the retirement home. There are far easier ways to deal with that. It's just as simple to have the family bring the individual to court on his court date, and they will if you simply ask. It's a courtesy that, maybe it should be a non-Indian courtesy also. A lot of things we do out of courtesy versus the letter of the law, and it should be.

Well, of course, no one is 100% familiar. I am very respectful of all tribal tradition. And the one thing I do is read the culture materials. And in fact, in this case here, I have considered (name deleted), who is a tribal historian and received firsthand what I consider an education in the tribal stories. And I spoke with him. And I also brought both of them into the training we did for the officers so that everybody could be up to speed.

Lack of discipline. Lack of control over kids. Lack of responsibility. And I don't mean all that in a negative sense, but kids are kind of free to come and go as they please and do as they please and learn on their own. They kind of watch each other's kids a little bit, but they don't worry a lot about their kids. They support each other when they are down. They are very supportive. When someone is in trouble, they are comforting. They comfort each other. They feel sorry for each other. They cry with each other. But they don't do much to change it. They accept it. They have given up trying to make a difference. I am not sure it's cultural as much as it's just lack of, you get tired of beating your head against the wall after a while. There are some that truly do beat their head against the wall trying to make improvements and make changes. After a few years, they give up. Or after many years, they give up.

As an investigator, what is helpful is the disciplinary aspect of who in the tribe, who in the nuclear family, or in the larger picture of the nuclear family, has the



disciplinary role. ... So that is good to know as an investigative standpoint, if you are trying to get somebody to give you information. We have found out that the tribe is very closed-lipped in that, right now, I have got several sexual assaults that are occurring on the reservation where I absolutely know who the offenders are. And I have nobody in the tribe that will come forward and be the victim, if you will, of these assaults. All this involves young girls from the ages of 14 to 17. Nobody will come forth and be my victim. Because if they were, I think I could successfully prosecute. ... I don't know if you would call it a code of silence or a code of conduct. And, at the same time, I have the tribe coming to me and saying, look, we need help. We need to deal with (the perpetrators). I am going I can, I will, but you have got to help me. And it's very frustrating to have a case solved and not have a victim to be the person who is involved in the case, not to have the witnesses who will come forth and give you details. It's very frustrating.

(This reservation) is one big family, and you will see that if something happens. If somebody is in need of help on the water, they don't have to wait. There will be 15 boats there within a couple of minutes, or within the hour.

The family. The extended family. We have a lot of single-parent families on the reservation, and the grandparents take care of them, the aunts or uncles take care of the children. And I believe a lot of the officers realize that you are not going to find a nuclear family that they will be, maybe it's the auntie or the grandma that is taking care of the child, not the mother.

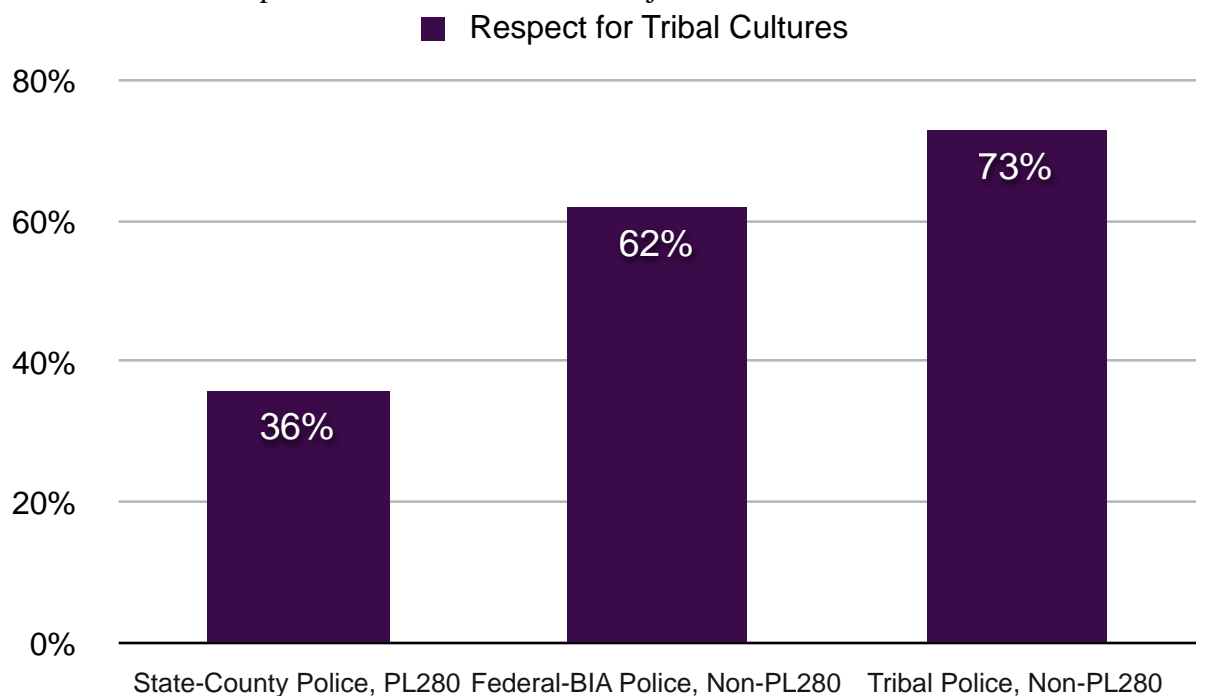
Another one is recognizing the elders as being the heads of households and community, and the tribe as a whole, and making sure that when you respond to a call, even if it didn't involve an elder in the home, that before you leave, you go and talk to the elder and make sure they know what you did and why you were there because they are in charge, simply out of respect if nothing else. ... If I was starting this from scratch, if we had just never been out there before and the sheriff said, "Here is a pile of money that they are paying us, and we want to put six guys out there," knowing what I know now, I would send every one of them to some training somewhere rather than going out there and learning it as you do the job. But now the people we have out there stay forever. Most of the deputies that work out there love it out there and don't want to leave. But we wouldn't have to send them to a lot of formal classes because everything he is going to learn, he is going to learn from the people that are already doing the job out there, and he couldn't get training that good anywhere else anyway.

I think probably the way they view the family ties, the extended family, the elders within the community and things like that. Religious practices, whether it's with peace pipe and smoked cedar, or what the rest of it's. Like in the jail, there are programs that are designed to serve the Indian communities.

Well, with this community, it's a very caring culture. You take care of one another, you take care of your elders. And also, when it comes to law enforcement, it's natural to want to protect your family member and not get involved.

### Police Respect for Tribal Cultures

The quality of police services provided to tribal communities is further investigated through measure of police respect for tribal cultures. Reservation residents are asked to rank and comment on whether police show respect for reservation cultures. Reservation residents (n=225) gave an overall ranking of 2.63, somewhat below medium, as a measure of how well law enforcement respects reservation cultures. Public Law 280 reservation residents (n=161) ranked police with 2.35, below medium and significantly lower than the ranking of 3.34 given by non-Public Law 280 reservation residents (Wilcoxon W = 15150.0,  $p < .001$ ). According to reservation residents, police in Public Law 280 jurisdictions show significantly less respect for tribal cultures than police in non-Public Law 280 jurisdictions.



Percentage of Reservation Residents Affirming Police Respect for Tribal Cultures  
Figure 6.17

Reservation residents were asked to comment on whether local law enforcement respects their community's culture. Forty-eight non-Public Law 280 reservation residents made comments on whether tribal law enforcement officers respect reservation cultures, and 73% say that tribal police are respectful. Thirty-eight non-Public Law 280 reservation residents commented on whether federal-BIA police were respectful toward tribal cultures, and 62% say

federal-BIA police show respect for reservation cultures. Among Public Law 280 reservation residents, 136 commented on whether state/county police are respectful toward tribal cultures and 36% say state or county police are respectful. Only 5 Public Law 280 reservation residents commented on the cultural respectfulness of tribal police, too few for further analysis.

As represented in Figure 6,17, reservation residents in our sample suggest there are significant differences between police departments regarding respect for tribal culture (chi square = 22.58, df = 2,  $p < .0001$ ; Cramer's V = .32). A significantly smaller proportion of Public Law 280 reservation residents say that Public Law 280 state or county police are respectful toward tribal cultures than non-Public Law 280 reservation residents say about federal-BIA police and tribal police. The difference between federal-BIA and tribal police in non-Public Law 280 jurisdictions is not statistically significant; non-Public Law 280 reservation residents say that respect for tribal cultures is about the same between tribal and federal-BIA police. These data suggest that state/county police in Public Law 280 jurisdictions show significantly less respect for tribal cultures than do police in non-Public Law 280 jurisdictions. Since Public Law 280 state/county police seem less respectful of tribal cultures according to reservation residents, it may be useful to review some of the comments:

Maybe some do. I wouldn't say all of them don't. But a few that may because the veterans, again, have been around awhile. If there are any, I don't know.

It depends. Because they get a lot of people from the cities that are real, I don't know. I think they act really cruel. No, not all.

I think they probably don't like they ought to, and that is all I will say. They will probably say they do, but I don't think they do.

I don't know about specific police ... but I think you just see it reflected in the way that native children respond to the border schools. You know, the lack of real interaction between some of the county officials and the tribal cultural events or cultural things.

To a degree. They respect their governmental structure more than their culture. The governmental structure that has been imposed on them by the U.S. government.

No. Well, I will give one more and that is, I think when people are racist, they tend to be quite narrow in their views. And so they define culture very narrowly and discount anything that does not fit into their conception.

I don't know. I couldn't answer that. Just because most of the towns in the outlying parts of the reservations, most of them don't like Indians. ... But hearing how some of the dealers are and stuff, I would say, yeah, they are not respectful.

No. They cannot. ... If that was the case ... let me rephrase that. If that was the case, I would see more of them there. I would see them making the effort, coming on the reservation. ... So, it's like, why am I going to go into the reservation just to put my life in danger? It's just the mentality of it that they are savages, barbarians. And they are not. They are scared because of stereotype. Yes.

No, again, because they are not attending events, they stay away from them, again it's still the cowboys-and-Indians mentality.

I have had interactions with several deputies that have made slander remarks towards the culture, towards Native Americans in general, be it the powwows or maybe a wedding ceremony or a name ceremony or a sweat. And it's just a quick remarking coming from people that do not, are not willing to try to understand but feel, I think, that they are forced into coming into a call or a report. So, it is one of those where they are forced into having to come up to the reservation to take a report. ...

I really can't say. I can say this: I don't think they know, to start with. I believe they see our culture, our general membership, our people as just another, not necessarily citizen, but another individual that their authority extends to and over.

I don't think so. Not unless they would have an understanding, unless there is that understanding that I don't think they could respect it.

I don't think they have made an effort to try to be familiar with anything. Not really. They act as if we forced them to come over.

I don't think so. To go into an elder's house or go push the door down ... or go to say. ... "Are you hiding your son here?" I don't know. You just don't talk to an elder that way.

I think they do. If they understood it, but I just don't think they understand, nor do they want to take the time to slow down to understand it. But I think some of them would go out to powwows and get to know what tribal community is, but then you have the other side of it. Guys that go, and they are trying to rob graves, and they are trying to find all the artifacts they can put in their houses. So, you got some of those guys that are police officers as well.

Do they respect our culture? Well, if you don't know and don't want to know it and do not want to take the time to understand it, that translates into a mutual non-respect. So, we have shown, time and time again, our respect and our willingness as a community to work cooperatively together. ... I personally have had it up to here and have taken my old warrior's philosophy, my old warrior spirit. "Well,

“piss on them.” I have gotten to that point. No more. I do not prescribe the philosophy of turning the other cheek. I am not that way. If they slap me once, they are going to get slapped back. I am not going to turn the other cheek. So, we have tried and we have tried and we continue to try. So, in answer to your question, no.

## Respect for Tribal Authorities

While reservation residents and law enforcement workers ranked police understanding of tribal cultures at 2.48 and respect for tribal culture below medium at 2.68, they ranked police

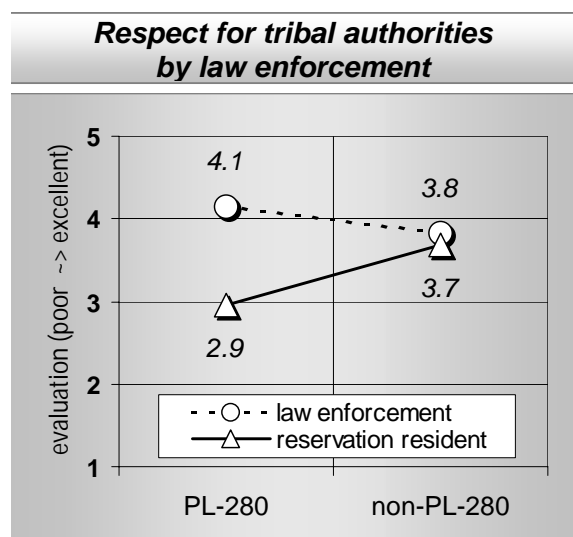


Figure 6.18

respect for tribal authorities higher and above medium at 3.32 (N=272). Police have greater respect for tribal authorities than they have knowledge of or respect for tribal cultures. Public Law 280 reservation residents (n=160), however, rank police respect for tribal authorities slightly below average at 2.94, which is significantly below the rankings for police by non-Public Law 280 residents (n=63) at 3.68 (Wilcoxon W = 16245.5,  $p < .001$ ). Public Law 280 law enforcement personnel (n=31) rank police respect for tribal authorities at 4.13, while law enforcement personnel in non-Public Law 280 jurisdictions rank police respect for tribal authorities at 3.83 (n=18), which,

does not yield a significant difference (Wilcoxon W = 430,  $p = .66$ , NS). Law enforcement personnel rankings for police respect for tribal authorities between Public Law 280 and non-Public Law 280 jurisdictions are not significant in a two-way comparison. As shown in Figure 6.18, for our sample, we can explore the relations of respect for tribal authorities with a nonparametric 2X2 ANOVA with transformed scale data which yields some significant patterns. The main effects of jurisdiction, Public Law 280 versus non-Public Law 280, are not significant ( $F = 1.41$ ,  $df = 1$ ,  $p = .24$ , NS). Ratings of respect for tribal authorities do not significantly vary by jurisdiction; the police show similar levels of respect for tribal authorities in both jurisdictions. Law enforcement ranks respect for tribal authorities by police significantly higher than do reservation residents ( $F = 11.95$ ,  $df = 1$ ,  $p < .001$ ). Police and reservation residents disagree about how much respect police have for tribal authorities; police rate themselves as more respectful of tribal authorities, while reservation residents believe police are less respectful. The interaction effect of jurisdiction and respondent is significant ( $F = 6.77$ ,  $df = 1$ ,  $p < .01$ ). Police and reservation residents in non-Public Law 280 jurisdictions are in relative agreement about the level of police respect for tribal authorities, but Public Law 280 reservation residents disagree significantly with Public Law 280 state/county police about how much police respect tribal authorities. The significant differences between police and reservation residents occur in the Public Law 280 jurisdiction. Police and reservation residents in non-Public Law 280

jurisdictions agree about somewhat above-medium police respect for tribal authorities. In Public Law 280 jurisdictions, reservation residents rank police respect for tribal authorities slightly below medium, while police rank their respect as relatively high. Law enforcement personnel in Public Law 280 jurisdictions say police have considerable respect for tribal authorities, greater than police in non-Public Law 280 jurisdictions, while reservation residents say state/county police have the least respect, less than non-Public Law 280 police. We see the continuing pattern of significant disagreement between Public Law 280 state/county police and reservation residents about delivery of police services to Public Law 280 jurisdictions, while non-Public Law 280 reservation residents and law enforcement agree about the level of respect police have for non-Public Law 280 tribal authorities.

Respect for tribal authorities by police is further investigated with an open-ended interview question: Does law enforcement show respect for tribal authorities? There are enough data for analysis from non-Public Law 280 reservation residents commenting on respect for tribal authorities from federal-BIA police (n=34) and tribal law enforcement (n=45). Reservation residents in Public Law 280 jurisdictions (n=141) provide comments on respect for tribal

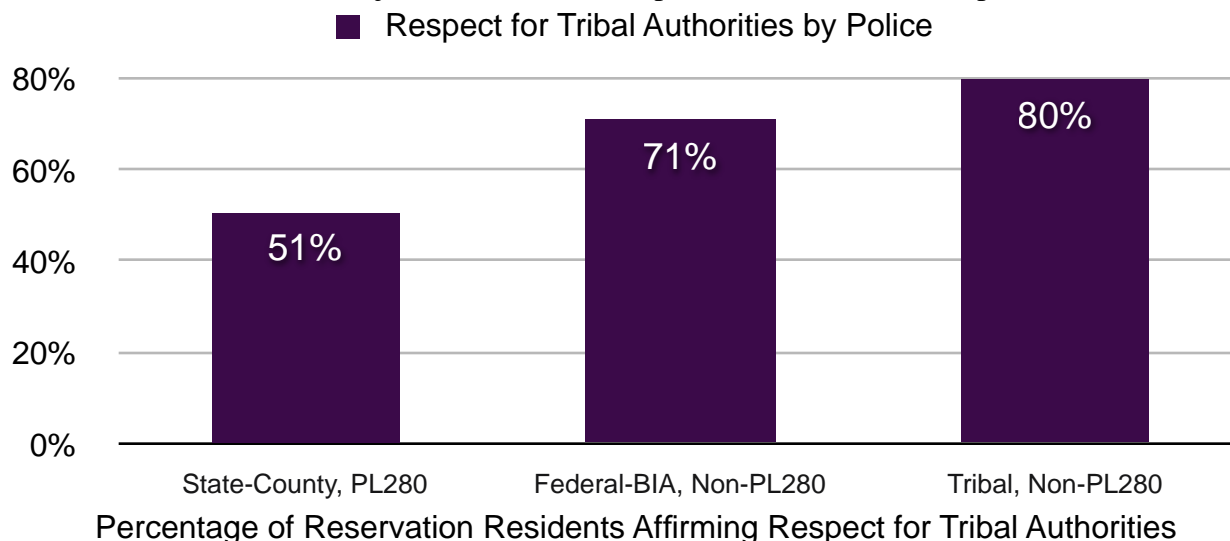


Figure 6.19

authorities by state or county police. Among responding non-Public Law 280 reservation residents, 71% say that federal-BIA police show respect for tribal authorities and 80% responding reservation residents say tribal police are respectful of tribal authorities in non-Public Law 280 jurisdictions. In Public Law 280 jurisdictions, 51% responding reservation residents say that state or county police show respect for tribal authorities. As shown in Figure 6.19, comparing the three outcomes of police respect for tribal authorities yields significant differences between police departments (chi square = 13.78, df = 2, p = .001; Cramer's V = .25). In our sample, a significantly lower proportion of Public Law 280 reservation residents says that state or county police have respect for tribal authorities than that of non-Public Law 280 reservation residents who say so of tribal police. The proportion of Public Law 280 reservation residents who believe that state or county police show respect for tribal authorities is similar to the proportion of non-Public Law 280 reservation residents who say that federal-BIA police are

respectful. The main significant difference is between the relatively high proportion of non-Public Law 280 reservation residents who say tribal police are respectful, while a significantly smaller proportion of Public Law 280 reservation residents who say state/county police are respectful of tribal authorities. State/county police in Public Law 280 jurisdictions appear less respectful than tribal and federal-BIA police in non-Public Law 280 jurisdictions.

The patterns of why Public Law 280 reservation residents say that state or county police are not respectful to tribal authorities are diverse. Some (11%) mention challenges to tribal government, treating tribal government as a lesser government, and lack of recognition of tribal government. Others mention that, at least in some Public Law 280 jurisdictions, state or county police provide services only when paid or perform only because it's their job (6%). Then there are a whole series of issues that perhaps can be characterized as relational, and respondents use terms such as "discriminatory," "complaints," "use of excessive force," "lack responsibility," "lack understanding," "do not show for meetings," "no trust," "selective services," and others (18%). Comments by Public Law 280 reservation residents evaluating state/county police respect for tribal authorities include:

,

Not at all. If anything they challenge (tribal authorities). Boundary issues that we are in federal court with right now is a good example.

The perception in the county system about tribal workers, no matter what field we are in, we don't get the respect that other workers do. ... That lack of creditability, that lack of respect.

Not really. I have heard different individuals speak that, "We are just still dumb, old Indians." We don't really know what is going on. But then again, I think that lack of understanding about tribal councils, how they are elected. ... But if we had our own law enforcement, if we had our own judicial system, if we had our own situation like that, that would alleviate, if we had that cross, cross-cultural, cross-training, cross-deputization, that would alleviate a lot of our problems because then we would have more understanding. I mean, that is where agreements come from, come from understanding.

In front of us they do. Yeah, because in the shed that is adjoining us over there, they had a bust of an individual and someone painted a headband on it and put feathers on him and drew a mustache on him. That was the deputy's bust of somebody out here. And then there was a cartoon that went around in their locker room.

I think they do. I think they do whenever it's put on the table. Yeah, they respect the council, they respect the tribe, I think, but their actions sometimes prove different.

I don't think so. I think that they look at it, I think they overlook that, and they are just going to do a job. I think that they view it as more resentment than anything, that this is something extra that we have to spend time on. I mean, I think that is the attitude that I get.

No, because I don't think that any of them feel that they are responsible to the tribe or anyone on the reservation.

So, whether they show respect to the tribal councils, I don't think they really have understanding that our councils are just like their city officials or supervisors for the county. I have seen them go out and just serve the warrants without anybody's approval. ... I think that was really handled badly.

The sheriff does. The officers don't. And that could be a lack of respect from both sides. We don't respect them too much, and they don't respect us too much. ... They become ignorant and mean, to where they don't want to respect our authorities because they do not believe in them. But then again, it's lack of knowing our culture, our community, and who we are, and how tight of a family we are.

In answer to that, I think, in general, overall, most off-reservation people don't view the tribal community as a sovereign nation of people and tend to consider them as less than, for example, our government, less of a government than theirs. ... The fact that we don't have a lot of written law, people tend to view us as less than organized, less than civil, so to speak.

Because we have people in positions in (the) county who don't even show respect to our chairman. We, he has been bad-mouthed by the judge and by the D.A. and by the sheriff. ... Plus, our tribal officers have been called ignorant and they don't know what they are doing and stuff like this, but yet they have more training than most county officers put together.

I don't think they perceive us as a sovereign entity.

No. I don't think there is much respect for tribal authority.

I don't see a disrespect, but I don't see an overly respectful (attitude) toward authority, because sometimes they don't know that that is an authority figure. No. They refer to the tribal police as security guards, "You have no power." We hear it all. Even when we are downtown, we hear about it. In fact we have been told several times that if we leave the reservation with our overheads on, like we are chasing somebody and they get off the reservation and we go off the



reservation without turning our overheads off, we will be arrested for impersonating a police officer.

Sometimes when they do defer to tribal law enforcement, they say that the tribal councils do that, but there are instances where they just ignore them, and I think it depends on who's working.

No. They just treat them (tribal police) like security guards because that is what they are in California. Which is really, really ... every time I talk about this, it really makes me mad because there is just no, it's so unfair for all these people. Those people go through all the training and jump through the hoops the same as anybody else has done out there in the real world, and they have no authority. This is ridiculous.

Yes, they have to. We are paying them. They probably don't. They get the money, but they probably don't.

I think they are starting to show it more, but it's only due to the dollars. ... But, like I say, if our dollars were to dry up tomorrow, they would be kicked out on their butts. Because, let's admit it, the dollar does a lot of talking. ... I think we have come a long way, but we still have a heck of a long way to go. Because we have, I like to call it, maybe it's not fair, "The old boys club" that has been in existence. Those people carry the power in the county, and they don't want to relinquish that power.

## Summary and Conclusions

The main hypothesis proposes there are significant differences in the quality of police services provided to tribal communities between Public Law 280 and non-Public Law 280 jurisdictions. The quality of police services provided to Indian communities is different in Public Law 280 and non-Public Law 280 jurisdictions. The null hypothesis is that respondents in Public Law 280 and non-Public Law 280 agree that the quality of police services provided to Indian communities is similar or comparable. Two alternative hypotheses are also investigated: group effects — differences in quality of police services reported by law enforcement and reservation residents; and police department effects — differences in quality of police services to Indian communities between tribal police and non-tribal police, federal-BIA and state or county police, as reported by reservation residents. The hypothesis for group effect is: Law enforcement personnel and reservation residents report significantly different evaluations of quality of police services to tribal communities. The null hypothesis is: Law enforcement personnel and reservation residents agree about how well police provide services to Indian communities. The third hypothesis suggests that tribal police and non-tribal police — state/county and federal-BIA police — provide different levels of services to tribal communities. The corresponding null

hypothesis is: Tribal police and non-tribal police provide comparable services to Indian communities. The quality of police services to Indian communities is measured in a series of questions, both qualitative and quantitative, that are used to investigate one or another of the three main hypotheses.

The hypothesis that jurisdiction effects are significant implies there are statistically significant differences between respondents in Public Law 280 and non-Public Law 280 jurisdictions reporting on a measure of police services to tribal communities. Several questions about quality of police services were asked of reservation residents and law enforcement personnel in both Public Law 280 and non-Public Law 280 jurisdictions. By comparing the answers of reservation residents and law enforcement personnel in both Public Law 280 and non-Public Law 280 jurisdictions, we can determine whether respondents disagree or agree about the quality of police services. If respondents agree about the quality of police services delivered to Indian communities, a statistically nonsignificant result, then we conclude that there are no differences between Public Law 280 and non-Public Law 280 jurisdictions, or there is no significant jurisdiction effect.

Reservation residents responded to a series of direct comparisons of the quality of police services in Public Law 280 and non-Public Law 280 jurisdictions, and most of the comparisons are statistically significant, indicating differences in the quality of police services in Public Law 280 and non-Public Law 280 jurisdictions. Reservation residents say the quality of police services is different in Public Law 280 and non-Public Law 280 jurisdictions for respect for tribal authorities, police respect for tribal cultures, police understanding of tribal cultures, satisfaction with police, thoroughness of police investigations, and police communication with tribal members. Furthermore, in all the above comparisons, reservation residents say the quality of police services is stronger in non-Public Law 280 jurisdictions than in Public Law 280 jurisdictions. Reservation residents, in both quantitative and qualitative measures, say that police respect tribal authorities more in non-Public Law 280 jurisdictions than in Public Law 280 jurisdictions. Again, with both quantitative and qualitative measurements, reservation residents say that police respect tribal cultures more in non-Public Law 280 jurisdictions than in Public Law 280 jurisdictions. Reservation residents say that police understand tribal cultures and communicate with tribal members more in non-Public Law 280 jurisdictions than in Public Law 280 jurisdictions. According to our sample of reservation residents, Public Law 280 jurisdictions are less well served by police than non-Public Law 280 jurisdictions in terms of respect for tribal authorities and cultures, thoroughness of crime investigation, understanding tribal cultures, and communication with tribal members.

Two measures of quality of police services — the timeliness of police in solving crimes, and whether tribal police have good relations with federal-BIA and state/county police agencies — yield agreement among reservation residents in Public Law 280 and non-Public Law 280 jurisdictions. These data suggest that jurisdiction effects, Public Law 280 and non-Public Law 280 situations, do not have significant influence the timeliness of police solving crimes or good relations between tribal and non-tribal police departments.

A very different pattern emerges from the comments of law enforcement personnel when reporting on quality of police services delivered to tribal communities. Law enforcement personnel generally say the quality of police services is similar in Public Law 280 and non-Public Law 280 jurisdictions. According to law enforcement, jurisdiction effects, differences in the situations of Public Law 280 and non-Public Law 280 jurisdictions, generally do not have significant effects on the quality of police services supplied to tribal communities. With one exception, the quality of police services is the same in Public Law 280 jurisdictions and non-Public Law 280 jurisdictions. Law enforcement personnel say that the quality of police services is the same in Public Law 280 and non-Public Law 280 jurisdictions for police respect for tribal authorities, respect for police by tribal members, police understanding of tribal cultures, police communication with tribal members, police effectiveness on reservations, and how well tribal police have professional relations with state/county or federal-BIA police. On one measure of police service, thoroughness of crime investigation, law enforcement respondents say that police investigations of crime is more thorough in Public Law 280 jurisdictions than in non-Public Law 280 jurisdictions.

In general, law enforcement and reservation residents give somewhat different views of the effects of jurisdiction, Public Law 280 versus non-Public Law 280 situations, on the quality of police services. Law enforcement personnel report that the quality of police services is generally similar in Public Law 280 and non-Public Law 280 jurisdictions, therefore indicating that Public Law 280 and non-Public Law 280 legal environments do not create significant differential effects on the quality of police services to tribal communities. The views of reservation residents are more mixed, but suggest that jurisdiction effects, Public Law 280 and non-Public Law 280 legal situations, have more frequent and diverse effects on the quality of police services than is indicated by law enforcement. When reservation residents indicate there are significant differences in the quality of police services between Public Law 280 and non-Public Law 280 jurisdictions, non-Public Law 280 reservation residents report stronger police services than Public Law 280 reservation residents. Public Law 280 reservation residents report the quality of police services in Public Law 280 jurisdictions is often different and worse than in non-Public Law 280 jurisdictions, and also different and worse than reported by law enforcement personnel. Law enforcement personnel believe that the quality of police services is similar across Indian country and indicate that only in thoroughness of crime investigation, but on no other measure, is quality of police services affected by Public Law 280 and non-Public Law 280 jurisdictions.

The law enforcement and reservation-resident comparisons across Public Law 280 and non-Public Law 280 jurisdictions disagree about the quality of police services delivered to Indian communities. The one-dimensional comparisons of law enforcement personnel and reservation residents do provide a path to determine the relative effects between jurisdiction (Public Law 280 and non-Public Law 280 situations) and groups (reservation residents and law enforcement). More clarity is gained by comparing group, jurisdiction, and police department effects across a variety of measures in 2X2X2 log-linear analyses.

Ten log-linear, or nonparametric, ANOVAs investigate the effects of jurisdiction, groups, and police departments on the quality of police services for Indian communities. Starting with jurisdiction, the main effects of jurisdiction are significant for seven out of 10 comparisons. Jurisdiction effects, differences between Public Law 280 and non-Public Law 280 police environments, are significant for:

- Thoroughness of crime investigation (qualitative data);
- Reservation residents saying that police overstep authority (qualitative data);
- Police communication with tribal members (qualitative data);
- Reservation residents commenting on police communication with tribal members (qualitative data);
- Police understanding of tribal cultures (quantitative data);
- Police understanding of tribal cultures (qualitative data);
- Reservation residents commenting about police and their understanding of tribal cultures (qualitative data).

On the above measures of quality of police services delivered to tribal communities, respondents report Public Law 280 and non-Public Law 280 jurisdictions are significantly different. Public Law 280 reservation residents report significantly more thorough police investigations than non-Public Law 280 reservation residents. Reservation residents say that Public Law 280 police overstep authority more often than non-Public Law 280 police. Police in non-Public Law 280 jurisdictions communicate with tribal members about community policing needs and issues better than Public Law 280 police, reservation residents say non-Public Law 280 police communicate about community needs and issues better than Public Law 280 police. Police in non-Public Law 280 jurisdictions have better understanding of tribal cultures than police in Public Law 280 jurisdictions. Public Law 280 police are better at crime investigations than non-Public Law 280 police, but non-Public Law 280 police communicate better, overstep authority less often, and have a better understanding of tribal cultures than Public Law 280 police.

Two results, police understanding of tribal cultures derived from quantitative data and reservation residents' comments on how well police understand tribal cultures, also uphold differences between jurisdictions, but also have significant interaction effects. The main effects for both measures affirm that non-Public Law 280 police have a better understanding of tribal cultures than Public Law 280 police. The main effects and interaction effects are assumed to be additive, and so the hypothesis remains affirmed that jurisdiction, differences in Public Law 280 and non-Public Law 280 situations, have effects on the quality of police services. Public Law

280 jurisdictions cause, or are associated with, less understanding of tribal cultures than non-Public Law 280 jurisdictions. The interaction effects, however, provide additional information, and often the best interpretation of the data. The quantitative measure of how well police understand tribal cultures is compared with group effects (reservation respondents and law enforcement respondents). The significant interaction effect suggests that law enforcement personnel and reservation residents in Public Law 280 jurisdictions disagree about how well police understand tribal cultures, while non-Public Law 280 law enforcement and reservation residents agree about how well police understand tribal cultures. Public Law 280 jurisdictions cause or are associated with significant differences in perception between law enforcement personnel and reservation residents about how well police understand tribal cultures.

The second measure of understanding tribal cultures derives from a subset of reservation residents who comment on police understanding of tribal cultures, and compares both jurisdiction and police department effects (tribal and non-tribal police departments). The interaction effect suggests that reservation residents say that Public Law 280 tribal police have a strong understanding of tribal cultures and Public Law 280 state or county police have little understanding of tribal cultures. At the same time, federal-BIA and tribal police in non-Public Law 280 jurisdictions have similar or comparable understandings of tribal cultures. Reservation residents say there is a significant divide in understanding tribal cultures between Public Law 280 state/county and tribal police, but similarity of understanding between federal-BIA and tribal police in non-Public Law 280 jurisdictions. Public Law 280 jurisdictions cause or are associated with, strong differences in understanding tribal cultures between Public Law 280 state/county and tribal police, while non-Public Law 280 jurisdictions foster greater common understanding of tribal cultures for federal-BIA and tribal police.

Three quantitative measures of quality of police services delivered to tribal communities yield non-significant main effects for jurisdiction, but yield significant interaction effects, suggesting differences in Public Law 280 and non-PL 280 jurisdictions have specific influences on quality of police services. The three quantitative measures of quality of police services are:

- Thoroughness of crime investigation;
- Police communication with tribal members;
- Respect for tribal authorities.

The interaction effects follow a similar pattern in all three instances. The measure of respect for tribal authorities has a significant interaction effect that follows a similar pattern. Non-Public Law 280 reservation residents and law enforcement personnel agree about the quality of police services (respect for tribal authority, communication, thoroughness of investigation), while reservation residents and law enforcement in Public Law 280 jurisdictions disagree about the quality of police services. Public Law 280 jurisdictions foster, or are associated with, strongly diverse views between police and reservation residents about the quality of police services, while

non-Public Law 280 jurisdictions cause, or foster, greater agreement among reservation residents and law enforcement about respect for tribal authorities.

The interaction effects suggest that Public Law 280 reservation residents believe the quality of police services is significantly lower than Public Law 280 law enforcement personnel report, while law enforcement personnel and reservation residents in non-Public Law 280 jurisdictions agree that the quality of police services is about the same. For nine of 10 measures of quality of police services, Public Law 280 jurisdictions receive less quality police services than non-Public Law 280 jurisdictions, or Public Law 280 reservation residents say the quality of police services to Public Law 280 reservation communities is less than reported by Public Law 280 law enforcement personnel. The exception to the pattern of non-Public Law 280 jurisdictions receiving better quality police services than Public Law 280 jurisdictions is the qualitative measure of thoroughness of police investigation, where reservation residents say Public Law 280 police more often provide better crime investigations than non-Public Law 280 police.

One of our alternative hypotheses is the main effect of police department, which is operationalized as tribal police departments and non-tribal police departments — state/county and federal-BIA police. The data for tribal police departments is restricted to reservation residents, so the results reflect only the views of reservation residents in Public Law 280 and non-Public Law 280 jurisdictions. The effects of police departments are analyzed with jurisdiction along four measures of quality of police services delivered to tribal communities. Police department effects for all four measures of quality of police services are significant. Reservation residents say tribal police provide more thorough crime investigations, are less prone to overstep authority, communicate needs and issues better, and have better understanding of tribal cultures than non-tribal police — federal-BIA and state/county police. Reservation residents say tribal police provide better quality police services than federal-BIA and state or county police.

Four measures of quality of police services yield significant interaction effects between police departments and jurisdiction, where quality of services is dependent on both police department and whether the police department is located in a Public Law 280 jurisdiction or not. Our sample of reservation residents say Public Law 280 tribal police have a significantly better understanding of tribal cultures than Public Law 280 state or county police, while non-Public Law 280 federal-BIA police and non-Public Law 280 tribal police have similar levels of understandings of tribal cultures. According to our sample of reservation residents, Public Law 280 tribal police provide significantly more thorough investigations than state/county or non-Public 280 federal-BIA and tribal police. And Public Law 280 police departments provide more thorough investigations than non-PL 280 police departments. Our sample of reservation residents suggests that Public Law 280 state/county police departments are more prone to overstep authority than are Public Law 280 tribal police and non-Public Law 280 tribal and federal-BIA police. And Public Law 280 police departments are more prone to overstep authority than are non-PL 280 police departments. Reservation residents suggest that non-Public

Law 280 police departments have greater communication with tribal communities and are in greater agreement about the quality of communication than are Public Law 280 police departments. According to our reservation-resident sample, Public Law 280 state/county police have significantly less communication with tribal members than Public Law 280 tribal police and non-Public Law 280 police departments. The significant interaction effects of police departments and jurisdiction suggests Public Law 280 has influence on the quality of services provided to tribal communities. Public Law 280 jurisdictions facilitate better police investigations, but more overstepping of authority, less communication, and less understanding of tribal cultures by police.

The third hypothesis investigates the main effect of groups, reservation residents and law enforcement personnel on quality of police service provided to tribal members. Group effects are compared with jurisdiction effects along six measures of quality of police service to tribal communities. The main effects of groups, differences between reservation residents and law enforcement personnel, are significant in all six measures of quality of police service provided to tribal communities. There is a similar pattern for all measures. For our sample, law enforcement personnel rank quality of police services higher than reservation residents on thoroughness of crime investigation, police communication with tribal members (qualitative and quantitative data), police understanding of tribal cultures (quantitative and qualitative data), and respect for tribal authorities.

Group effects, differences between reservation residents and law enforcement personnel, yield significant interaction effects with jurisdiction, Public Law 280 and non-Public Law 280, on four measures of quality of police services provided to tribal members: Public Law 280 reservation residents report significantly lower quality of police services than Public Law 280 law enforcement personnel, while non-Public Law 280 reservation residents and law enforcement report similar levels and agree about the quality of police services. Public Law 280 reservation residents report significantly lower levels of thoroughness of state/county police investigations, police communication with tribal members, police understanding of tribal cultures, and police respect for tribal authorities than Public Law 280 law enforcement personnel. In contrast, non-Public Law 280 law enforcement and reservation residents agree about the quality of police services provided to non-Public Law 280 reservation communities. Law enforcement and reservation residents in Public Law 280 jurisdictions have significantly different understandings on four measures of quality of police services, while law enforcement and reservation residents are in relative agreement or have more common understanding of quality of police services in non-Public Law 280 jurisdictions.

In summary, according to our sample of cases and respondents, differences between Public Law 280 and non-Public Law 280 are significant for main effects and/or interaction effects for all 10 measures of quality of police services to tribal members. Public Law 280 jurisdictions have lower-quality police services than non-Public Law 280 jurisdictions, and/or Public Law 280 reservation residents say they have lower quality services than Public Law 280 law enforcement personnel, while non-Public Law 280 reservation residents and law

enforcement agree on the quality of police services in non-Public Law 280 jurisdictions. In one interaction-effect relation, reservation residents say that Public Law 280 tribal police provide better quality police services to tribal communities than Public Law 280 state or county police, while non-Public Law 280 federal-BIA and tribal police provide about equal quality services. In all scenarios, Public Law 280 reservation residents say that they receive lower quality police services than non-Public Law 280 jurisdictions, or lower quality police services than Public Law 280 law enforcement say, or Public Law 280 state/county police provide lower quality police services than Public Law 280 tribal police. Public Law 280 jurisdictions have a negative effect on the quality of non-tribal police services provided to tribal communities.

In our sample, reservation residents say tribal police provide better quality police services to tribal members than state/county and federal-BIA police. Law enforcement personnel say the quality of police services provided to tribal members is better than reported by reservation residents. Reservation residents disagree with law enforcement personnel about the quality of police services provided to reservation communities. Public Law 280 reservation residents disagree with Public Law 280 law enforcement personnel about the quality of police services in Public Law 280 jurisdictions, while non-Public Law 280 reservation residents and law enforcement personnel agree about the quality of police services provided in non-Public Law 280 jurisdictions. Public Law 280 reservation residents say the quality of police services provided to Public Law 280 jurisdictions by state/county police is lower than non-Public Law 280 jurisdictions and/or lower than reported for Public Law 280 tribal law enforcement.



## CHAPTER 7

### The Fairness of Courts in Indian Country

#### Introduction

In Public Law 280 jurisdictions, criminal prosecutions for Indian country offenses are normally in the hands of county and state courts, while non-Public Law 280 communities have tribal and federal courts to handle such offenses. Public Law 280 tribes have concurrent jurisdiction with counties and states, but many tribal communities do not organize tribal courts unless they have gaming income and/or federal grants for special courts, such as children's courts or drug courts.

State courts are managed according to county and state laws, and Indians prosecuted for alleged crimes based in Indian country are supposed to be subject to the same laws and procedures as other U.S. citizens in the county. Federal and tribal courts in non-Public Law 280 communities also share court powers, but major crimes are largely in the domain of the federal courts.<sup>1</sup> United States Supreme Court decisions, such as *Oliphant v. Suquamish Indian Tribe*<sup>2</sup> limit tribal court jurisdiction over crimes committed by non-Indians on reservations, and the Indian Civil Rights Act<sup>3</sup> constrains the powers that tribal courts have over Indians. The maximum sentences allowable to tribal court for any crime are one year in jail and a \$5,000 fine. Consecutive sentences are possible if a defendant is found guilty of multiple crimes. These restrictions on tribal courts apply to both Public Law 280 and non-Public Law 280 jurisdictions.

Federal courts and federally funded tribal courts in non-Public Law 280 jurisdictions have the advantage of long presence and experience in addressing Indian country crimes. Moreover, non-Public Law 280 courts generally receive greater amounts of federal funding from the Department of the Interior.<sup>4</sup> Tribal communities often try to adjust their ordinances and procedures to meet the expectations of both federal and tribal courts.<sup>5</sup> At the same time, many communities, such as the Navajo Nation, have adopted case law that reflects their own legal and normative traditions. Federal courts have the advantage of longer experience with tribal issues and cases than state and county courts in Public Law 280 jurisdictions. However, federal courts are not well suited to take on the types of criminal cases arising in Indian country that in non-

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<sup>1</sup> Although most authorities now agree that the Major Crimes Act does not bar tribal jurisdiction over the offenses listed in the Act, the limitations on tribal sentencing described below make it difficult for Indian nations to punish the most violent and serious offenders. For a discussion of the effect of the Major Crimes Act on tribal criminal jurisdiction, see Nell Newton et al., Cohen's Handbook of Federal Indian Law § 9.04 (2005 ed.).

<sup>2</sup> 435 U.S. 191 (1978).

<sup>3</sup> 25 U.S.C. sec. 1302(8).

<sup>4</sup> Cross- reference to Funding chapter.

<sup>5</sup> See Carole Goldberg, Individual Rights and Tribal Revitalization, 35 Ariz. St. L.J. 891-901 (2003).

Indian jurisdictions are managed by local and county courts.<sup>6</sup> The relative dearth of tribal courts in Public Law 280 jurisdictions leaves the field to state and county criminal justice systems, and there is less opportunity for application of tribal legal norms or values in the administration of justice.

In this chapter we investigate comparisons of court fairness in Public Law 280 and non-Public Law 280 jurisdictions. When there are sufficient and appropriate data, our main priority is to establish whether there are significant differences between Public Law 280 and non-Public Law 280 court systems in fairness. Otherwise, we seek to establish baseline results for fairness in the administration of justice in Indian country, both for Public Law 280 and non-Public Law 280 regimes.

We asked respondents to express their views or recount their experiences with the aid of several questions about fairness in federal, state/county, and tribal courts. The respondents provide information on whether they think Indian defendants are subject to differences in sentencing, jury selection, judge and jury responses, and speed of case management. The court-fairness data are compared between Public Law 280 and non-Public Law 280 court jurisdictions, and were solicited primarily from court and legal personnel in Public Law 280 and non-Public Law 280 jurisdictions, and to a lesser extent, reservation residents in both jurisdictions. We investigate the treatment of Indian victims and defendants in federal, state/county, and tribal courts to identify differences between Public Law 280 and non-Public Law 280 jurisdictions and to better understand the administration of criminal justice.

### How Expeditiously Are Indian Court Cases Managed?

In the Public Law 280 jurisdictions, reservation residents and criminal justice personnel were asked “Do you think that legal cases involving an Indian victim or defendant move through the county criminal justice system faster, slower, or at the same rate as non-Indian cases? Reservation residents in non-Public Law 280 jurisdictions were asked the same question, but queried about the “federal criminal justice system” rather than about state or county courts.

Among reservation residents in Public Law 280 jurisdictions, 148 gave responses. Twenty-nine (19.6%) respondents said they could not say, or could not answer the question; 29 (19.6%) stated that Indian clients moved through the county courts faster; 25 (16.9%) said slower; and 65 (43.9%) said that Indian victims or defendants move through the county court system at the same rate as non-Indian victims or defendants. There was a relatively high level of uncertainty in the answers: About one-fifth of the reservation respondents did not have enough knowledge to provide an answer. Most Public Law 280 reservation-resident respondents who answered the question thought that Indian victims and defendants moved through the county

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<sup>6</sup> For a general discussion of the legal and policy issues posed by federal criminal jurisdiction over Indian country offenses committed by Indians, see Kevin Washburn, *American Indians, Crime, and the Law*, 104 Mich. L. Rev. 709 (2006).

court system at the same rate as non-Indians. The remaining respondents (36.4%) thought that Indian victims or defendants moved through the county courts either faster or slower than non-Indian victims or defendants. The most frequent reasons given for faster disposition of Indian cases were: discrimination, weak defense, and plea bargaining. Some comments by Public Law 280 reservation residents who say Indian-related cases move through state/county courts faster are:

I know that there is a feeling in the community that the court is harder on Indian defendants. That they are not necessarily as fair as they should be, or, if there are two parallel cases, the white person gets off, but the Indian person gets prosecuted. I know that there is a very strong feeling within the community that once things get to that court atmosphere, that things are not equal.

Oh, yeah. Here? Yeah. They can't wait to get their hands on our juveniles. And you have to realize, that is with the sheriff's office, getting them into the system. The district attorney wants to resolve the issue as quickly as possible.

That is a hard one. I know that most Native American cases are quick to be judged. Just to get that conviction.

Faster ... they move pretty quickly to convict you. And we get more harsher sentences than anybody.

It probably moves faster because they usually end up plea bargaining. That is what they push them for, to plea bargain.

I think if it's an Indian defendant, it will move through quicker ... but just my observation of when we bring cases before the DA involving a non-Indian and a crime committed on the reservation, they are less likely to act, that I have seen. And I have seen cases with assaults with Indians where they are more than happy to act. It's pick and choose.

Those Public Law 280 reservation residents who said that county court cases involving Indian clients or victims moved more slowly than non-Indian cases mentioned most frequently: lack of priority in Indian cases and work overloads for court personnel. Some comments by Public Law 280 reservation residents who say that Indian-related cases move more slowly through state and county courts are:

Probably slower ... anything to do with Indians is either (set aside) or you are in the holding tank longer than Joe Lawyer or Joe Doctor.

I would have to say, on balance, a little bit slower, particularly where there is any intersection of the unique laws that apply to Indians. But this is not all a bad thing, because some hesitancy in a prosecution of somebody based upon a jurisdictional quandary by the county attorney is a sign of progress around here.

They take their sweet, old time, I think. Sometimes it seems they never get resolved ... cops working with folks down here, and nothing happened to them. And if somebody else did it, they would be sent to prison. I don't know, they get preferable treatment sometimes.

Respondent: "I would say slower...because it's not a priority." Interviewer: "But that would be different than just a non-Indian." Respondent: "Yes, because the non-Indian would put pressure on them."

If I was to be thinking about it, I would say slower ... because we are Indian. ... Maybe one of the reasons that Indian people can't get representation is they don't have money for a lawyer. So, if they are defending with the public defender, he probably has a list that long ... and when you go through legal aid, too, you have got to be poor, poor to get a lawyer.

Slower ... yeah, they always think that they can't harness enough evidence or that they cannot solve a crime because tribes are uncooperative. ... That is why they have so many unsolved things, unsolved murders, unsolved whatever.

Forty-five county criminal justice personnel in Public Law 280 jurisdictions answered the questions, and 32 (71.1%) said that Indian victims or defendants move through the county courts at about the same rate as non-Indians. There was much more certainty in the responses of the county criminal justice personnel, since only 3 (6.6%) did not answer the question. Three (6.6%) Public Law 280 criminal justice personnel respondents said that Indian cases move faster than non-Indians cases through the county courts, while 7 (15.6%) say Indian cases move more slowly. A majority of Public Law 280 criminal justice personnel said that Indian victims and defendants move through the county courts at the same rate as non-Indians.

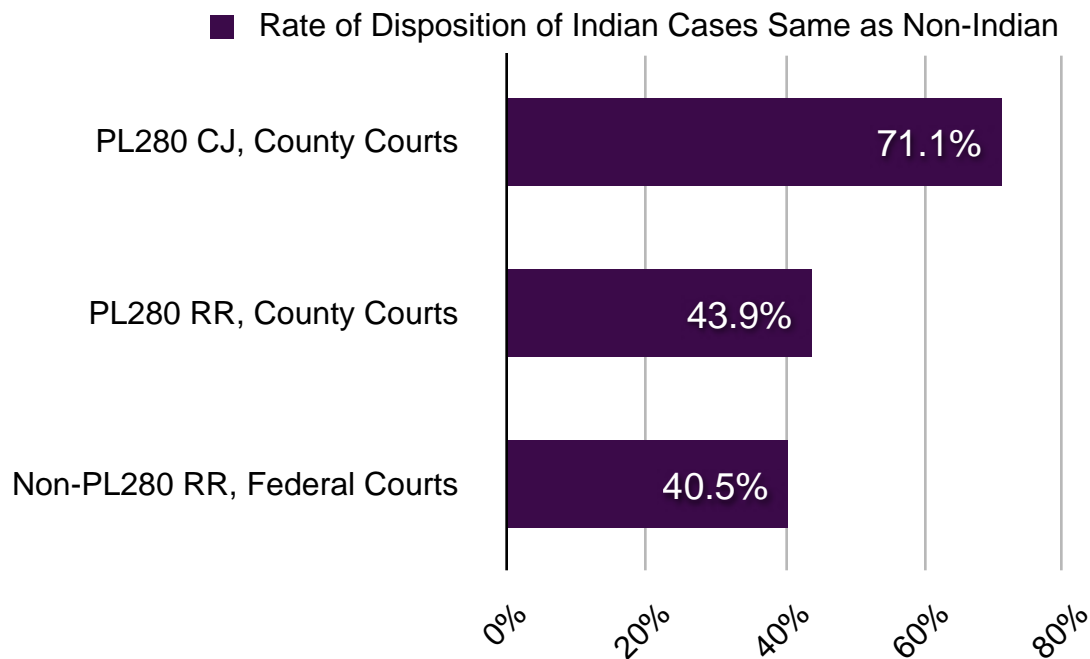
Reservation residents (N=42) in non-Public Law 280 jurisdictions responded to the same question for federal courts. As in the Public Law 280 reservation responses, there is a relatively high rate of uncertainty in the answers since 15 (35.7%) said they could not answer the question, usually not having any direct experience with federal courts. These data suggest that reservation residents in non-Public Law 280 jurisdictions are less familiar with the rate of disposition of Indian cases in federal court than reservation residents in Public Law 280 jurisdictions with the disposition of Indians cases in county court. However, reservation residents in both Public Law 280 and non-Public Law 280 jurisdictions are less well informed about the rate of disposition of Indian court cases than Public Law 280 criminal justice personnel. Four non-Public Law 280

reservation residents (9.5%) said that Indian-related cases are disposed of faster than non-Indian cases, while 17 (40.5%) said the rate of disposition is the same as non-Indian cases, and 16 (38.1%) said that Indian-related cases move through federal courts more slowly than non-Indian cases. Some comments by non-Public Law 280 reservation residents who report that Indian-related cases move through federal courts faster than non-Indian cases are:

I think they go faster ... because they push it. Whoever is in the government ... it's just that they push them, and they go, you know. People can go for five or six years. And ours are heard in a year or so.

Well, it moves faster than non-Indians ... because they want to push them through the system and in jail and move on. Because they don't have the money to stall. ... Yeah, they (the Indian defendant) can't put up a defense, and they try to get the cheapest lawyer they can, and they always lose. Because, you know, some cases where there are non-Indian (defendants), they go through that system for years ... (Indian defendants) get killed pleading guilty ... because they go after minorities more than they do their own.

By comparing the percentages among the three respondent groups, we can further investigate how each group views the speed of disposition of Indian-related courts. Among Public Law 280 reservation residents, 43.9% (N=148) say that cases involving Indian victims and



Percentage Affirming Indian Cases Same

Figure 7.1

defendants move through the county courts at the same rate as non-Indian cases, while 71.1%

(N=45) of Public Law 280 criminal justice personnel say the Indian and non-Indian cases move at the same pace in county courts, and 40.5% of non-Public Law 280 reservation residents (N=42) say that Indian and non-Indian cases move through federal court at the same rate. As shown in Figure 7.1, for our sample of respondents, there are significantly different perceptions in the rate of disposition of Indian court cases (chi square = 11.54, df = 2,  $p < .003$ ). Criminal justice personnel in Public Law 280 jurisdictions believe that the cases of Indian victims or defendants move through the courts at the same rate as non-Indian cases more often than do reservation residents in Public Law 280 jurisdictions. Criminal justice personnel in Public Law 280 jurisdictions have greater certainty about the disposition of Indian cases in county court, and believe that most Indian cases are managed through the criminal justice system at rates similar to non-Indian cases. Public Law 280 reservation residents express less knowledge of the disposition of Indian cases in county court and believe that Indian cases are less likely to be handled at the same rate as non-Indian cases. In Public Law 280 jurisdictions, criminal justice personnel and reservation residents have significantly different perceptions of how quickly Indian cases are disposed of, compared to non-Indian cases. When compared to Public Law 280 criminal justice personnel, reservation residents in Public Law 280 jurisdictions are more uncertain about the disposition of Indian cases, or believe that Indian cases are handled faster or slower than non-Indian cases.

Non-Public Law 280 reservation residents (40.5%) say that Indian cases move through federal courts at the same rate as non-Indians and at a similar pace as reported by Public Law 280 reservation residents: 43.9% in our sample say Indian cases move through county courts at the same rate as non-Indians. Criminal justice personnel in Public Law 280 jurisdictions believe that Indian cases are handled similarly to non-Indian cases in county court more often than non-Public Law 280 reservation residents believe that Indian cases are managed in federal court. Public Law 280 criminal justice personnel more often believe that cases involving Indian victims or defendants are managed at the same rate as non-Indians in county courts than do Public Law 280 reservation residents regarding county courts and non-Public Law 280 reservation residents in federal court. As compared with Public Law 280 criminal justice personnel, reservation residents express less knowledge about rates of disposition of criminal cases and more often believe that Indian court cases are handled at different rates than non-Indian cases.

### Are Judge and Jury Responses Different When Considering Indian Cases?

Respondents were asked: Is there a difference in judge and jury responses if the victim or defendant is Indian? This question was asked of reservation residents and criminal justice personnel respondents in their respective jurisdictions about federal, tribal, and state/county courts. Criminal justice personnel in Public Law 280 jurisdictions self-reported about their own county courts, while there was too little data to analyze from non-Public Law 280 criminal justice personnel reports. Reservation residents in Public Law 280 jurisdictions reported about county courts, while reservation residents in non-Public Law 280 jurisdictions reported their views on differences in judge and jury responses to Indian cases for federal and tribal courts.

The question is designed to identify observations of discrimination among reservation residents and criminal justice personnel on the disposition of Indian cases in Public Law 280 and non-Public Law 280 jurisdictions.

Public Law 280 reservation residents (N=136) say that judge and jury responses to Indian cases in county or state courts are not different from non-Indian cases 23.5% (n=32) of the time. Twenty-nine Public Law 280 reservation residents (21.3%) say that they are not familiar enough with the state/county courts to make a confident answer. Reservation residents have a distinct uncertainty about the processes and actions of judges and jurors in county courts. Seventy-three Public Law 280 reservation residents (53.7%) say that Indian cases in county or state courts are not treated the same as non-Indian cases. Two respondents (1.5%) thought county judges and juries were oversensitive to Indian cases. The reservation-resident respondents generally say that tribal defendants or victims are treated less fairly than non-Indians in state or county courts. Fifty-one Public Law 280 reservation residents (37.5%) say that the county courts are prejudiced against Indian cases. Some comments by Public Law 280 reservation residents who say that Indian defendants or victims are not treated the same by county or state judges and juries include:

Oh yeah, I would say for sure. ... The first few times I appeared in state court (as a female Native attorney), now this is 1988, they thought I was the defendant, when I went in as an Indian woman in court. I had, several times, judges look at me and ask me, "Has your attorney explained your rights to you?" (I would say) "Your Honor, I am the attorney." That happened to me several times.

Yes, but I also would say that I am coming to appreciate, increasingly in this county, that it's economic ... I mean, where your identity actually becomes (your occupation), people see you differently and make different assumptions. So, I think there is racism, but it's also economic.

I don't know about the juries. My perception of the judges is that it's possible that the judges harbor some biases, whether known or unknown.

Yeah. I think the jury is probably going to convict you, and I think the judge will probably be more understanding and maybe convict you and give you less sentence. But I think if you go before a jury in this county, you are really stupid because you are not going to win ... rarely do you see a Native person go to trial with a jury.

I believe so. I believe, in past generations, I have heard of that from my mother and my father, of how heavy-handed a decision was made against someone. As a matter of fact, the full letter of the law came down on them, so to speak.

I probably shouldn't say this, but there have been times I felt that our people have been discriminated against over there. Simply looking at the penalties applied. ... They are not comparable very often. If you see the court results, it always seems like the poor Indian pays a heavier penalty.

I think that, generally, in this community, there is still racism, and I think that would very likely be a factor when you have an all-white jury comprised of local people. And, like I said, the attitude that is here towards Indian people.

Sure. Yes. There is a lot of hidden biases and prejudices that emerge within the sentencing parameters. I am amazed to see that. You see a differential in the amount of time people get for the same offense.

Non-Public Law 280 reservation residents provided 36 responses to whether Indian cases were assessed differently by judges and juries from non-Indian cases in federal courts. Twelve non-Public Law 280 reservation residents (33.3%) say that judges and juries in federal courts assess Indian cases the same as non-Indian cases. However, 23 of non-Public Law 280 reservation respondents (63.9%) say that federal judges and juries assess Indian cases more negatively than non-Indian cases. One respondent (2.8%) said that federal courts are more favorable to Indian cases. Among those commenting on the fairness of Indian cases in federal courts, 12 (33.3%) say that judges and juries are discriminatory toward Indian cases. At least a third of reservation-resident respondents in Public Law 280 (37.5%) and non-Public Law 280 jurisdictions (33.3%) believe their respective county or federal courts are biased against Indian victims or defendants. Some comments by non-Public Law 280 reservation residents who say federal courts assess Indian-related cases more negatively include:

I think race is always a factor in any determination, and stereotypes ... I think a federal court jury is likely to have few, if any, Native Americans on it. And so, I think that obviously is a negative. A jury of your peers depends on how you define peers.

I always think the non-Indian gets a break on the outside.

My impression is yes. And this is simply because serious crime goes through to the federal court system, and then you have it, at least in our case, the federal jury pool is pulled from people from within the state ... the jury pool is going to be predominantly non-Natives. And it's pretty rare, actually, that a Native sits on a federal jury judging an Indian. ... So, I think it's pretty tough not to get a conviction all the time, if you have those attitudes...

Well, because when you watch when cases are in the paper. I read all of them. I read the ones in here every week, who has been speeding, who has been picked up



for drug paraphernalia. I read all of those. And you can see many times a clear pattern. This guy's got an Indian name, this guy doesn't. Same crime, first time, second time, whatever. It's the same. But they get a different sentence.

Yeah ... the ones that go to criminal court are more likely found guilty instead of being put on probation. ... It seems like Indians are found guilty in sentences where white men seem to get off lighter in the same kind of crime.

Criminal justice personnel in Public Law 280 jurisdictions provided 28 comments and 13 (46.4%) say that judges and juries in county or state courts assess Indian cases in the same way as non-Indian cases. One criminal justice worker could not comment, and 14 (50%) say that judges and juries in county or state courts handle Indian cases more negatively than non-Indian cases. Seven criminal justice personnel (25%) say the county courts are prejudiced against Indian cases, while others attribute differences in judge jury assessments of Indian cases to cultural bias (10.7%). In Public Law 280 jurisdictions, about one-third of criminal justice personnel agree with at least one-third of reservation residents that judges and juries are negatively biased toward cases with Indian victims or defendants.

There are enough respondents to compare whether juries and judges in non-Public Law 280 tribal courts handled court cases differently than judges and juries in county or federal courts. Thirty-four non-Public Law 280 reservation residents responded and 22 (64.7%) say that Indians and non-Indians are treated the same in tribal courts. Because of the Oliphant decision restricting tribal court jurisdiction on non-Indians who commit crimes on Indian reservations, comparisons are limited to cases with Indian and non-Indian victims, because only Indian defendants can be prosecuted in tribal court. Nine non-Public Law 280 reservation residents (26.5%) say that Indian cases are managed differently in tribal court from non-Indian cases. The differences were attributed to family ties or lack of jurisdiction over non-Indians in tribal courts. Ten tribal criminal justice personnel in non-Public Law 280 jurisdictions commented on whether judges and juries managed Indian cases differently than non-Indian cases, and 5 (50%) say they are handled the same. Four respondents could not answer, and 1 (10%) said that tribal courts have no jurisdiction over non-Indians, and, therefore, the cases were managed differently.

Comparisons among reservation residents suggest that judges and juries are negatively inclined toward Indian victims or defendants more often in federal non-Public Law 280 courts (N=36, 63.9%) than in state/county courts operating in Public Law 280 jurisdictions (N=136, 53.7%). Criminal justice personnel in Public Law 280 county courts generally agree that Indian cases are negatively evaluated by judges and juries (N=28, 50%). A smaller proportion of non-Public Law 280 reservation residents say that Indian cases are handled differently from non-Indian cases in tribal courts (N=34, 26.5%). The data for tribal criminal justice evaluations of judge and jury responses to Indian cases are too few (N=10), and so we will discard them from statistical analysis.

As represented in Figure 7.2, our sample of reservation residents suggests judges and juries treat Indian cases differently (chi square = 10.98, df = 3, p = .01; Cramer's V = .22). The primary difference among the courts is between non-Public Law 280 reservation residents' evaluations of federal courts when compared to tribal courts. Reservation residents in non-Public Law 280 jurisdictions say that federal court judges and juries are significantly biased in treating Indian cases, while Indian cases are treated more fairly in tribal courts. There are no significant differences among reservation residents between Public Law 280 and non-Public Law 280 non-tribal courts regarding judges and juries assessing Indian-related cases differently. More than 50% of reservation residents and criminal justice personnel agree that Indian cases are handled differently and more prejudicially than non-Indian cases by judges and juries in federal

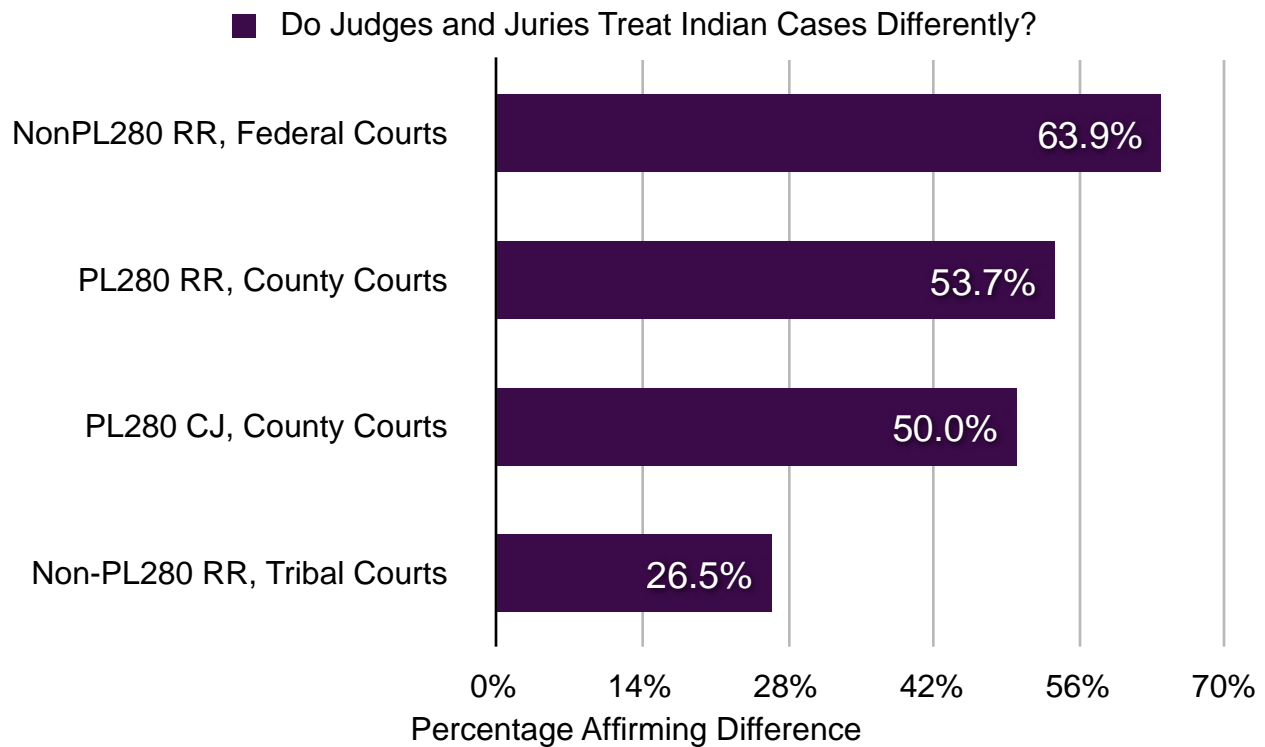


Figure 7.2

and state/county courts. There is general agreement among our respondent reservation residents and criminal justice personnel that judges and juries in federal and state/county courts are not treating Indian cases fairly and equitably as compared with similar non-Indian cases.

### Is Jury Selection Different in Indian Cases?

Respondents were asked: Do you think jury selection is conducted differently in criminal cases if the victim or defendant is an Indian? We want to investigate whether there are perceived differences in jury selection for federal, state/county, and tribal courts. Public Law 280 reservation residents show a considerable amount of uncertainty or unfamiliarity with the jury-selection process. Fifty-six (39.1%) of 143 Public Law 280 reservation-resident respondents say they cannot comment on the jury-selection process for county courts. Forty-eight (33.6%) of Public Law 280 reservation residents say that there are no differences in the patterns of jury

selection when the case involves an Indian victim or defendant. Three more respondents (2.1%) say there is no difference but suggest that the lack of consideration of approving a more culturally sensitive jury panel is itself a problem. Thirty-six Public Law 280 reservation residents (25.2%) say that jury selection is different in county courts when the case involves an Indian victim or defendant. Among the respondents who say jury selection is different, 31 (21.7%) say directly that jury selection is discriminatory against Indian victims and defendants. Some comments by the Public Law 280 reservation residents who say that jury selection is different for Indian-related cases in state/county courts include:

Oh boy, did I learn a lesson, and it happened right before my eyes here. They called in about 100 and some people for a jury trial. Jury trial: I thought I was innocent, I thought my lawyer was going to defend me. But really I felt sold out, to tell you the truth, because of their local connection, because he worked for the county, he even told me that ... I mean, no, we don't have a chance in the system, so, but anyway when it came to selection of the jury ... well out of the first 24, we got six people that were related to law enforcement. ... I said, "Wait a minute, percentages don't add up. How are you gonna get six people out of 24 choices?" ... Yeah, so I felt that the DA and staff, you know, their office staff, got a little system going 'cause he wanted to win against me ...

I mean, yeah, you get a lot of white juries up here. ... We have a relatively low minority population beyond the Indian community and there is a lot of all-white juries up here. And I don't know how that happens because we have a lot of Indians in the jury pool.

I laugh because the last time I got called for jury duty, it was four Indian kids that were charged with a robbery or something like that. And I knew two of them. This is such a small community, in the Indian country part, I mean. They were not close friends of mine, but they were kids that I had seen around before. It's a close-knit community. Everybody knows everybody. And my experience with jury selection is that I never get picked.

Twenty-four criminal justice workers responded to the same question about jury selection for county courts in Public Law 280 jurisdictions. Sixteen Public Law 280 criminal justice workers (66.6%) say that jury selection in county courts is the same for Indian and non-Indian cases. One respondent says that the jury-selection process is the same for non-Indian and Indian cases, but suggests that there should be more consideration for the culture of the Indian victims and defendants. Seven Public Law 280 criminal justice workers (29.2%) say that jury selection is different when a case involves an Indian victim or defendant. Six of those 7 criminal justice respondents (25%) say that the jury selection is discriminatory against the Indian victims and defendants.

Non-Public Law 280 reservation residents responded to whether they perceive differences in jury selection for cases involving Indian victims or defendants for both federal and tribal courts. For federal courts, 54 non-Public Law 280 reservation residents answered the question, and 22 (40.7%) said they could not answer for lack of information or experience. A relatively high percentage of reservation residents do not have experience with or knowledge about the jury-selection procedures in federal courts. A second group of 22 non-Public Law 280 reservation residents (40.7%) say that jury selection in federal courts is the same for cases involving non-Indian or Indian victims or defendants. Fewer non-Public Law 280 reservation residents, 18.5%, say that there is a difference in jury selection when the case involves an Indian victim or defendant. Among those non-Public Law 280 reservation-resident respondents who say that jury selection is different, 7 (12.9%) attribute the differences to discrimination. Comments by non-Public Law 280 reservation residents who say that jury selection is different for Indian-related cases in federal courts include:

Yes, definitely ... I think so because, well, some people might (think) we were always arguing about who were our peers. And I think they pick some. It's that token thing they always do. I think they do that with witnesses, too. They have this token Indian.

I was in federal court in (big city) because I was testifying ... and they picked the jury without even asking them about Indians. So, when we got up there to testify about the 1999 (NAGPRA) act where it's against federal law to sell human remains. And they didn't understand why we were so concerned about human remains. They didn't even understand the spirituality or our culture, or they didn't know who (famous tribal leader) was. That is the federal court system, but I think a lot of times, too, where they picked the jury. A lot of those folks don't even understand what an Indian is. They don't understand that there is an Indian left. ... I think it's a disadvantage to the Indians.

When reservation residents are commenting on tribal courts, tribal criminal justice workers are removed from the analysis, so that tribal criminal justice workers will not comment directly on their own activities. Separate analysis of tribal criminal justice comments on non-Public Law 280 tribal courts did not yield enough data for further investigation. Forty-one non-Public Law 280 reservation residents commented on jury selection in tribal courts. Four respondents (9.7%) say they did not have enough information about tribal court procedures to provide an evaluation of whether jury selection was conducted differently in tribal court when the defendant or victim is an Indian. Twenty-eight non-Public Law 280 reservation residents (68.3%) say that jury selection in tribal courts is not conducted differently when the defendant or victim is an Indian. Seven respondents (17%) say that non-Public Law 280 tribal courts select jury panels differently, primarily because of family-ties issues. Two respondents (4.9%) say that Indians are more understanding in Indian-related cases and believe that they are an advantage for creating a jury panel.

Among reservation residents in Public Law 280 jurisdictions, 25.2% (N=143) say that jury selection is different in county courts when the case involves an Indian victim or defendant. The same question among Public Law 280 criminal justice workers yields 29.2% (N=24) who say that juries are selected differently for Indian cases in county courts. Among non-Public Law 280 reservation residents commenting on jury selection in federal courts, 18.5% (N=54) say that Indian cases are subject to disadvantageous jury selections. Commenting on tribal courts, 17% (N=41) of non-Public Law 280 reservation residents say that jury selection is different for Indian victims and defendants in tribal courts. Comparing the proportions of respondents yields a nonsignificant statistical result (chi square = 2.33, df = 3, p=.51). The views of Public Law 280 and non-Public Law 280 reservation-resident respondents about jury selection in cases involving an Indian victim or defendant are similar. Seventeen to 25% of respondents say that jury selections in federal, county, and tribal courts are disadvantageous to Indian victims or defendants.

### Do Courts Give Different Sentences in Indian-related Cases?

Respondents were asked: Do you think there is a difference in sentencing when the victim or defendant is Indian? Sometimes the question was contextualized to refer to federal, state/county, or tribal court depending on the situation of the respondent. Public Law 280 reservation residents (N=136) commented on differences in sentencing in county or state courts. Twenty-six Public Law 280 reservation-resident respondents (19.1%) say they don't have enough knowledge or experience to answer the questions. Thirty-four Public Law 280 reservation residents (25%) say that sentencing in cases involving Indian victims or defendants in state or county courts is the same as in non-Indian cases. Most Public Law 280 reservation residents (71, or 52.2%) say cases with Indian victims or defendants are sentenced differently, and more disadvantageously, than cases with non-Indian victims or defendants. This latter group suggests that cases with Indian victims or defendants are subject to different sentencing because of alcohol, poverty, or lack of influential contacts, while 62 (45.6%) say that sentencing is biased against Indian defendants or victims. Public Law 280 reservation residents say Indian defendants receive harsher sentences than non-Indians and non-Indian defendants receive lighter sentences in cases where the victim is Indian. Another 5 Public Law 280 reservation residents (3.7%) say that sentencing in Indian cases is different because Indians receive lighter sentences or alternative sentencing. Comments from Public Law 280 reservation residents who say that sentencing practices in state/county courts are disadvantageous to Indian victims or defendants include:

Yeah ... well, I would say because of, if you are poor. The reason I say that if you are poor, I refer to O.J. Simpson. If you got money, probably (an Indian defendant) couldn't get out of it. But you ought to put him on probation (since) that is first offender, first offense.

A difference in sentencing because, if you can't afford a lawyer, you are going to go away. You are going to get that 90 days instead of 60, and not get that probation.

Yes ... one case, there was a protest outside because a person was shot, and they were not really prosecuted for that, the person who shot this Indian. So inside in one courtroom, the judge was sentencing the maximum on each Indian's case, and that was not fair to those people.

I believe that is the case. ... I thought that they got disparate sentences. ... I will say that it's one of the issues most frequently spoken about by tribal members, and, therefore, I am getting the impression that they think there is disparate sentencing. ... I hear the juvenile sentencing is really disparate.

Yeah. There is a dual justice system.

I think our community at large feels that is the case ... I think that they just feel they are treated differently.

Yeah. I don't know if it's longer or anything, but I know that if ... it's a Native killing another Native, it's nothing. You go to jail for, what, eight years, and you are out. But if it was a Native killing a non-Native, then you are looking at life or whatever. So, I think there is a difference.

Well, yeah, in this community they will say if you are from the reservation, you are going to get it. If it's a serious crime, you don't want to be in county court because you are already guilty.

Public Law 280 criminal justice personnel (N=25) responded to the same questions whether they observe that cases with Indian victims or defendants result in different sentencing patterns than cases with non-Indian victims or defendants in state or county courts. Two Public Law 280 criminal justice workers (8%) say they could not answer the question, while 15 (60%) say that sentencing in cases involving Indian victims or defendants is not different from sentencing in cases with non-Indian victims or defendants in state or county courts. Five Public Law 280 criminal justice workers (20%) say that sentencing in cases involving Indian victims or defendants is different and disadvantageous against Indian victims or defendants. Also, 3 Public Law 280 criminal justice workers (12%) observe that sentencing for cases involving Indian defendants is different and involves alternative sentencing methods. Public Law 280 criminal justice workers say that sentencing in cases involving Indian victims or defendants is fairer in state and county courts than reported by Public Law 280 reservation residents.

Non-Public Law 280 reservation residents (N=48) commented on whether sentencing was different for cases involving Indian victims or defendants in federal courts. Ten non-Public Law 280 reservation residents (20.8%) say they did not have enough information or experience to answer the question. Fifteen non-Public Law 280 reservation residents (31.3%) say sentencing is not different for cases involving Indian victims or defendants in federal courts. Twenty non-Public Law 280 reservation residents (41.7%) say, in cases involving Indian victims or defendants, Indians experience disadvantageous sentencing in federal courts, where defendants in cases with Indian victims receive more lenient sentencing, and Indian defendants receive harsher sentencing. Three respondents (6.3%) say that Indians receive more lenient sentencing than non-Indian defendants. Comments by non-Public Law 280 reservation residents who say that federal courts are disadvantageously sentencing in Indian-related cases include:

That is just the way it's. And I will tell you, they even admit why. I went to a forum once a few years back in Montana. And we had federal judges, prosecutors, we had public defenders, we had lawyers and social workers and everybody that works in Indian country. And the federal judge admitted that he gave longer sentences to Indian clients. And it took longer to get paroled. His reason for doing that was because they had to go back to the same environment that they came from. So they are just going to end up back here anyway. So we will just make it longer, it will take longer to get probation. But I still don't understand his thinking. Because does that go good for non-Indian as well as Indian? I don't think so. But he said that in Indian country, he specifically said that and admitted it. ... Because that is totally unfair. And not fair in equal justice.

Oh yeah ... as I look through those reports I get, you will see what the sentences are, and you will see how Indian people are doing the years, and you will see the white people doing the 18 months or doing the nine months or things like that. That is an issue ...

Yeah. We had another young man. He was younger than my boy. That happened to him. It's hard. It's the hardest thing for any parent to go through. But he was Indian, and they categorize them the same as coloreds. It's all bad people, like the Hispanics and that. I don't know what happens. ... You never know what is going to happen. But they do. I feel, especially a white judge, they really look at things differently.

Yeah, I really do. A friend of mine, her nephew was sentenced because he was harassing couples up in (nearby town). Jumping out of the car and demanding money from them and blah blah blah. Whether he had a weapon, I don't know. But the poor boy, to me he never hurt any of them, but they were white, and he got 45 years. My friend the following week, she said, "Did you know this white boy in (nearby town). What did he do? It didn't seem half as bad as what her

nephew did. It was worse than what her nephew did. She is thinking about going to civil liberties or something ... I think the other boy had a weapon, where her nephew never had a weapon. But (the white boy) beat up this couple, something to that fact. So no, I don't think none of it's fair. I really don't.

To analyze non-Public Law 280-reservation residents' views on sentencing in tribal courts, tribal criminal justice workers were separated from the rest of the reservation-resident respondent data. The separation did not result in enough data to analyze the responses of tribal criminal justice workers to the sentencing question. However, 31 reservation residents, less the criminal justice workers, gave comments on sentencing practices in non-Public Law 280 tribal courts. Three respondents (9.7%) say they did not have enough experience to answer the question. Sixteen non-Public Law 280 reservation residents (51.6%) say that sentencing in cases involving Indian victims or defendants is not different in tribal courts. Seven respondents (22.6%) say that sentencing in tribal courts is different owing to family and political relations, or that adults get harsher sentences than juveniles. Five non-Public Law 280 reservation residents (16.1%) say that sentencing for Indian cases is more lenient, sentencing alternatives are available, or federal limitations constrain sentencing.

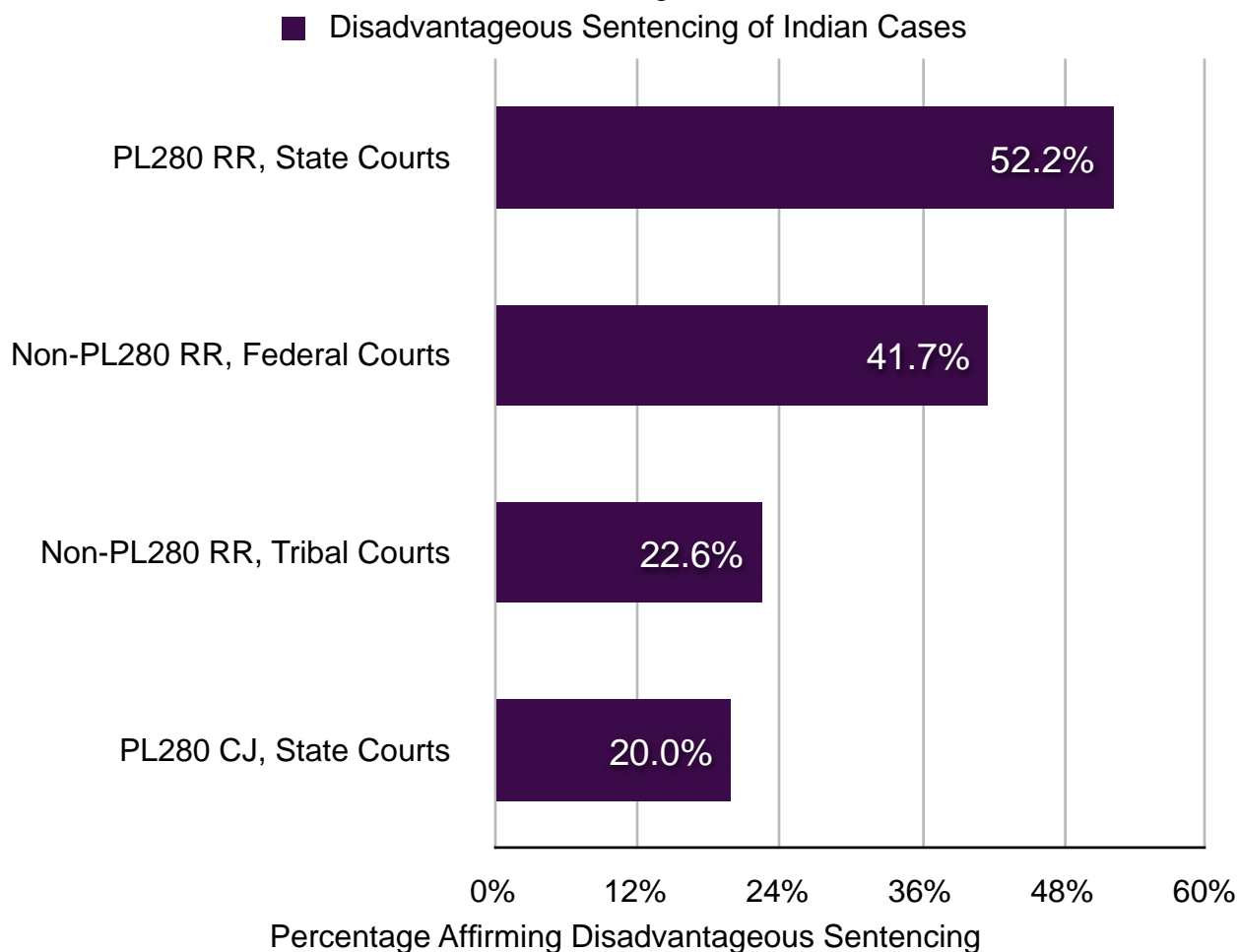


Figure 7.3



Comparing respondent comments on the frequency of disadvantageous sentencing in court cases involving Indian victims or defendants yields: non-Public Law 280 reservation-resident comments on tribal courts (22.6%, N=31), non-Public Law 280 reservation-resident comments on federal courts (41.7%, N=48), Public Law 280 criminal justice personnel comments on state/county courts (20%, N=25), and Public Law 280 reservation resident comments on state courts (52.2%, N=136). As shown in Figure 7.3, our sample of reservation residents and criminal justice respondents perceives disadvantageous sentencing of Indian cases as varying according to court ( $\chi^2 = 15.41$ ,  $df = 3$ ,  $p < .002$ ; Cramer's  $V = .25$ ). In Public Law 280 jurisdictions, reservation residents say that state/county courts give more disadvantageous sentences to cases with Indian defendants and victims than Public Law 280 criminal justice personnel. Public Law 280 reservation residents and criminal justice personnel disagree significantly over the fairness of state/county court sentences in cases involving Indian victims or defendants. Higher proportions of Public Law 280 reservation residents say that state/county court sentencing in cases involving Indians is unfair than reservation residents in non-Public Law 280 jurisdictions say about tribal courts. Non-Public Law 280 reservation residents believe that sentences given in tribal courts are fairer than sentences reported by Public Law 280 reservation residents in state/county courts. Reservation residents in Public Law 280 and non-Public Law 280 jurisdictions report that disadvantageous sentencing in cases with Indian victims or defendants is about the same for federal and state/county courts. State/county courts, however, are reported at 10% higher rates of disadvantageous sentencing than federal courts. The proportion of reports of disadvantageous sentencing are nearly twice as high for federal courts when compared to tribal courts. Our sample suggests Public Law 280 state/county courts provide more disadvantageous sentencing than non-Public Law 280 federal courts. Reservation residents say that disadvantageous sentencing patterns are similar for federal and state/county courts. Public Law 280 criminal justice personnel and reservation residents significantly disagree about whether state/county court sentencing is disadvantageous for Indian defendants and victims. Most Public Law 280 reservation residents in our sample say Indian defendants and crime victims do not get fair sentencing in state/county courts. According to these data, Indian victims or defendants do not find fair sentencing practices in either federal or state/county courts, according to 42% to 52% reservation residents.

### Sentencing Limits

The Indian Civil Rights Act places sentencing limits on tribal courts in both Public Law 280 and non-Public Law 280 jurisdictions. Tribal courts can provide maximum criminal sentences of \$5,000 and up to one year in jail for a single offense. Consecutive sentences are possible for multiple convictions in tribal court. The Major Crimes Act in non-Public Law 280 jurisdictions authorizes the FBI and federal courts to investigate major crimes such as murder, rape, and kidnapping when committed by an Indian. If the federal court declines to prosecute a major crime, then the crime can be tried in tribal court, but with the sentencing limitations provided by Congress. Similarly in Public Law 280 jurisdictions, tribal governments retain concurrent criminal jurisdiction with state and county governments, and, by agreement, can manage criminal cases, but are restricted to the usual sentencing limitations. Public Law 280

tribal governments, often without tribal courts and with sentencing limitations, may defer major crimes to state and county courts. Respondents were asked: Do you think the limits on sentencing from the Indian Civil Rights Act have any impact on the way cases are allocated between the county and the tribe? In non-Public Law 280 jurisdictions, respondents were asked the analogous question: To what extent, if any, does the Indian Civil Rights Act sentencing limits affect your need to work with federal courts?

There were 52 total comments to the sentencing-limits question and 10 (19.2%) said that they could not answer the question. Although 31 Public Law 280 reservation residents responded, only 21 responses were received from all other groups, too few for statistical comparison along our usual analysis between Public Law 280 and non-Public Law 280 subgroups. Among Public Law 280 respondents, 8 reservation residents (25.8%) say that sentencing limits affect the way cases are allocated between state/county and tribal courts. Some comments include:

All the time ... well, it's a problem. That is all I can tell you ... bootlegging. As far as drug dealing, I don't think there is any. They usually send that to the state, but as far as bootlegging goes, that is something that we try to take care of. You give them a \$5000 fine, if you know what they make, and that is (the cost of doing business). ... One thing we have had a hard time with, well, we contacted a lot of people ... they said, "No, it's too small. We don't to want come in there." And then I think people were even turned in to the IRS (and Bureau of Alcohol, Tobacco and Fire Arms) ... and nothing was ever done about it because they were too small. Peanuts, you know.

Yes. (Grand theft and burglary), drug-related issues, because the tribal court only sentences a certain amount of time in just a federal holding facility where the system can do the penitentiary prison sentence. Actually it's done by adopting of the law that the tribe is only limited to what it can sentence to, I believe.

See, that is the thing again, that needs to be changed, I think. I think the tribe should have the liberty to be able to give a perpetrator more time in jail, a bigger fine. Because a lot of times there are all the things that are going to cause people to change. Not so much spending time in jail. Some people like it, but I mean, when you start hitting people in the pocket book, when they have to start paying fines, and it becomes a real problem in their life, a lot of times they will change around.

Nine Public Law 280 criminal justice workers responded and one (11.1%) affirmed that Indian Civil Rights Act sentencing limitations affect the way cases are disposed of as between county and tribal courts. Two Public Law 280 law enforcement officers also responded and none saw any effect from tribal court sentencing limitations. Considering our limited data, the trend

suggests that few law enforcement and criminal justice workers say that tribal sentencing limitations have any effect on the disposition of cases between tribal and state/county courts. Proportionately more Public Law 280 reservation residents thought that tribal court limitations affected the need to work with state and county courts than did county law enforcement and criminal justice personnel.

Among non-Public Law 280 respondents, 8 reservation residents and 2 criminal justice workers responded to the questions. Five reservation residents (65.2%) and both criminal justice workers (100%) affirmed that tribal sentencing limits affect tribal courts' need to work with federal courts. Among the 8 non-Public Law 280 reservation-resident respondents, 77.8% thought tribal sentencing limits significantly affected the disposition of cases as between tribal and federal courts.

The data are limited and, therefore, can only be considered a possible trend, but the respondents in non-Public Law 280 jurisdictions are more aware of issues relating to limitations imposed on tribal courts and believe the effect is more significant than do Public Law 280 respondents. That finding makes sense in view of the lower frequency of tribal courts in Public Law 280 jurisdictions. A higher proportion of reservation residents in Public Law 280 jurisdictions thought that limitations on tribal court sentencing had greater effect in directing prosecution of cases to state/county courts than did state/county law enforcement and criminal justice workers. Public Law 280 reservation-resident trends were much lower than non-Public Law 280 response rates. Given our small numbers, the limited data suggest the following trend: There is greater and clearer understanding of the implications of tribal court sentencing limitations to require tribal courts to yield cases to federal courts in non-Public Law 280 jurisdictions, and less understanding about the limitations of tribal court sentencing among reservation residents, criminal justice workers, and police in Public Law 280 jurisdictions.

#### Are There Pretrial or Post-trial Diversion Programs Between Courts?

Courts can decide whether they are the most appropriate venue to try a case. Some cases may be better tried and adjudicated in tribal court, while others may be better tried in state/county or federal court. Here, we ask whether tribal courts have diversion agreements with federal or state/county courts. Depending on the facts and history of a case, courts may decide that tribal court might be a better venue, not necessarily for procedure or legal requirements, but because tribal court may be more suited to provide rehabilitation or understand the circumstances of the cases. Here we ask respondents to comment on their knowledge and understanding about programs or agreements between courts where defendants may be assigned to another court where rehabilitation or justice may be better served. The question asked of Public Law 280 respondents asked is: Are there any pre or post-tribal diversion programs that send cases from state/county court to tribal court? An analogous question was asked of non-Public Law 280 respondents, but there are too few replies for analysis. The respondents are not necessarily

providing data on the official agreements or procedures of their courts, but rather provide their own understandings of how and when courts may pass cases to tribal courts, or vice versa.

Respondents' reports are given primarily by Public Law 280 reservation residents (N=60) and criminal justice workers (N=22). Among Public Law 280 reservation residents, 20 (33.3%) say they are aware of court diversion programs between state/county and tribal courts. Reservation residents comment that pretrial diversion programs (28.3%) are more frequent than post-trial diversion transfers (5%). Five (22.7%) of Public Law 280 criminal justice workers say they know about court-diversion programs. The difference in knowledge about court diversion programs is not statistically significant ( $F = .84$ ,  $df = 1, 80$ ,  $N=82$ ,  $p=.36$ ). Although the trend indicates that reservation residents in Public Law 280 jurisdictions are somewhat more aware of the availability of diversion programs than criminal justice workers in state/county courts, Public Law 280 reservation residents and criminal justice respondents report about the same frequency of awareness of court-diversion programs.

### Does Double Jeopardy Occur Between Tribal and Other Courts?

Double jeopardy occurs when a defendant stands trial twice for the same offense. The fifth and 14th amendments to the United States Constitution protect defendants in state/county and federal courts against double jeopardy. Multiple prosecutions by separate jurisdictions for the same crime are not counted as double jeopardy under the United States Constitution.<sup>7</sup> Thus, tribal and federal prosecutions may both continue, either simultaneously or in sequence, for the same offense within non-PL 280 jurisdictions.<sup>8</sup> However, some states, including more than half of the states exercising jurisdiction under PL 280, have their own constitutional or statutory protections against double jeopardy that apply even when the earlier prosecution was by a separate government. Many states that have jurisdiction under PL 280 or like statutes have determined that these protections extend to situations where the earlier prosecution was in tribal court.<sup>9</sup> Thus, if a tribe in one of these Public Law 280 jurisdictions entertains criminal prosecutions, a subsequent state/county prosecution may violate state double-jeopardy prohibitions.

When a double jeopardy situation arises, the jurisdictions that have a claim to try a defendant for a crime may negotiate to establish which jurisdiction has precedence or authority to conduct the trial. Double jeopardy cases may arise when tribal and state/county court personnel are not communicating, or when actions in tribal courts are not honored or respected by state/county courts. We asked respondents: Do you ever encounter double jeopardy issues?

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<sup>7</sup> *Bartkus v. Illinois*, 359 U.S. 121 (1959); *Abbate v. United States*, 359 U.S. 187 (1959).

<sup>8</sup> *United States v. Wheeler*, 435 U.S. 313 (1978).

<sup>9</sup> See Nell Newton et al., *Cohen's Handbook of Federal Indian Law* § 6.04[3][c] (2005 ed.).

Forty-four Public Law 280 reservation residents responded to the question and 8 (18.2%) said they occasionally met with double jeopardy cases. Thirteen Public Law 280 criminal justice workers commented, and 4 (28.6%) said they occasionally come across double jeopardy issues. Some comments are:

Oh yeah, the arguments made, quite a bit. I think it's pretty much a lost cause. The argument is made more in the equity standpoint, though, than any kind of hope of it being a successful, natural dismissal of the case or charge. Once the defense attorney finds out that there is concurrent jurisdiction, much as there would be in a federal court, and once you look at case laws, then it kind of shuts down that argument. But the argument can still rest in terms of disposition of the case where the defense attorney argues, "Your Honor, my client has already paid \$400 in tribal court, now you are asking him to pay another \$800 in this court." It would seem only fair for him to get some recognition of the fact that he paid \$400 in another court. I think that it's a fairly weighty argument, but it doesn't rise to level of double jeopardy ... and I don't really know what that answer is, but it has been months and months, if not a year, since I have seen any argument about double jeopardy.

Yes, and I have used that before actually (in a) state double jeopardy case. I was getting examples of what various tribal codes had codified as crimes and what their penalties were available, as compared to ours. So, it explained that if they did find that double jeopardy applied, we could potentially have aggravated first-degree murder as being (given a sentence in tribal court of) one year and \$5000.

Three Public Law 280 law enforcement officers commented and 1 (33.3%) said s/he had occasionally met with double jeopardy situations. Again, our data set is not large enough to make reliable statements or interpretations. The data collected suggest a trend in Public Law 280 jurisdictions, county law enforcement and criminal justice (31.3%) are somewhat more conscious of double jeopardy situations than are Public Law 280 reservation residents (18.2%).

For non-Public Law 280 jurisdictions the data is still fewer and, hence, less reliable. Seven non-Public Law 280 reservation residents responded, and 4 (57.1%) say they met with double jeopardy incidents in tribal and federal courts. Three non-Public Law 280 criminal justice workers commented, and none (0%) say they encountered double jeopardy cases in federal courts. These data suggest a trend of greater concern over double jeopardy issues among non-Public Law 280 reservation residents than Public Law 280 respondents and non-Public Law 280 criminal justice respondents, but the data are too few to make reliable interpretations. Given that double jeopardy is not a legal problem as between tribal and federal prosecutions, it's understandable that non-PL 280 respondents would be less concerned about it.

## Summary and Conclusions

One of our main research goals is to make comparisons between Public Law 280 and non-Public Law 280 jurisdictions, and here we have data comparing several measures of judicial fairness, such as speed of case processing, jury selection, sentencing patterns, and the effects of sentencing limits. Most of the direct comparisons on fairness issues come from Public Law 280 and non-Public Law 280 reservation residents; our data only rarely support direct comparisons between criminal justice personnel in Public Law 280 and non-Public Law 280 jurisdictions. This resulted from extreme difficulty of obtaining data from United States attorneys. The data we have, however, give us information and results about differences in how court fairness is viewed by Public Law 280 and non-Public Law 280 reservation residents, and Public Law 280 criminal justice workers.

Reservation residents in Public Law 280 and non-Public Law 280 jurisdictions do not express significantly different views on fairness measures between Public Law 280 and non-Public Law 280 jurisdictions. Reservation residents say that state/county and federal courts are about equally fair on a variety of measures, such as rate of disposition of cases, judge and jury responses, jury selection, and disadvantageous sentencing. Differences in the administration and organization of courts in Public Law 280 and non-Public Law 280 jurisdictions do not lead to different perception of unfairness in state/county or federal courts, according to reservation residents.

The reservation-resident respondents, however, establish a series of markers for understanding how well justice is administered in Indian country. Generally, Public Law 280 and non-Public Law 280 reservation residents agree that justice is not fairly administered in Indian country. Only 40.5% of Public Law 280 reservation residents and 43.9% of non-Public Law 280 reservation residents say that the cases of Indian victims or defendants are handled at the same speed as non-Indian cases. Most Public Law 280 (53.7%) and non-Public Law 280 reservation residents (63.9%) say that judges and juries respond differently to Indian-related cases. Between 17% and 25% of reservation-resident respondents believe that jury selection is disadvantageous for Indian victims and defendants. Public Law 280 reservation residents (52.2%) and 41.7% of non-Public Law 280 reservation residents say that courts give disadvantageous sentences in cases involving Indian defendants or victims. Reservation residents in both Public Law 280 and non-Public Law 280 jurisdictions have similar perceptions of the administration of justice. Jurisdictional differences between Public Law 280 and non-Public Law 280 court systems do not create differences in the experience or perception of court fairness by reservation residents; respondents agree that there are significant and comparable degrees of unfairness in both jurisdictions. Since we do not have comparative data for criminal justice workers in Public Law 280 and non-Public Law 280 jurisdictions, we cannot make a comprehensive assessment of the effects of jurisdiction on the several fairness measures. So our results are tentative.

Public Law 280 criminal justice workers and reservation residents make several comparative evaluations of court fairness in federal, state/county, and tribal courts. In Public Law 280 jurisdictions, criminal justice personnel and reservation residents disagree over the speed with which Indian-related cases are disposed, and over whether cases with Indian defendants or victims receive disadvantageous sentencing more so than non-Indian cases in state/county courts. Public Law 280 criminal justice personnel (71.1%) say Indian-related court cases move through the courts at the same rate as non-Indian cases, while fewer Public Law 280 reservation residents (43.9%) say the same. In Public Law 280 jurisdictions, a significantly higher proportion of criminal justice personnel say that Indian-related cases are managed at the same rate as non-Indian cases than do reservation residents. In addition, fewer Public Law 280 criminal justice personnel (20.9%) believe that Indian victims or defendants receive disadvantageous sentencing than do Public Law 280 reservation residents (52.2%). Public Law 280 reservation residents believe that Indians receive more disadvantageous sentencing in state/county courts than criminal justice workers say. Public Law 280 reservation residents and criminal justice personnel have significantly different understandings, and disagree over the speed and sentencing of Indian cases. Public Law 280 reservation residents believe that Indian defendants and victims in state/county courts are managed differently, and their cases are sentenced differently than non-Indian cases.

Similar proportions of Public Law 280 reservation residents and criminal justice workers agree that judges and juries in state/county courts treat Indian cases differently than non-Indian cases. However, most Public Law 280 criminal justice workers (50.0%) and reservation residents (53.7%) agree that Indian-related cases are handled differently and more negatively than non-Indian cases. Criminal justice personnel and reservation residents in Public Law 280 jurisdictions show similar awareness of court-diversion programs (22.7% to 33%) and double jeopardy cases (18% to 33%).

Although Public Law 280 and non-Public Law 280 reservation residents report that state/county and federal courts are similar for fairness, the disagreements among Public Law 280 reservation residents and criminal justice personnel over sentencing and speed of disposition of cases suggest a significant difference in understanding and interpretation of court fairness in Public Law 280 jurisdictions. There is agreement among Public Law 280 criminal justice workers and reservation residents that judges and juries treat Indian cases differently than non-Indian cases, and similar awareness of court-diversion programs and double jeopardy cases. However, the significant differences over the disposition rates of Indian cases and sentencing suggest that Public Law 280 criminal justice workers believe that state/county courts are fairer than is believed by reservation residents. Most Public Law 280 criminal justice workers and reservation residents agree that judges and juries in state/county courts give disadvantageous treatment to Indian defendants and victims. Half of Public Law 280 criminal justice respondents agree with slightly over half of reservation residents that judges and juries are treating Indian-related cases differently. Most Public Law 280 reservation residents view the state/county court system as relatively unfair in case speed, judge and jury responses, and sentencing, while the trend for Public Law 280 criminal justice personnel is to believe that the state/county courts are

fair for case speed and sentencing, and unfair for judge and jury responses when considering Indian-related cases.

For non-Public Law 280 jurisdictions, there is less data, but reservation residents say that judges and juries in federal courts are less fair than in tribal courts, although sentencing patterns are not significantly different between tribal and federal courts. These data are too few to make a reliable statement, but the trends are in the direction that non-Public Law 280 reservation residents tend to believe that federal courts are less fair than tribal courts.

There is general agreement among Public Law 280 reservation residents, non-Public Law 280 reservation residents, and Public Law 280 criminal justice respondents that judges and juries respond differently and unfairly to Indian-related cases. Most Public Law 280 reservation and non-Public Law 280 reservation residents say that Indian cases work through the courts at different rates than non-Indian cases, while most Public Law 280 criminal justice workers disagree, saying that Indian cases go through state/county courts at about the same speed as non-Indian cases. Public Law 280 reservation residents and non-Public Law 280 reservation residents are in statistical agreement about disadvantageous sentencing in Indian-related cases, but most Public Law 280 reservation residents say that sentencing in state/county courts is disadvantageous, while less than half of non-Public Law 280 reservation residents say that sentencing in federal courts is disadvantageous for Indian defendants or victims. Public Law 280 criminal justice workers significantly disagree with Public Law 280 reservation residents about the degree of disadvantageous sentencing for Indian defendants and victims, but agree with non-Public Law 280 reservation residents. A minority of Public Law 280 reservation residents agree with non-Public Law 280 reservation residents that jury selection is unfair for Indian-related cases.

In three out of four measures of fairness, most Public Law 280 reservation residents say that they are experiencing unfairness for the rate of case dispositions, sentencing, and judge and jury responses. Public Law 280 criminal justice workers agree that judges and juries are responding negatively to Indian cases, but disagree that the speed of Indian-related cases and sentencing are different from non-Indian cases. Most non-Public Law 280 reservation residents agree with Public Law 280 reservation residents that the disposition of Indian-related cases is different from non-Indian cases, and that judges and juries respond negatively to Indian-related cases; but a minority say that sentencing and jury selection are unfair.



## CHAPTER 8

### Quality of Court Services

In this chapter we investigate several measures of quality of services by court and legal personnel serving tribal communities. The study has better data for and concentrates on communication, understanding tribal cultures, and overall quality or effectiveness of services. In addition, we ask some questions about how to improve cultural understanding, communication, and the delivery of court services. The focus of the analysis is on determining jurisdiction effects: Are there differences between Public Law 280 and non-Public Law 280 jurisdictions. The research design also features analysis of group effects, differences between criminal justice personnel and reservation residents, which serves as an alternative hypothesis. There is a mix of quantitative and qualitative questions, but the main analyses are derived from the qualitative questions, which are coded inductively into groups or types of responses that lend themselves to quantification and statistical analysis. In addition, the qualitative answers provide supplemental information about how to interpret the quantitative and statistical results.

The respondent groups are reservation residents and criminal justice personnel. Most respondents work with crime-related issues and are generally well informed about crime and court issues on Indian reservations. Reservation-resident respondents are individuals who are employed on the reservation, an Indian person living on the reservation, or a tribal member. Most reservation residents are tribal members on the reservation in question, but non-Indian tribal employees and non-tribal member Indian employees and residents are also part of the reservation-resident sample. Reservation residents are chosen because they are community elders or leaders, or their work is engaged with police, court, social services, or related crime issues. Law enforcement personnel generally are police officers and related personnel who work for county or BIA police departments. Tribal police officers who work for and are funded by a tribal government are classified as reservation residents in the Public Law 280 jurisdictions, while police officers who work for the BIA or federal government, as well as tribal police in non-Public Law 280 jurisdictions, are classified as law enforcement personnel. Criminal justice personnel are judges, attorneys, public defenders, probation officers and other related personnel who work as county, federal, or in the non-Public Law 280 jurisdictions, tribal employees or who work in the courts, such as legal advocates, public defenders, and attorneys. Tribal judges and tribal court personnel who work for the tribal government in Public Law 280 jurisdictions are classified as reservation residents, and reservation court and legal personnel who work for the tribe, the BIA or the federal government in non-Public Law 280 jurisdictions are classified as criminal justice personnel.

The key to the distinction between reservation residents and criminal justice personnel is who has responsibility for criminal jurisdiction. In the Public Law 280 jurisdictions, where tribal police and court personnel exist, they are treated as reservation residents because they are not generally exercising criminal jurisdiction. They may be enforcing state/county law under cross-deputization agreements or enforcing civil laws. However, where questions ask reservation

residents in Public Law 280 jurisdictions to evaluate tribal police and courts, the respondents in those categories are excluded from the reservation-resident sample. In the non-Public Law 280 jurisdictions, in contrast, there are crimes over which the tribe has exclusive jurisdiction, and, therefore, where tribal police and courts exist, they are generally exercising criminal jurisdiction. Thus, in these jurisdictions the tribal police are treated as law enforcement personnel, and the tribal court and related staff are treated as criminal justice personnel.

Our assumption in constructing the reservation-resident category is that reservation residents will have different work, community, and government experiences than criminal justice personnel, and they may express these views and orientations with reference to their understandings and experiences with courts. The groupings of reservation residents and criminal justice personnel are not based on racial or tribal membership. Many non-Indians work for tribal governments and they are classified as reservation residents, except where they are administering justice in non-Public Law 280 jurisdictions. Many tribal members work for county police departments, some are county judges, or work for BIA police departments or courts. The latter tribal members are classified as law enforcement or criminal justice personnel because their occupations are outside of tribal government management, and these tribal members are entrusted to carry out county, state, or federal laws and procedures, and not tribal government law and policing practices.

### Communication

Criminal justice personnel in both Public Law 280 and non-Public Law 280 jurisdictions were asked to rank on a 5-point scale how well court and legal personnel communicate with tribal members. In this self-evaluation, 47 criminal justice workers in Public Law 280 jurisdictions provided rankings with an average of 3.1. The medium score on the scale is 3.0, so Public Law 280 criminal justice workers gave themselves about-average, or medium, rankings only slightly above the medium score on the scale. Public Law 280 criminal justice workers believe they communicate with tribal members neither very well nor very poorly, but slightly above medium. Non-Public Law 280 criminal justice workers (n=24) provided an average group evaluation of 2.7, indicating that federal-justice workers communicated with tribal members less well than the medium scale score and less well than Public Law 280 state/county criminal justice and legal workers. The difference between Public Law 280 and non-Public Law 280 criminal justice worker self-evaluations of how well court and legal personnel communicate with tribal members is not statistically significant. Court and legal workers in PL 280 and non-Public Law 280 jurisdictions believe they communicate with tribal members about the same, about average or slightly below average.

Besides the rankings, some respondents were asked the open-ended question: Do court and legal personnel communicate with community members regarding court and legal needs? The results of this qualitative analysis are represented in the figure below. One hundred forty-eight Public Law 280 reservation residents answered the question, and 104 made comments

negatively (70.3%), saying that criminal justice personnel in county courts do not communicate well or do not communicate at all with tribal communities. Thirty-seven Public Law 280 reservation residents (25%) said that county court personnel communicate well or to some substantial degree with reservation communities.

Forty-two Public Law 280 criminal justice workers answered a similar question: Do court and legal personnel communicate with community members on the reservation regarding court and legal needs? Twenty-three Public Law 280 criminal justice workers (54.8%) say that county court personnel do not communicate well with tribal community members. Seven reservation-resident respondents say they could not answer the question. Eighteen Public Law 280 criminal justice workers (42.9%) say that county court personnel have good communication with tribal communities. One criminal justice worker said they could not answer the question. In Public Law 280 jurisdictions, court personnel agree that most county courts do not have good communication with tribal community members, while only 1 in 4 Public Law 280 reservation residents thought that county courts communicate well enough with tribal members.

Fifty-one non-Public Law 280 reservation residents answered an analogous question about communication: Do federal court and legal personnel communicate with community members regarding court and legal needs? Twenty-six non-Public Law 280 reservation residents (51%) say that federal court and legal personnel do not communicate well with reservation residents. Eighteen non-Public Law 280 reservation residents answered affirmatively (35.3%), although most answers were accompanied by qualifying remarks suggesting that federal court and legal personnel only partially communicate with tribal communities. The most frequent affirmative response suggested that federal court and legal personnel communicate only in professional capacities or with the tribal council (n=15, 27.5%), but do not generally communicate with tribal members on a regular basis. Only 3 (5.9%) of non-Public Law 280 reservation residents gave unqualified affirmative responses that federal court and legal personnel have good communication with tribal community members. Seven non-Public Law 280 reservation residents said they could not answer the question. Very few non-Public Law 280 reservation residents fully affirm that federal court and legal personnel communicate well with tribal members about court or legal issues.

Forty-nine non-Public Law 280 reservation residents, minus the tribal court workers in that group, answered an analogous question about whether tribal court and legal personnel communicate with community members about court and legal issues. Twenty-three non-Public Law 280 reservation residents (46.9%) say that tribal court workers do not communicate well with tribal community members. Seven non-Public Law 280 reservation residents (14.3%) say that communication is mixed between tribal court personnel and community members. There are some meetings but not directly with reservation residents, and more contact is needed. Seventeen non-Public Law 280 reservation residents (34.7%) say that tribal court and legal personnel communicate well with reservation residents.

Twenty-one non-Public Law 280 criminal justice personnel made comments about communication between tribal court/legal personnel and tribal community members. Six non-Public Law 280 criminal justice workers (28.6%) say that tribal court and legal personnel do not communicate well with tribal community members. Four non-Public Law 280 criminal justice court and legal personnel (19%) say that communication is mixed between tribal courts and tribal members. Six non-Public Law 280 criminal justice workers (28.6%) say that communication is good between tribal courts and tribal members. Five respondents say they cannot answer the question. Somewhat more non-Public Law 280 reservation residents say that communication between tribal courts and tribal community members is good than is expressed by non-Public Law 280 criminal justice court and legal personnel.

As shown on Figure 8.1, our sample of reservation resident and criminal justice respondents suggests tribal, federal, or state/county court and legal personnel communicate in varying degrees of effectiveness with tribal communities (chi square = 18.98, df = 4, p = .0008;

■ How Well Do Court and Legal Personnel Communicate?

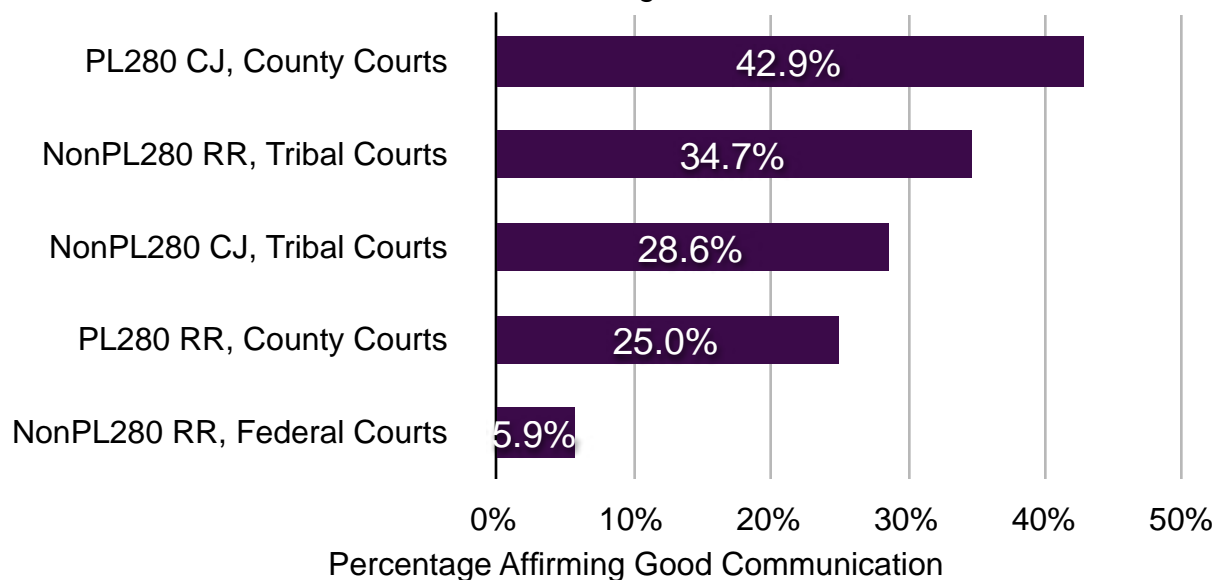


Figure 8.1

Cramer's  $V = .25$ ). The primary difference among the evaluations of how well court and legal personnel communicate centers on the ratings given by non-Public Law 280 reservation residents, among whom only 5.9% say that federal court and legal personnel have good communication with tribal community members. Reservation residents do not think that federal court and legal personnel have good communicative relations with non-Public Law 280 tribal reservation community members. A higher proportion of non-Public Law 280 reservation residents (34.7%) say that tribal court and legal personnel have good communication with tribal community members than federal court and legal personnel. Non-Public Law 280 reservation residents say that tribal court and legal personnel do a better job than federal court workers of communicating their court and legal needs to tribal members. Public Law 280 criminal justice personnel (42.9%) rated themselves to have the highest level of communication among all

groups, and ranked themselves higher than non-Public Law 280 reservation residents commenting on communication by federal court and legal personnel. Criminal justice workers in Public Law 280 jurisdictions say they communicate with tribal communities better than non-Public Law 280 reservation residents believe federal court and legal personnel communicate with tribal community members.

The proportion of Public Law 280 reservation residents who say that county court and legal personnel have good communicative relations with their tribal communities is less than the proportion of Public Law 280 criminal justice workers. In Public Law 280 jurisdictions, the rates at which reservation residents and criminal justice workers say that county court and legal personnel have good communicative relations with tribal members is about the same. Criminal justice workers and reservation residents in Public Law 280 jurisdictions suggest there is better communication from county courts than from federal courts.

In non-Public Law 280 jurisdictions, similar proportions of criminal justice personnel and reservation residents rated non-Public Law 280 tribal courts about the same. Reservation residents and criminal justice workers agree about how well criminal justice workers communicate in non-Public Law 280 tribal and federal courts. Although the strong trend is toward belief by non-Public Law 280 criminal justice workers that tribal courts are more communicative than federal courts, the differences in these data are not statistically significant. Non-Public Law 280 reservation residents and criminal justice personnel say that federal and tribal courts have about the same level of communicative relations with tribal members.

The proportion of reservation residents in Public Law 280 jurisdictions who say that county court and legal personnel maintain good communication with tribal communities is not statistically different from the proportion of non-Public Law 280 reservation residents who say that federal courts have good communicative relations. Reservation residents in both Public Law 280 and non-Public Law 280 jurisdictions, respectively, say that county courts and federal courts have good communicative relations with tribal members at similar, but relatively low, rates.

Further statistical analysis confirms that there is agreement about how well state/county and tribal courts communicate with tribal members. Performing a 2X2X2 log-linear analysis between Public Law 280 state/county courts and non-Public Law 280 tribal courts, where criminal justice workers and reservation residents comment whether communication is good or not in each jurisdiction, does not yield significant results. According to our sample, as shown on Figure 8.2, the interaction effect between jurisdiction, courts and communication is not significant ( $G \text{ square} = 7.14$ ,  $df = 4$ ,  $p = .13$ ). There is no significant difference between Public Law 280 and non-Public Law 280 jurisdictions for respondent perceptions of how well tribal and state/county courts communicate with tribal members ( $G \text{ square} = .38$ ,  $df = 1$ ,  $p = .54$ ). Furthermore, the main effect of groups (criminal justice workers and reservation residents) is not statistically significant ( $G \text{ square} = 2.52$ ,  $df = 1$ ,  $p = .1$ ). Criminal justice workers and reservation residents report similar levels of good communication among non-Public Law 280 tribal courts

and Public Law 280 state/county courts. Criminal justice workers and reservation residents in Public Law 280 and non-Public Law 280 jurisdictions report similar patterns of communication with tribal community members for tribal and state/county courts. Between 25% and 42% of respondents report that tribal or state/county courts have good communication with tribal community members.

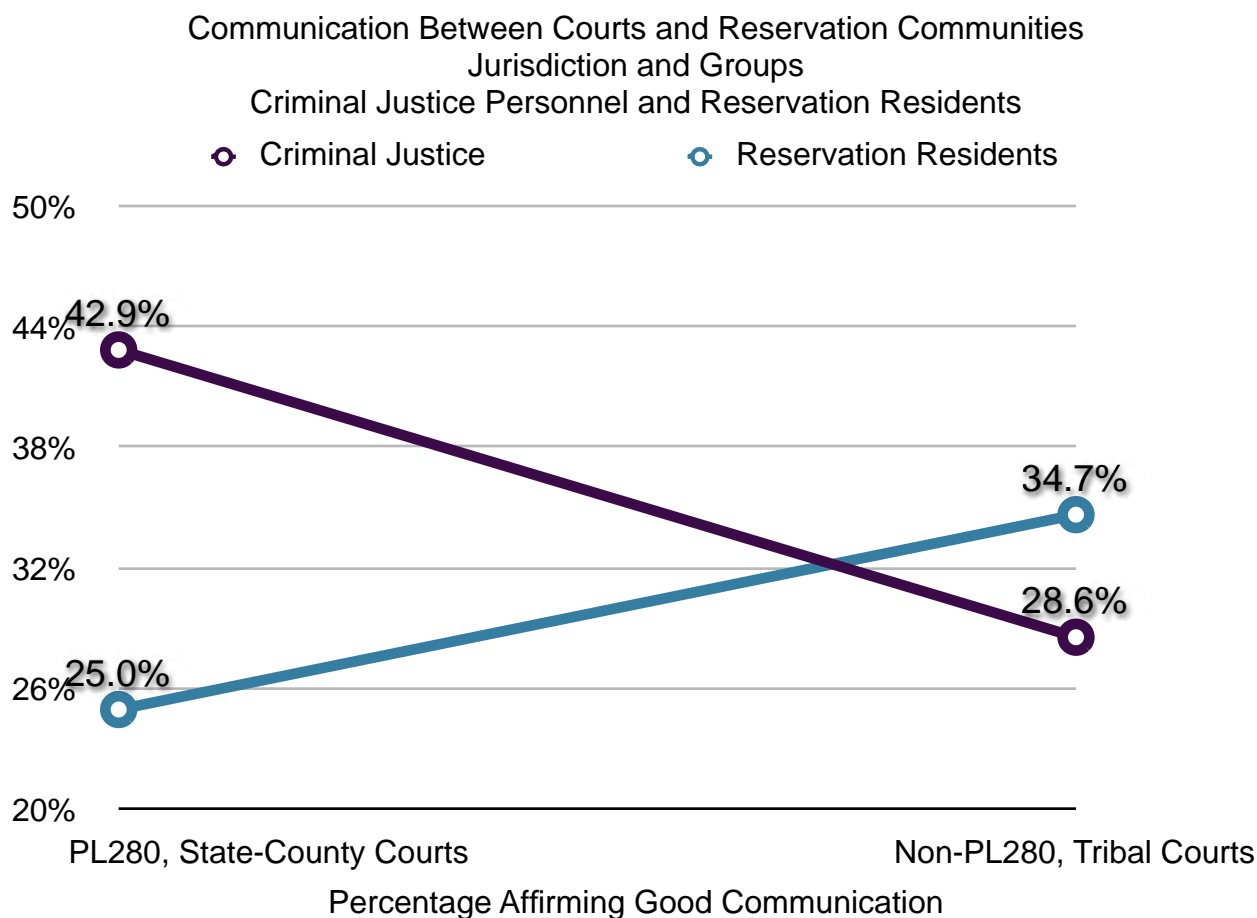


Figure 8.2

There is general agreement among all respondents about how well state/county courts and non-Public Law 280 tribal courts communicate with tribal members; in all cases less than 50%, the minority, say that court and legal personnel in Indian country have good communicative relations with tribal members. Only comparisons with the very low evaluation by non-Public Law 280 reservation residents of federal court communication suggest any disagreement, although federal court communication appears as an outlier on the low end. Most respondents do not believe that federal, state/county, or tribal court and legal personnel communicate well with tribal communities in both Public Law 280 and non-Public Law 280 jurisdictions.

### How to Improve Communication

Eighty-five Public Law 280 reservation residents gave suggestions about how to improve communication with county and state courts. All answers are open-ended discussions, and 53

(62.4%) respondents emphasize that communication could be improved between tribal community members and state/county court and legal personnel if there were more meetings, social interaction, and collaboration between criminal justice workers and tribal community members. The most frequently mentioned suggestion (14.1%) was for community members and state/county criminal justice personnel to meet and talk, and for criminal justice workers to learn about American Indian culture. Other reservation residents suggested a variety of ways to improve communication, such as creating a tribal liaison between the community and state/county courts (5.9%), training sessions for criminal justice workers (4.7%), use of public media (3.5%), creation or transfer of cases to tribal courts (5.9%), and improved state/county court accountability (4.7%).

Some comments by those respondents who emphasize that communication will improve with more meetings and direct interaction and collaboration are:

Meetings geared toward (cooperation). One thing that really happened that really was a positive communication thing... . We had a fire here ... but the reason it was so spectacular in coordination was because the county did cooperate in working with us with the forest service. The local (government) and the tribal community, brought out their disaster plan and calls for lots of coordination ... that seemed to be a bringing together like never before ... you have sort of communication and community building.

Respondent: "And I think that the direction we are heading right now with law enforcement is the best way." Interviewer: "Right. Those cooperative agreements?" Respondent: "Right, we seem to be accomplishing that."

But you know the problem is that there is no communication with the community. They are always going down there to talk with them, or they would meet with them privately, and there was really no sharing with the community, and that's where our biggest problems are, I think.

Visits. Visits by the judges, visits by the prosecutors, prosecutor's office (should) set up public hearings ...

Just by coming and meeting with the community. All the things the kids can do in the community, the courts could sentence them to that.

Like going out in the community would be a great thing, but community members should be part of it. And telling them their perceptions of how they are treated or what needs to be done.

I'm comfortable with it, but I doubt if there is a lot of people who are. I think they would rather handle their issues in tribal court because they have a misunderstanding of the different court systems.

I think just putting out more information on ... just what actually happens as far as the law ... the court systems. Because a lot of people really don't know how the court system works. They get confused.

First of all, I think they need to start dealing and talking with the governing body of the tribe. That would be who they should be talking to, I think. Then, perhaps, from there the tribe needs to disseminate the information to its members.

I think they should hold meetings on the reservation and ask the communities what they want.

Anything to start the dialogue: a forum or just a meeting between high-level officials and the tribal government.

I personally think that, you know, the district attorney, public defenders office, those, I think that they should make an actual effort to come out to the reservation. And if nothing else, at least give us a name and a contact person, should we have questions or concerns because, realistically, if we wanted to follow up on a case and the Sheriff's department wasn't assisting us on the following, there really isn't anyone that we could call ...

Thirty state/county criminal justice personnel in Public Law 280 jurisdictions gave suggestions about how communication could be improved with tribal communities. Most criminal justice respondents (53.3%) recommended meetings and more situations that enhanced greater social interaction and exchange of information. Others suggested more programmatic tactics such as more long-term planning (3.3%), diversity training (6.6%), funds to sustain programs (3.3%), or more reliable tribal police reports (3.3%). Some state/county criminal justice respondents (16.7%) say that communication is already good and is not in need of adjustment or improvement.

Some comments by Public Law 280 criminal justice personnel are:

In that ideal world, we would work very closely with the substance-abuse counselor over there, with the psychiatrist, and the tribal council. We would work with everybody as we did kind of in the safety net, and say this offender is coming over. "These are the problems. Could you help us here?" I think it would be a collaborative effort to supervise an offender on (the reservation), so the risk of him re-offending would be zero.



Well, I know when we were at Indian legal (services), we tried to set up, like, an outreach program to have clients come to talk, you know, have a paralegal there, so they could come and talk to us. But the program, the only buildings that they have, that they can do that in are where the, like, tribal leaders are so obviously (in presence), nobody wants to come and talk about their legal problems or their criminal programs or whatever under the watchful eyes of their council people. (Interviewee 3) A lot of Natives' problems are with their tribal government: Their government says, "Why should we give money for people to attack our regime?" is what they would say.

(W)e want to get out into the community more and to meet, not only with tribal leaders and tribal law enforcement, but to meet with community leaders.

I think how that might be improved would be if somebody actually brought it to the attention of some of the powers that be that maybe that communication should be opened. ... Maybe if it came to someone's attention who might be able to get the powers that be to say maybe we do have a problem, maybe we could sit down and talk about it. I hope that some of the persons in the system would see that it would be important, either to build up a good working relationship with the law enforcement agencies, but I think we do need to address some of the concerns that some of the community members have.

Let me only speak for my department. Could we do more? Certainly, we could do more, especially with just communication with Native American folks on the reservation. We do work heavily as much as we can. And we only have limited staff ...

Well, the first step is the desire to communicate. I mean that is 99% of the battle, you know. Your people with responsibility of government should make that effort, I mean that is the people they represent. You know it's difficult. It's time consuming. There is always a tendency to get set in your ways, but you just have to work extra on that. People have busy schedules.

Well, quite bluntly, it's just keep communicating to improve it, to make it better. That is one issue, I think, we have come from our tribal-affairs committee meeting with the tribes is (that sometimes) both sides tend to just (withdraw). If they don't like what somebody says, they just kind of back away. And we don't talk for six months. And that just makes matters worse. I think what we are finding is that we are trying to have monthly meetings. (Our plan) is, let's just keep getting out there. We can agree to disagree, but let's keep talking, and as long as we keep communicating, the concerns that we have, or the concerns that another person

has. That is what is going to solve the system best. Is, come up with the issues, if we have issues, and try to deal them.

Probably we should set up a periodic meetings, annually or something where we simply get together and have a cup of coffee and maybe have a loose agenda to discuss problems that may come up.

Non-Public Law 280 respondents commented on ways to improve communication for both federal courts and tribal courts. Twenty-four non-Public Law 280 reservation residents suggested ways to improve communication between tribal community members and federal courts. The patterns of response are less clear than for the Public Law 280 respondents and the number of respondents is smaller, and hence our data are less reliable. As among the Public Law 280 respondents, non-Public Law 280 reservation residents (41.7%) emphasized more meetings and social interaction as a means to improve communication. Other respondents emphasized a variety of suggestions, including more training and education of federal court and legal personnel (16.7%). Some comments by non-Public Law 280 reservation residents for improving communication between federal court and legal personnel and tribal community members include:

Maybe there should be the position of the tribal council representing the people that they should protect them. Make an attempt to contact people so they can come in and discuss things. My experience is that you have to sort through the maze to find who you want, then you lodge your complaint or whatever. But still, again, it takes time, and a lot of it seems to fall on deaf ears.

Each tribe should have some sort of governmental affair (agency) to negotiate with the state. Each community should have something like that.

Sure, I mean, there should be a quarterly meeting with chief judges from every reservation, along with the federal judges and state judges. How difficult would that be? Even semi-annual. Every six months. And talk about the administration of justice. It would be in everybody's interest, right? Politics aside, racism aside, and jurisdiction aside ... and talk about the administration of justice.

Probably through our law and order. I would like to see that the manager, chief of police, head investigator open the doors up and sit down and talk with them, maybe, to at least explain. And the U.S. Attorney and the FBI in saying there is certainly a need to exist, so that it will go forward in one court or another. Or the likelihood. And the reasons why, at the onset, why a case did not proceed in the federal system. Just a little understanding. A little communication. It should happen.

Four non-Public Law 280 criminal justice personnel commented on improving communication between tribal community members and federal courts. They emphasized cultural and diversity training, as well as a proactive and direct interpersonal approach.

Eight non-Public Law 280 reservation residents suggested ways to improve communication between tribal court and legal personnel and tribal members. Most respondents (75%) suggested more community education, greater cooperation or seminars, and visits or published information for community distribution. Nine non-Public Law 280 criminal justice personnel commented on how to improve communication between tribal community and tribal court personnel. Most non-Public Law 280 criminal justice personnel (66.7%) said that communication with tribal community members and tribal court personnel could be improved by more community education, attendance of community members in tribal courts, public meetings, a liaison between the court and the community, and through informative articles in the local newspaper.

Most respondents, both reservation residents and court personnel, believe that communication between the state/county, tribal, and federal courts, and tribal community members is not good. To improve communication between tribal community members and state/county, federal, and tribal courts, most respondents say that tribal members and federal, state/county, and tribal court and legal personnel should engage in more meetings and direct face-to-face discussions with community groups, tribal government officials, and community members. The meetings should contain information but address issues that are of concern for tribal members, and court and legal personnel. Many reservation residents believe that direct and regular discussions will improve communication and create greater understanding and more consensus about better ways to administer justice on Indian reservations.

#### Do Criminal Justice Court and Legal Personnel Understand Tribal Cultures?

Criminal justice workers in both Public Law 280 and non-Public Law 280 jurisdictions were asked to rank on a 5-point scale how well they believe court workers understand tribal cultures. Forty-seven Public Law 280 criminal justice workers provided an average ranking of 2.6, somewhat below the scale medium of 3.0. Twenty-four non-Public Law 280 criminal justice and legal personnel provided average rankings of 3.0, about average, implying that, in their view, criminal justice workers have about-average understanding of tribal cultures. The differences in the rankings of Public Law 280 and non-Public Law 280 criminal justice workers about how well their colleagues understand Indian cultures is not statistically significant. According to the self-evaluations of court personnel, criminal justice and legal personnel understand Indian culture about the same in Public Law 280 and non-Public Law 280 jurisdictions. They rank themselves about average or somewhat below average in knowledge of Indian cultures.

Besides the ranking questions, some respondents were asked open-ended questions about the understanding of tribal culture by criminal justice and legal personnel. Results are reflected

in the Figure 8.3 below. One hundred thirty-eight Public Law 280 reservation residents gave answers to the question: Do you think court and legal personnel have an understanding of your community's culture? In Public Law 280 jurisdictions, the question was targeted toward gaining reservation residents' perspectives about how well state and county court and legal personnel understand the cultures of tribal-reservation communities. Eleven Public Law 280 reservation residents (8%) say that state and county court workers have mixed understanding of tribal cultures, meaning that some Public Law 280 legal and court personnel have good understanding of tribal cultures, while others do not. Ninety Public Law 280 reservation residents (65.2%) say that state and county criminal justice personnel do not understand tribal cultures. Some reservation-resident respondents make additional comments about the ways in which state or county criminal justice workers do not understand tribal cultures. Eleven Public Law 280 reservation residents (8%) say that state or county criminal justice personnel are biased against tribal cultures, while 16 reservation residents (11.6%) say that criminal justice workers treat everyone the same or are indifferent to tribal cultures, and 10 (7.2%) say that criminal justice workers have too-infrequent contact with tribal cultures. Six Public Law 280 reservation-resident respondents (4.3%) say that criminal justice court and legal personnel do not have enough knowledge of tribal cultures to have significant influence in the disposition of court cases. Thirty-seven Public Law 280 reservation residents (26.8%) say that state or county criminal justice and legal personnel have a good understanding of tribal cultures. Some respondents qualified their answers with additional comments including 7 (5.1%) who say that criminal justice workers are improving in their knowledge of tribal cultures, while 8 (5.8%) suggest that some state and county judges have developed significant appreciation for tribal cultures.

Forty-five Public Law 280 criminal justice and legal personnel made self evaluations about the understanding of tribal cultures among their colleagues in the state or county courts. Ten Public Law 280 criminal justice and legal personnel (22.2%) say that the understanding of tribal cultures among their colleagues is mixed, meaning that some have good knowledge of tribal cultures, while others have very little knowledge. Some understand or try to understand tribal cultures, while others do not. Twenty-two Public Law 280 criminal justice workers (48.9%) say that their colleagues in the state and county courts do not have a good understanding of tribal cultures. Eleven respondents (24.4%) say that their criminal justice and legal colleagues have good understanding of the tribal cultures that they serve. Both Public Law 280 reservation residents and criminal justice court and legal personnel agree that only about one-fourth of county or state court and legal personnel have a good understanding of the tribal cultural communities they serve.

Fifty-one non-Public Law 280 reservation residents responded to a similar question: Do you think that federal court and legal personnel have a good understanding of your culture? Thirty-five non-Public Law 280 reservation residents (68.6%) say that federal court and legal personnel do not have a good understanding of tribal cultures in non-Public Law 280 jurisdictions. Among those who say that federal court and legal personnel do not have a good understanding of tribal cultures, 11 non-Public Law 280 reservation residents (21.6%) say that

federal court and legal workers do not have enough knowledge of tribal cultures or their different norms and rules. Five non-Public Law 280 reservation residents (9.8%) say that federal court and legal workers do not have enough contact with tribal communities or enough social interaction with individual tribal members. Four respondents (7.8%) say that federal court workers do not have enough knowledge of tribal laws. Twelve respondents (23.5%) say that federal court and legal personnel have a good understanding of tribal cultures in the non-Public Law 280 jurisdictions which they serve. There are too few non-Public Law 280 criminal justice respondents (n=6) answering the same question about their colleagues in federal court evaluating their cultural knowledge of the tribal communities the criminal justice workers serve. Two-thirds of the non-Public Law 280 criminal justice respondents, however, say that federal court and legal personnel have a good understanding of tribal communities within their scope of work. The trend is toward higher evaluations of criminal justice worker tribal-cultural knowledge among criminal justice personnel than among Public Law 280 reservation residents. Since the criminal justice evaluations are composed of only 6 respondents, these data are suggestive only and are too small to enter into statistical comparison with the other group evaluations of cultural knowledge among criminal justice workers.

Both reservation residents and federal criminal justice workers commented on whether tribal court and legal personnel have a good understanding of cultures within the reservation communities in non-Public Law 280 jurisdictions. Fifty-two non-Public Law 280 reservation residents answered the question: Do you think tribal court and legal personnel have a good understanding of your reservation's culture? Nine non-Public Law 280 reservation residents (17.3%) say that tribal court and legal personnel do not have good understanding of tribal cultures. Thirty-nine non-Public Law 280 reservation residents (75%) affirm that tribal court and legal workers have a good understanding of local tribal culture. Four reservation residents (7.7%) say they cannot evaluate tribal court and legal workers' knowledge of local tribal cultures.

Twenty-two non-Public Law 280 criminal justice court and legal personnel evaluated whether tribal court and legal personnel have a good understanding of local tribal cultures. Four non-Public Law 280 criminal justice court and legal personnel (18.2%) say they cannot answer the question. Three criminal justice respondents (13.6%) say that tribal court and legal workers do not have a good cultural understanding of the tribal communities they serve. Fifteen non-Public Law 280 criminal justice court and legal personnel (68.2%) say that tribal court and legal personnel have a good understanding of local tribal cultures. In non-Public Law 280 jurisdictions, criminal justice workers and reservation residents generally (68% to 75%) agree that non-Public Law 280 tribal courts and legal personnel have a good understanding of local tribal cultures. Criminal justice workers and reservation residents in Public Law 280 and non-Public Law 280 jurisdictions agree that about one-fourth of state/county and federal court and legal personnel have a good understanding of the cultures they serve. While over two-thirds of non-Public Law 280 criminal justice and legal workers, as well as reservation residents, report that tribal justice workers have a good understanding of local tribal cultures.

We can compare the rates at which the respondents say that federal, state/county, and tribal court and legal personnel have a good understanding of reservation tribal cultures, and make some limited comparisons for Public Law 280 and non-Public Law 280 jurisdictions. As represented on Figure 8.3, for our sample, there are significant differences in respondent perceptions of how well criminal justice and legal personnel understand tribal cultures (chi square = 54.54, df=4,  $p < .0001$ ; Cramer's  $V = .42$ ). Two main patterns are exhibited by the data, both non-Public Law 280 reservation residents and non-Public Law 280 criminal justice workers rank tribal criminal justice and legal personnel as having a relatively good understanding of local reservation tribal culture. The rankings for non-Public Law 280 tribal court and legal personnel are about three times as high as the proportion of respondents who ranked state/county and federal court and legal personnel as having a good understanding of the tribal cultures served. In non-Public Law 280 jurisdictions, reservation residents and criminal justice workers agree that tribal court and legal personnel have a good understanding of local tribal cultures.

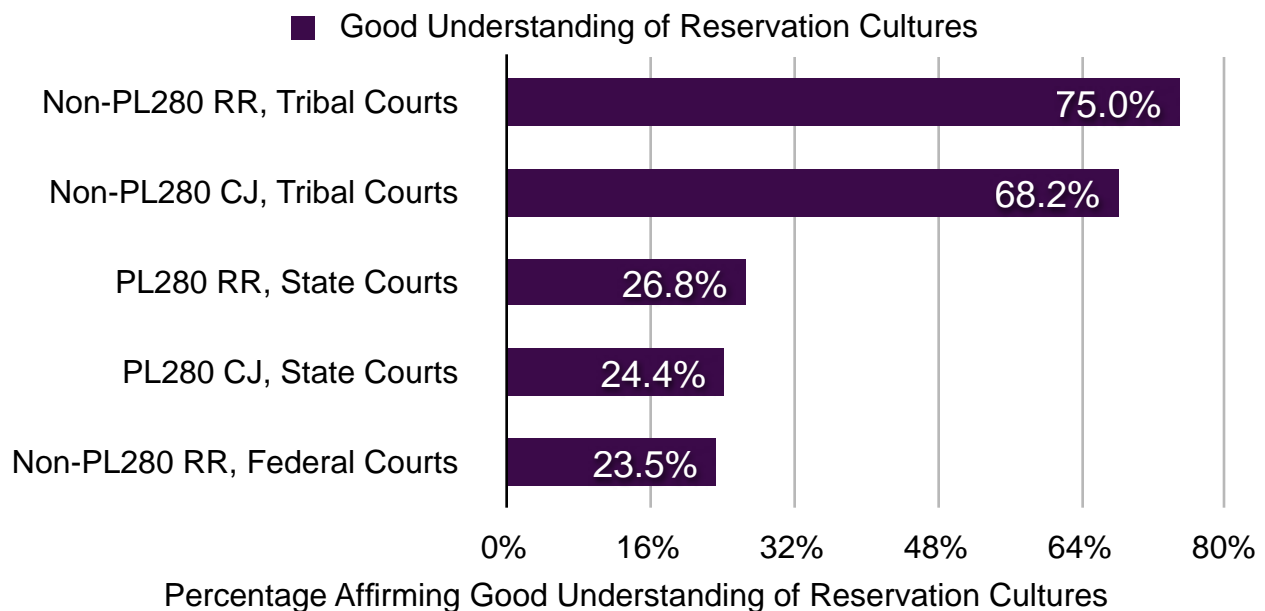


Figure 8.3

The second batch of ratings indicates that relatively few Public Law 280 reservation residents and criminal justice workers believe that state/county court and legal personnel have a good understanding of the tribal cultures served. Similarly, few non-Public Law 280 reservation residents say that federal court and legal personnel have a good understanding of tribal cultures served. Only about one-quarter of respondents commenting on state/county and federal courts agree that federal or state/county court workers have a good understanding of the tribal cultures served.

A higher proportion of respondents in non-Public Law 280 jurisdictions say tribal court and legal personnel have a good understanding of tribal cultures than respondents say about Public Law 280 state/county court and legal workers and about federal court workers. More non-Public Law 280 reservation residents say tribal court and legal personnel have a good

understanding of tribal culture than non-Public Law 280 reservation residents observe for federal court workers, and Public Law 280 criminal justice say about state/county court and legal workers, and Public Law 280 reservation residents say about state court and legal workers. The same pattern prevails for the evaluations of non-Public Law 280 criminal justice workers who say that tribal court and legal personnel have greater understanding of tribal culture than is observed by non-Public Law 280 evaluations of federal court workers, and Public Law 280 criminal justice workers' observations about state/county court and legal workers, and Public Law 280 reservation residents say about state/county court and legal workers. According to both reservation-resident and criminal justice worker respondents, non-Public Law 280 tribal court and legal personnel have greater understanding of tribal cultures than state/county and federal court and legal personnel.

Some of the data can be explored more systematically with a 2X2X2 log-linear analysis considering comparisons of groups, criminal justice workers and reservation residents, cultural

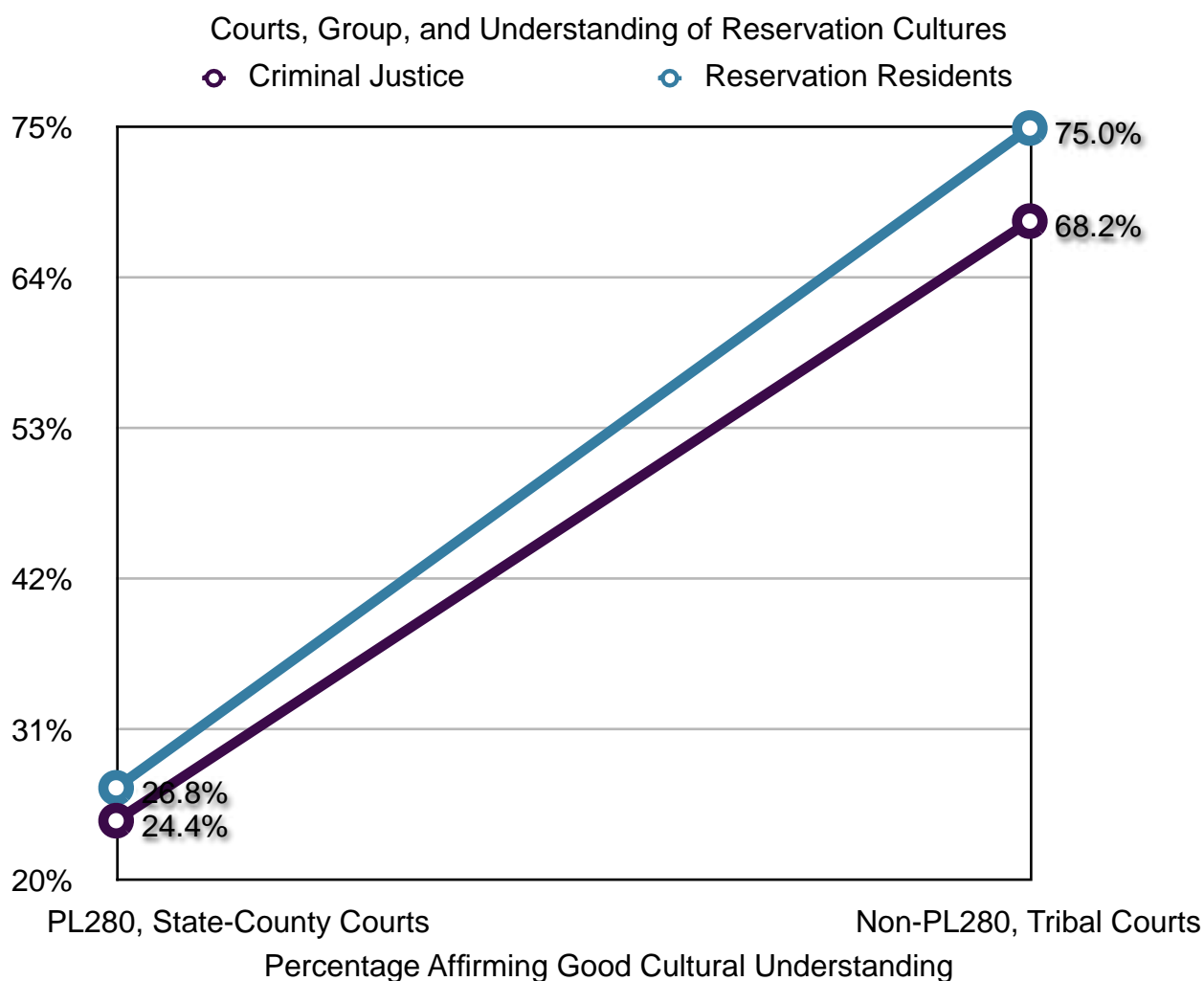


Figure 8.4

understanding, good or not-good, and two levels of courts, Public Law 280 state/county courts

and non-Public Law 280 tribal courts. As represented in Figure 8.4, our sample suggests there is a significant interaction between cultural understanding, court type, and respondent group ( $G \text{ square} = 49.44$ ,  $df = 4$ ,  $p < .0001$ ). Good understanding of reservation cultures is dependent on specific levels of courts and groups. Reservation residents and criminal justice personnel rank non-Public Law 280 tribal courts high in cultural understanding, while reservation residents and criminal justice workers rank Public Law 280 state/county courts low in cultural understanding of reservation cultures. Non-Public Law 280 respondents, reservation residents and criminal justice personnel say tribal courts understand tribal cultures significantly better than Public Law 280 respondents report about Public Law 280 state/county courts. Tribal court personnel in non-Public Law 280 jurisdictions understand reservation cultures significantly better than Public Law 280 state/county court personnel. Criminal justice workers and reservation residents, on average, rated court understanding of reservation cultures about the same ( $G \text{ square} = .02$ ,  $df = 1$ ,  $p = .89$ , NS). The group effect, different rating between criminal justice and reservation residents, was not significantly different. The main effect of court type, Public Law 280 state/county courts and non-Public Law 280 tribal courts, suggests non-Public Law 280 tribal court and legal workers have significantly better understanding of reservation cultures than Public Law 280 state/county court and legal personnel ( $G \text{ square} = 48.28$ ,  $df = 1$ ,  $p < .0001$ ).

Tribal court and legal personnel in non-Public Law 280 jurisdictions have significantly greater understanding of reservation culture than non-Public Law 280 federal and Public Law 280 state/county court and legal workers. Criminal justice workers in Public Law 280 state/county and non-Public Law 280 federal courts agree that their colleagues have average to below average understanding of reservation cultures, and about 25% of reservation residents agree that Public Law 280 state/county and non-Public Law 280 federal court and legal personnel have good understanding of reservation cultures. Criminal justice and reservation residents indicate that Public Law 280 and non-Public Law 280 jurisdiction does not affect their evaluations of cultural understanding by court and legal personnel. The proportions of respondent evaluations of cultural understanding of non-Public Law 280 tribal courts are significantly higher than Public Law 280 state/county and federal court personnel and legal personnel.

### Acquiring Awareness of Tribal Culture

Criminal justice respondents in Public Law 280 and non-Public Law 280 jurisdictions were asked: Can you name a few aspects of tribal cultures that you have become aware of since working with Indian people? The question is open ended and invites answers of multiple themes or stories. The responses were very diverse and sub-coded to underscore major themes. Forty-five Public Law 280 and 17 non-Public Law 280 criminal justice personnel answered the question. We analyzed both groups separately with an eye toward investigating differences in Public Law 280 and non-Public Law 280 in patterns of gaining more awareness of tribal culture.

Among Public Law 280 criminal justice workers, 12 (26.7%) say that they acquired little or no new awareness of tribal culture. Within this group of 12, 2 (4.4%) say they gained no new



knowledge of tribal culture, while 10 (22.2%) go on to comment on at least one aspect of tribal culture they acquired while on the job and through contact with Indian people. The comments of the 10 respondents who thought they gained relatively little knowledge were coded and added to the counts of different types of responses to inductively ascertain patterns in the data. Using this inductive method, several issues are observed from the comments by the Public Law 280 criminal justice respondents and include family and elders (n=27), religious and spiritual issues (n=11), ethical and normative issues (n=10), and land (n=2). Since respondents often mentioned several cultural aspects that they learned about, there are more themes than respondents.

Among the 27 comments from Public Law 280 criminal justice workers about new understandings of elders and Indian family are the following:

Families and extended families ... in my early years, I saw the older people who are elders doing what I thought elders should do more than I see today. But maybe I am not right on that. I don't know. When I was here the first 15 years, I think the elders took much more responsibility on being an elder, and being proud to be an elder, and sharing their traditions and cultures with the kids, and just caring about the kids, especially caring and taking responsibilities for the family.

One thing that I noticed is it seems that there are a lot of Native American people who go back home, and you may have grandparents sometimes. In my opinion, it seems like the grandparents are taking the brunt of the raising. They finished raising their kids and a lot of times it seems that their kids are maybe dumping the grandchildren on the grandparents. And the grandparents are working their butts off. And they're raising the grandchildren because their own children don't want to raise their own children.

My experience in working directly with Native Americans was respect for the elders. I think that is a real honorable thing they cherish.

I think, traditionally, families are a lot closer in the Native culture. I think they have a lot closer ties than any culture. They tend to live together, grandparents and grandchildren. They spend a lot of time with their families. ... Grandmas and grandpas are more like mothers and fathers ... large extended family.

Another issue I have definitely learned about in my years is that when a Native American kid, especially (a) youngster, gets in trouble, there is a lot of family interest, extended family. ... A lot of times there is more interest among aunts and uncles, or they like to use (the) expression up here "auntie," aunts and uncles, grandparents, so I think it's more extended.

The family, the importance of the family, and the extended family, that is such a strength. It's just such a huge strength. And the generations, the inter-generations from great-grandma all the way down. And that goes (to) the respect of the elders in the community. Although I am seeing a weakening of that in the younger kids, but I think the ones that are still in their 20s and 30s, they still have a really strong belief in that traditional respect for the elders and stuff.

Comments on new awareness of religious and cultural issues by Public Law 280 criminal justice workers (state and county employees) include:

I am aware that tribal members have a lot of social events that are very important to tribal members. I don't know what they call them, but these communal get-togethers, I know the tribal members up there have a pretty active religious community that makes a difference in the quality of their lives.

In terms of multi-housing, not just one family lives together, but there may be two or three families that live together. In this region or area of the reservation, they are very, very devoted to their tribal beliefs. They have celebrations, rituals on a regular basis. And it's very open to anybody and everybody.

(T)hey have really been great about their culture. When I was a public defender, the kids were involved in (dances). I would try getting them out of juvenile hall to do that. The (tribal) elders would come in, and the ladies and their tattoos ... I know that it was great when the kids and families were involved in the tribal activities and tribal culture because then they had a lot of support and actually the tribal laws and culture are a lot more punitive than our juvenile justice system.

The other thing that I have discovered, and I am still trying to get more answers without being too prying, is the strength of the spirituality of the community. I am always asking questions about like setting fire for people who have passed and keeping the fire burning and what is the purpose of that. And one of the things that I am discovering that I have just noticed after two years, I don't know why, is that everyone has a pole in their yard with different color ribbons. And I am aware of the different colors and the different directions, and they also have the tobacco stuff, the little bags and stuff. But I am, like, what is the significance of the pole, and why is it the way that is and stuff.

Some of my clients talk about their religion, as to animal spirits and what they believe, and why powwows are so important, and why song is so important and why drums are so important, and just getting it from the individual perspective. But to truly understand their religion is different, too.

Well, I have found that there is a resurgence of interest in traditional spiritual matters that I think is a positive thing.

Comments on ethical and normative issues by Public Law 280 criminal justice workers relating their experiences of awareness of Indian culture include:

For me, what was different, was the way that ... I wasn't used to somebody that doesn't hold down a steady job or run a store or something like that. ... And so when I came here and found that leeching and ricing and things like that were means of making a living, and were so seasonal, that was just kind of a shock.

I think I can think of one cultural difference that people, the police, should know about, but they do not know, is that Natives, as a general population, especially Native males, as a general population, do not rattle on. They don't go on through lengthy sentences ... I don't know how to explain it ... very brief, and they are not even trying to defend themselves ... low key is better.

I think that a lot of times Native people, they might not discipline their children like white society might discipline their children. And I think that sometimes the sense of humor is from a different perspective, and I think that sometimes there is some misunderstandings about things like that. I think that what I talked about before, though, was not necessarily trusting people right away until they have proven themselves is definitely there.

Sense of respect, importance of family, the mellow character versus the aggressive character. Few words spoken rather than more words spoken. Sense of birth and history are very important.

The desire of the tribal communities to resolve issues on their own without the involvement of the white man's justice system ... I heard it expressed once when I first came up here — the Indian way of taking care of things is he gets me today, I will get him tomorrow. More of a family or tribal obligation to right wrongs. You know, almost like the Hatfields and McCoys, and that is a characterization of Native American cases that still exist.

Things I can think of for Native clients, sometimes I have to speak a little slower. Sometimes face-to-face, eye-to-eye contact is a little intimidating for some Native clients, so I am more aloof with them. Sometimes there has to be, I think, it works better for Native clients to be in my office than it does to be on the phone. And again, sometimes going through things a little slower, explaining it, and making sure that they are understanding about articulating back to me what I have said to them is helpful. And just becoming respectful and aware that their

differences aren't really (discourteous), if they are not making eye contact, it's not because they are shifty, it's just because it's something they are not used to.

Among non-Public Law 280 criminal justice personnel from federal courts or related departments, 17 provided answers totaling 18 different aspects of culture that the respondents became aware of while engaging in court and legal business with tribal communities. Non-Public Law 280 criminal justice workers cited ethical-normative issues (13) as the most frequently encountered new cultural feature they became aware of from Indian communities. Some examples of ethical and normative issues that non-Public Law 280 criminal justice workers became newly aware of are:

Just my consideration of here in this court room here, you have young men coming in with bandanas. And that is one of the questions I ask, does that have some tribal significance?

They are very quiet people. From my experience with dealing with the reservations ... over the last 10 years, people sometimes think that quietness means something other than what it's. They are just quiet people. That would be my biggest thing.

The key thing, I think, is to not try to make this court be just like any old white court, like any old state court, with all the attendant rules and expectations. Every time we have had another assistant to me that is white and has no background whatsoever working with the tribes or any other cultures so far as I can tell. And he keeps coming up, even though he has worked here for a very short period of time, he is trying to change everything to make it be just like the other systems that he has worked with. And that doesn't work. And it's not what the tribe wants. And they have been tolerant of the white judge to a certain extent. And tolerant of this other guy, but that is not what they want. Not at all.

Some use what they call a talking circle. I have had the advantage of while I am out there in Indian Country to observe a talking circle. Our Wellness Court was designed traditional, basically not to apply the state law. The Indians believe that they have their day in court. The judges allow them to speak. The grandmas and grandfathers. There is that respect.

I think funerals stand out, paramount, family relations, sometimes the cultural foods and practices ... and they have First Kill ceremony where a rifle is given away to a respected elder and the elder replaces that teenager's or child's given-away rifle with a new rifle, and it's a keepsake, and it means an awful lot. And that will come up.

Right. Some of them (criminal justice workers) have never gone on a reservation. They don't know the same rules. ... It's just a lot of think before you say. I think a lot of danger comes from, when you are trying to build common ground with a client. That is when you slip up and say things like, "I am part Cherokee." That kind of thing. We talk about why we don't do that right out of the blocks. Things like that. Just common sense.

One of the things we found out early on is they like to talk about issues, and probably more than we do as a culture. And some people say: Why does it take so long to get this done? Well, they need to talk about it. They need to think about it. They need to come back and talk about it again. And I am not sure why it's that way, but that is the way it's. And we learned to work with it. And it worked, it was successful. So, we took the time to listen to them, and they took the time to listen to us.

Non-Public Law 280 criminal justice workers also emphasized family and elder relations (n=6). Here are some comments:

At least in my position, it would be helpful to know how the family hierarchy and the traditional custodians and what their responsibilities are. I know the code states what the traditional custodians are, and what their duties are. I also think that understanding how, I guess, just in general, basic Indian ways. Like the judge telling me about the different clans. I am still trying to figure all that out.

I don't know the (reservation) families as well as I know some of the other community ... reservation families, because I have not done as much prosecution there. But I do tend to remember family connections, and I do try to keep those. And they are interesting ...

And I think the elders expect more respect, for example. And some more patience. ... And the fond way that they speak of their elders and how protective they are of their elders. We have a great deal of respect, if that doesn't come through in what we said up to now, it should because we do.

Although the data are limited, there appear to be clear differences in the patterns of cultural awareness between Public Law 280 and non-Public Law 280 criminal justice court and legal personnel. For non-Public Law 280 jurisdictions, the court and legal personnel are mainly in the federal court systems, while the Public Law 280 court and legal personnel respondents are mainly connected to state and county courts. There is more diversity in the patterns of Public Law 280 criminal justice awareness of Indian cultures with significant comments on family and elders, ethical-normative relations, and religion and spirituality. Non-Public Law 280 criminal justice workers emphasized normative patterns as the main issues they are aware of, but showed

less awareness of religion and spirituality, and less awareness of Indian family and elder relations than is shown by Public Law 280 court workers. These data suggest that Public Law 280 criminal justice court and legal personnel are more broadly and deeply aware of tribal cultural diversity in terms of family, elders, and religion than are non-Public Law 280 criminal court and legal personnel about the diversity of tribal cultures within non-Public Law 280 jurisdictions. Non-Public Law 280 criminal justice workers emphasize their new awareness of Indian normative understandings, while Public Law 280 criminal justice workers say they are newly aware of family and elders, and religious and spiritual issues more frequently than they have experienced new cultural awareness of normative rules in Indian communities.

### Thoroughness of Legal Services

In both Public Law 280 and non-Public Law 280 jurisdictions, criminal justice personnel were asked to rank on a 5-point scale the thoroughness of legal services in prosecuting or defending cases. Reservation residents were asked to rate thoroughness of police investigations, but not thoroughness of legal services. Forty-seven Public Law 280 criminal justice respondents offered rankings that yield a mean ranking of 3.8, a strong ranking indicating that Public Law 280 state/county criminal justice workers believe that they provide relatively thorough legal services to tribal members. Non-Public Law 280 criminal justice personnel (n=24) offered rankings with a mean score of 3.3, suggesting that federal court and legal personnel in non-Public Law 280 jurisdictions believe they are providing somewhat above-average thoroughness of services to tribal members when prosecuting or defending their cases. The difference in the mean rankings by Public Law 280 and non-Public Law 280 criminal justice personnel on thoroughness of legal services is not statistically significant. These data suggest that Public Law 280 state/county criminal justice and non-Public Law 280 federal criminal justice workers have similar views about how thorough they believe state/county and federal court services are delivered to tribal communities. Criminal justice workers in both Public Law 280 and non-Public Law 280 jurisdictions believe they are providing above-average legal services to Indian tribal members when prosecuting or defending their cases. Jurisdiction, whether Public Law 280 or non-Public Law 280, does not appear to have an affect on criminal justice workers' beliefs about the thoroughness of legal services delivered to tribal members. Criminal justice workers believe that legal services are delivered at similar above-average thoroughness in Public Law 280 and non-Public Law 280 jurisdictions.

### Respect for Tribal Authorities

Criminal justice workers in both Public Law 280 and non-Public Law 280 jurisdictions provided rankings on a 5-point scale about the extent of respect for tribal authorities exhibited by their criminal justice colleagues. Reservation residents were asked to rate police respect for tribal authorities, but not criminal justice worker's respect for tribal authorities. Public Law 280 criminal justice workers (n=47) provided a mean rank of 3.6, while non-Public Law 280 criminal justice workers' rankings yield a mean score of 3.7. In both Public Law 280 and non-Public Law

280 jurisdictions, criminal justice workers rank their criminal justice colleagues relatively highly in their respect for tribal authorities. The differences between the rankings by Public Law 280 and non-Public Law 280 criminal justice workers' mean rankings is not statistically significant. Criminal justice workers in Public Law 280 and non-Public Law 280 jurisdictions give similar, relatively high self-rankings of respect for tribal authorities. According to criminal justice workers, state/county and federal court and legal workers have above-average respect for tribal authorities. Jurisdiction, when comparing Public Law 280 and non-Public Law 280, does not have a significant affect on how criminal justice workers perceive their respect for tribal authorities. Criminal justice workers say they have similar, above average, respect for tribal authorities in both Public Law 280 and non-Public Law 280 jurisdictions. An open-ended question about respect for tribal authorities is analyzed later in this chapter.

### Respect for State-county and Federal Courts

In both Public Law 280 and non-Public Law 280 jurisdictions, criminal justice workers ranked on a 5-point scale how well tribal community members respect court and legal personnel. Public Law 280 state/county criminal justice personnel (n=47) ranked tribal members' respect for state/county court and legal workers at a mean score of 3.5. State/county Public Law 280 criminal justice workers believe tribal members have above-average respect for state/county criminal justice and legal personnel. Non-Public Law 280 criminal justice workers (n=24) gave a mean rank of 3.1, indicating that tribal members have slightly higher than average respect for federal court and legal personnel. The difference between mean rankings of tribal member respect for criminal justice workers in Public Law 280 and non-Public Law 280 jurisdictions is not statistically significant. Whether criminal justice workers are serving Public Law 280 or non-Public Law 280 reservations, legal jurisdiction does not appear to have a significant effect on tribal member respect for state/county or federal court and legal personnel. Criminal justice workers in both Public Law 280 and non-Public Law 280 jurisdictions believe that tribal members have somewhat above-average respect for court and legal personnel in the federal and state or county courts.

### View of Legal Services by Reservation Communities

We now turn to a series of evaluations of legal services provided to tribal communities, and investigate several questions and measures from criminal justice and tribal member respondents. First in the series are evaluations by criminal justice personnel about how favorably reservation residents view the delivery of legal services in their communities. Criminal justice workers in both Public Law 280 and non-Public Law 280 jurisdictions were asked to rank on a 5-point scale how favorably tribal members they served viewed legal services. Public Law 280 criminal justice workers (n=47) gave a mean ranking of 2.7, while non-Public Law 280 criminal justice workers (n=24) had a mean of 2.8. Both evaluations suggest that criminal justice workers believe that tribal community members they serve think that legal services are slightly or somewhat below average. On the 5-point scale, 3.0 is the medium, and

scores below 3.0 are evaluations of less favorable performance. The difference in mean scores between Public Law 280 and non-Public Law 280 criminal justice rankings of reservation-resident views toward legal services is not statistically significant. In both Public Law 280 and non-Public Law 280 jurisdictions, criminal justice workers agree that reservation community members they serve view the delivery of legal services as somewhat less than average. Jurisdictional location, Public Law 280 and non-Public Law 280, does not appear to have a significant effect on how criminal justice workers evaluate the views that reservation residents have toward the delivery of legal services in their communities.

### Reservation Residents' Satisfaction with Court and Legal Services

A second measure of how criminal justice workers understand and view court and legal services asks criminal justice personnel to rank satisfaction of reservation residents with court and legal services. Public Law 280 criminal justice workers (n=47) provide a mean rank of 2.8, suggesting that reservation residents believe the delivery of state and county court and legal services is somewhat below average. Non-Public Law 280 criminal justice workers (n=24) give a mean rank of 2.5, indicating that reservation residents have below average satisfaction with the delivery of federal court and legal services. In both Public Law 280 and non-Public Law 280 jurisdictions, criminal justice personnel say that reservation residents have below-average satisfaction with the delivery of court and legal services. The difference in the mean rank between Public Law 280 and non-Public Law 280 criminal justice workers is not statistically significant. Jurisdictional location, Public Law 280 or non-Public Law 280, does not significantly affect perceptions by criminal justice workers of satisfaction with court and legal services. In both Public Law 280 and non-Public Law 280 jurisdictions, criminal justice workers agree that reservation residents are somewhat dissatisfied with the delivery of state/county and federal court and legal services.<sup>1</sup>

### Positive or Negative Views of Court and Legal Services

Criminal justice workers were asked an open-ended question: Do the reservation communities you serve have a positive or negative view of the court and legal system? The question complements the rank scores given to evaluate reservation-resident relations and views toward court and legal services.

Forty-one Public Law 280 criminal justice workers responded to the query. Three criminal justice workers could not provide an answer (7.3%), and 8 (19.5%) reported that positive or negative views were specific to circumstances, or there are mixed or neutral views toward state and county court and legal systems. Twenty-four Public Law 280 criminal justice workers (58.5%) say that tribal community members who they serve have a negative view of

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<sup>1</sup> Reservation residents were asked to rate their satisfaction with police in their communities, but were not asked to rate their satisfaction with criminal justice personnel.



state and county court and legal services. Seven respondents (17.1%) say that reservation residents have positive views of state and county court and legal services.

Some of the comments by Public Law 280 criminal justice workers who believe reservation residents have negative views toward county and state court and legal services include:

Well, I think it's positive as compared to court at the tribal level. But I think it's negative in view of court at all ... I mean, family members and even victims. I think there is pretty much a preference of dealing with stuff yourself. Although I am frustrated that so many people who do call the police and wind up not wanting to be involved later, but in the heat of the moment they call the police. And I always wonder, well, why is everybody snitching on everybody else if they don't want to have the involvement later on? Certainly, this community is not alone in that problem.

I would say, just based on the information I have, is — not positive. ... Bias, a lot of perception of bias, just a low priority, and allocation of resources ... Indians suffer just as much from stereotypes as we do. And I understand, there is an unjustified perception that there is a lot of bias. As I understand there is a perception that they are just low on the totem pole in regards to allocation of resources and effort. ... Law enforcement and the white community is not as interested in them, except for just to periodically go in there and assert its power in an arbitrary and capricious way. I don't know what can be done on that except for time and showing differently. It seems to me a common complaint.

Negative ... because I deal with, as a general rule, those individuals that come in contact with the judicial system, with the criminal justice system, that is where I am going to get my contact information from. I come in contact with defendants and victims. I don't come in contact with the general public as a general rule. ... But victims are generally unhappy, as well. And because the criminal justice system in our country does not run swiftly, because it protects constitutional rights we all enjoy, victims oftentimes want justice now, and it doesn't happen that way. So, I think there is a negative impact, or a negative outlook, on our system by the general public, Native and non-Native as well. ... I think that the general person is going to say that the system works much too slowly, including Native Americans.

I don't think the community feels that the court system is very, the word isn't accommodating, it's aware maybe ... I think that it's a kind of "us and them" kind of thing ... and I think the community is frustrated with that. I hear that when people talk. They are frustrated they don't get the DA to come. They are frustrated that people don't respond to their issues. They are frustrated that the

doesn't seem to be much communication. So, I think that frustration leads to hostility sometimes.

I would say it's more negative than other groups. Although I also believe that they would probably have a negative opinion of some tribal courts, also. I mean, I believe that tribal courts often, from what I have seen, there are problems with tribal courts because you have small groups of people, and a lot of people are related to other people, and there are old disagreements, and there are allegations within the tribal courts of one family or certain families being treated unfairly by other families who might be in power, and feelings of real different treatment because of some in-fighting between families that have occurred, and just the small population base of certain tribes. That can cause real problems, too.

I would say the general population probably has a negative (view of the courts) ... yeah. The general Native population.

Negative ... no trust ... because they never treated them fairly. ... I think that it's A) it's unfair, and B) they think that Native defendants tend to be in jail pending resolution, bail is too high, or conditions to pretrial release are unbeatable. I think that has a lot to do with distrust.

But there are many complaints about the local court system being unfair to Indian populations, and some of it's legit, and some of it's not. There is always going to be that, it doesn't matter what is going to happen, they are going to be dissatisfied, whether it be tribal or county or state ... it probably comes more from the disenfranchised, disconnected people that have dealt with the system themselves, either through the juvenile (system) or their adult life kind of thing, and have their own set of issues going to them ... those folks, people, they feel they are picked on to some degree, but there are some general complaints about the local system.

Some of the Public Law 280 criminal justice situational comments include:

I think it's positive and negative. I think there is a significant amount of frustration with the criminal justice system, and ... an obvious distaste for law enforcement. But I think it's a piece of the community, and that it's not the whole community.

Some people have a positive view and some people have a negative view. (Generally) people who are in trouble sometimes have a pretty negative view of the court system. I know, I get people in trouble who have been through the system a lot of times ... I have worked with a fair number of people on the reservation who have a positive view of the court system.

Depends, I don't know ... well, depending upon the specific individuals you are dealing with, you know, the reservation community has their identified outlaws like any community does. It has been part of our system for a long time. There are certain names that kind of reoccur, and, of course, any enforcement action against them is automatically branded racist, anti-Indian, et cetera. On the other hand, I think that on a tribal government level, in working with tribal police, I don't see it at those levels. So, it depends upon whose ox is getting gored or who feels their ox is getting gored.

Four non-Public Law 280 criminal justice workers commented on whether tribal community members had positive or negative views of federal court and legal services. The number of respondents is too small for analysis. Two non-Public Law 280 criminal justice workers said that they could not answer the question, and the other 2 said that non-Public Law 280 reservation residents have negative views of federal court and legal services. The two comments include:

For my families and their clients, it would be negative. ... All of it would be bad from my clients' perspective ... I think part of it's just any criminal entity. But I also think part of it's the fact that it's that same scenario of, I want to say Big Brother, but that doesn't even qualify here. It's that other country imposing itself. It's like they are telling you on one hand that you are autonomous, and then on the other hand, they are not.

Probably negative. Just to be right, without a specific (example) it's more of their comments of "That is the white man's (system)." Still some of that exists.

Twenty-one non-Public Law 280 criminal justice workers commented on whether tribal members had positive or negative views about tribal courts. The respondents were asked: Do you think the reservation community has a positive or negative view of the tribal court and legal system? Seven non-Public Law 280 criminal justice workers (33.3%) say that views toward tribal courts are mixed or situational, depending on circumstances and specific persons. Eleven respondents (52.4%) say that tribal members view tribal courts negatively. Three non-Public Law 280 criminal justice workers (14.3%) say that tribal members have positive views toward non-Public Law 280 tribal courts and legal services.

Some comments by Public Law 280 criminal justice workers who said attitudes toward non-Public Law 280 tribal courts were situational or dependent include:

It depends. I think a lot of them don't really have an opinion. The ones that don't get into trouble, I think they like it ... and then the tribal court itself, they really don't think about it. The ones in the tribal court don't like it. They don't like it. And it depends on what it's for ... I think they like the fact that the chances are

they are not going to get as much jail time for what they do. What they don't like is that it doesn't run as well as a state court. ... Occasionally, you get somebody ... they don't have any money for conflict counsel. And so people are being told, "We can't provide you an attorney, and the clinic can't help you" ... and they get angry, because they know that in the state system, no matter what, they are going to have an attorney. They don't like that. I think the court is underfunded, well, it's not underfunded, it's undersized for the caseload.

See it goes back to ... some people think we are too lenient, we are too nice. Other people think we don't have any feelings, that we are just putting people in jail.

From what I have experienced, depending on the day, it differs. Depending on who you are talking with, it could be negative or positive.

Negative comments about tribal-member attitudes toward the tribal courts and legal system by Public Law 280 criminal justice workers include:

Here, when we are so closely knit and so close in this community, I think the ignorance becomes more of a nuisance. So, in the state (court), ignorance translates to awe ... and here, ignorance translates into being a nuisance. That we are meddlers ... leave us alone. We are incompetent. I have often wanted to erect a sign behind us behind the bench that says, "Don't expect the court to legally fix in 30 days, that which you have socially destroyed for a generation." Meaning in that family. And I don't mean anything negative, overall. I just mean that people, in their own families, through their abuse or whatever has happened in that community, that there is a perception that you could come to court, and we are going to fix it. Whether we are going to fix it, or that we are inadequate or inept at trying to fix it. People refer to us as the kangaroo court, right ...

The community as a whole. I hate to say this, but I think that in the last few years it has become more negative than positive. ... We have not had the stability. And that hurts our community because the community members don't have the respect that the court needs to have. I hate to say that, but it's true.

I think, right now, that anytime you are uninformed, you are going to have a negative view. I have got to stick by that because we need to inform the community more of what is happening at the tribal court.

Negative. There is a reason why there is a negative view. Our previous judge didn't hear anything but arraignments. So, there is a tremendous backlog of (cases). ... So, you have all the victims out there, it's a joke. It was a joke.

I hear a whole lot more negatives than I hear positives. I think that is a general truism throughout both Indian country and off-reservation. But I think there is a lot of good being done too. The courts are very cognizant with restitution and other things ... but yet there are a lot of people who appreciate what the tribal court does, they are just kind of quiet on it. It's like you hear the complainers more than the people who are appreciative.

A minority of Public Law 280 criminal justice personnel (19.5%) believes state/county courts and legal services are well regarded by community members. Comparatively few non-Public Law 280 criminal justice personnel (14.3%) believe tribal members have a positive view of non-Public Law 280 tribal courts and legal services. Public Law 280 state/county courts and non-Public Law 280 tribal courts do not receive strong support from tribal members, according to criminal justice workers in both jurisdictions. The difference between the proportion of Public Law 280 criminal justice personnel who say tribal members have positive views of state/county courts and non-Public Law 280 criminal justice personnel who say community members have positive views of tribal courts is similar. In both Public Law 280 and non-Public Law 280 jurisdictions, less than 20% of criminal justice workers say that reservation residents have positive views of state/county and tribal courts, respectively. These data do not suggest that jurisdiction, Public Law 280 or non-Public Law 280, affects criminal justice workers' perceptions of whether reservation residents have positive or negative views toward court and legal systems. The qualitative question indicates much less positive support for court and legal systems by reservation residents than was observed through the analysis of 5-point scales, where the "view of legal services by reservation communities you serve" recorded somewhat below-average (3.0) mean scores (2.7 and 2.8). An agreement that less than 20% of criminal justice workers believe that reservation residents have positive images of county and non-Public Law 280 tribal courts suggests that tribal members have more negative views toward the courts and legal system than is reported in the scaled data.

### The Quality of Services Provided by Criminal Justice and Legal Personnel

Reservation residents in Public Law 280 jurisdictions were asked to give an assessment of the quality of services provided by state and county courts. The respondents were asked: Do you think that the county or state court and legal system provide quality services to your community? One hundred forty-four Public Law 280 reservation residents gave comments. Fourteen Public Law 280 reservation residents (9.7%) said they could not make an evaluation, indicating a degree of uncertainty about how well state and county court and legal personnel provide services to reservation communities. Five respondents (3.5%) say that the quality of services provided by county and state courts is mixed or about average. Sixty-two Public Law

280 reservation residents (43.1%) say that county and state courts and legal personnel do not provide quality services to reservation communities. Sixty-three Public Law 280 reservation residents (43.8%) say that state and county court and legal personnel provide quality services to the reservation communities. About equal proportions of Public Law 280 reservation residents say that county and state courts provide quality services, as opposed to those who report that county and state courts do not provide quality services. These data suggest significant differences of viewpoint among Public Law 280 reservation residents over how well the state and county courts and legal personnel serve their communities. Public Law 280 community opinions are about equally divided over how well state and county courts serve Public Law 280 reservation communities.

Many Public Law 280 reservation residents who responded affirmatively also made qualifying comments indicating that the affirmative answers are softer than the percentages indicate. Among the caveats mentioned by respondents who affirmed quality services (6.3%) by state and county courts were communication needs improvement, recent improvement, and constraints owing to funding, workload, and rural areas. Many of Public Law 280 reservation resident (43.1%) respondents report that state and county courts and personnel do not provide quality services to reservation communities. What are the complaints given? The comments given by the respondents suggest two major patterns: lack of cultural understanding (9.1%), and insufficient protection and services (22.3%). In terms of lack of cultural understanding by county and state courts and legal personnel, 6 respondents (4.2%) say that the state and county courts operate under adversarial principles rather than nurturing and recovering community members in trouble. Seven respondents (4.9%) say that county and state court and legal personnel do not have a good understanding of reservation communities, and, therefore, cannot administer law effectively for reservation residents. The second main pattern of complaint, insufficient protection and services, focuses on inadequate services (12.5%), fairness (4.9%), and protection (4.9%).

Some comments by Public Law 280 reservation residents who say that county and state court and legal personnel are not providing quality services include:

Respondent 1: "I don't know. I just hear bits and pieces, and I think the public defender's office is so busy that sometimes they don't even meet with their clients until they are here appearing for court that day. ... I don't think it's quality. What do you think?" Respondent 2: "... I heard that it's not the way we have been taught."

We are just another number ... just in the limited time exposure that we have had with the county court system is, you get pretty much what any poor person gets.

No ... well, (our) county has a reputation for trying to throw the book at Indians for everything. They don't seem to try to work things out on a personnel or

nurturing level. It's just, if we can't get them for one thing, let's get them for another thing.

From their perception, I think they feel they do. But, I think, if we had, again, a way of sentencing within our communities, that that would really do much to deter our crimes ... rehabilitate rather than punish.

The only service we get provided for is when they drag them into jail.

I guess maybe my reason is because, once again, there is lack of understanding. I think that is a lack of education. There is a lot of lacks that go with that ... because, you know, every time we got to do something, we got to beg somebody. We shouldn't have to beg. We are a proud people, too. ... They never took us seriously. Where do we go then? ... This DA is doing nothing for us. We want to clean up (the) community, and, what the hell, we have got to do commit major crimes, or roadblock, or the (tribal) government has to stand up and be militants or whatever?

I think within the scope of their authority, they do. As far as understanding it and sensitivity, I don't think that is there, but I think that the question is, they do. But I know that it could be better, and that is due to the fact that these individuals, the judges, and I have said this openly, the judges have never been where we have been, they don't understand, they don't have the cultural knowledge or the traditions, the traditions most of us all have. Our mental health programs don't have any idea as to Indian disposition and thinking and perceptions and habits. They apply us across the board with all the different models that they have in psychology and try to apply those to Indians, so they make us look crazy ... I can't speak too bad of that, outside of the insensitivity again and the areas where they don't really understand us well.

I don't think the legal personnel do because I heard a lot about people, when they get arrested and they get a public defender, that they don't feel they got good representation, and they end up with bad deals and have to plea bargain in a lot. ... And there are others, too, that just know that the public defenders don't really try to help them, just push them through, don't look at their case until the day of court.

I think the public defender is one of the travesties of the legal system. ... Yeah, for Indian people especially. That is a big one. That is probably one of the main ones.

No. I really don't think the county attorney or their advocate they have for crime victims is actively seeking out participation of our members. ... And they will not refer cases over to us unless they absolutely do not want the case.

To me, their public defenders are not very helpful to Indians. ... It's like, they work for the county, so they don't care what happens to Indians. I know a few of them that will just go right along with whatever the county suggests without even trying to fight for you.

No. Because to the cops, when they arrest somebody, they threaten them all the way to jail. ... A poor person is locked up in jail, the cops are threatening them, harassing them bad, and the DA is threatening them. You can't do that. But they do anyway. What is your word against theirs. A lawyer? A cop?

I would say no because they usually are not that knowledgeable about Public Law 280 issues ....

They don't feel that that is a responsibility, that it's our responsibility. It's the tribal council's responsibility. As a matter of fact, when we talk to them, they talk about they are only responsible to the citizens of the state. And we will say, we are citizens of the state. And they go, "Oh, yeah, that is right." It's almost like a bad comedy.

Public Law 280 state and county criminal justice personnel were asked the analogous question: Do you believe you are providing quality and effective services to Indian clients? Forty-two Public Law 280 criminal justice workers provided comments and 6 (14.3%) said that they are not providing quality and effective court and legal services to Public Law 280 reservation communities. Constraints of funding, lack of community understanding, and rural constraints were mentioned most frequently by state and county criminal justice workers as the reasons Public Law 280 reservations were not provided with quality court and legal services. Thirty-six Public Law 280 criminal justice workers (85.7%) self-report that state and county court and legal personnel provide quality and effective services to Public Law 280 reservation communities. The large majority of state and county criminal justice respondents say that county and state courts and legal services are providing quality services to Public Law 280 reservation communities. Analyzing findings and disagreements between Public Law 280 law enforcement and reservation residents, it appears that Public Law 280 criminal justice personnel and reservation residents do not agree on the quality of court and legal services. A large majority of criminal justice workers say that Public Law 280 courts and legal services are providing effective and good quality services to Public Law 280 reservation communities, while less than half of Public Law 280 reservation residents (43.8%) agree.



Non-Public Law 280 reservation residents commented on the question: Do you think federal court and legal personnel provide quality services to your community? Forty-six respondents answered the question, including 12 non-Public Law 280 reservation residents (26.1%) who said they could not answer the question. About a quarter of the reservation respondents did not know enough about federal court to provide an opinion, which may indicate uncertainty or lack of familiarity with the federal court system and its legal services. Sixteen non-Public Law 280 reservation residents (34.8%) said that federal court and legal personnel do not provide quality services. Three reservation respondents (6.5%) said that federal court and legal personnel provide a standard level of services but are generally lacking in effective communication. We will not code the standard evaluations with those that say that federal court and legal personnel are providing quality services because of the absence of affirmation of quality services and the expression of serious caveats. Fifteen non-Public Law 280 reservation residents (32.6%) said that federal court and legal personnel provide quality services to non-Public Law 280 reservation communities. There is some softness in the affirmative answers, since at least 2 respondents attach caveats about discrimination and consistency to their comments that federal court and legal personnel provide quality services to non-Public Law 280 reservation communities. Most non-Public Law 280 reservation residents (69.6%) express uncertainty about or do not believe federal court and legal person provide quality services to non-Public Law 280 reservation communities.

What comments do non-Public Law 280 reservation residents give that suggest federal courts are not providing effective and quality services? The most frequent comments are about lack of communication (10.1%), lack of understanding of reservation residents (13%), and caseload, reliability, speed, and prioritization (13%) issues. Some comments include:

No. Because they don't know us.

Because they don't know who we are. They treat Indians all alike ... and they should know that all Indian nations are distinct.

Because, like, you never really hear of the federal court. I mean, locally.

I think that the FBI and the federal courts need to become much more involved, in particular, to the set of crimes that have been set aside. Arson, assaults, murders, rapes, and those crimes that fall into that category. That they need to become more involved in the prosecuting. And their lack of funds shouldn't play into the fact that they have to say, "Well, you know, we just don't have the manpower to look into that."

I think they are slow. I think it's a slow process, and I think our people don't understand that system ... until you get into it, and then you try to figure it out. Because I know of a family that their son he is, like, 18 or 19, and he went

through the federal system. He stabbed somebody, and you ask him about the case, he can't tell you. They can't tell you what is going on ... they say, "We don't know what is going on. We don't know how long he is going to be there." I am thinking, what is happening here? Why is not anybody communicating exactly what was going on here?

I don't think it's a high priority, especially since all this terrorism. I think it has to be a fairly serious thing to get any kind of federal interest for anything going out there. ... Unless it involves a lot of money or it's a very serious crime, even if it's federal jurisdiction, it's difficult to get that involved.

Not especially. I've got a homicide that is clear, and they will come out and do their thing. ... They got their own stuff they got to do. It's not one of their priorities. I don't know it's a priority on any reservation that I know of.

No. Again, the amount of cases that we have, it's just ... you can't even provide an adequate resource or process for a few people. So, when you have many people, it's just an injustice. The whole process needs to be upgraded and improved.

Well, we don't have a lot of interaction with them, so I wouldn't say quality. I would say it's up to standard.

Non-Public Law 280 criminal justice personnel were also asked whether they believed they were providing effective and quality services to tribal communities. Five non-Public Law 280 reservation residents (100%) give self-evaluations of themselves and colleagues, saying they believe that the federal courts are providing effective and quality services to non-Public Law 280 reservation communities. Unfortunately, there are only 5 respondents, which does not give enough information for a confident conclusion. The trend with these limited data suggests that non-Public Law 280 criminal justice personnel believe that federal courts are providing quality services. In non-Public Law 280 jurisdictions, criminal justice personnel and reservation residents do not agree on the effectiveness and quality of services provided by federal court and legal personnel. Criminal justice workers say they are providing quality court and legal services, while most reservation residents in non-Public Law 280 jurisdictions express uncertainty or do not believe federal courts are providing effective and quality court and legal services.

Non-Public Law 280 reservation residents were asked to comment on whether tribal court and legal personnel provide effective services to non-Public Law 280 reservation communities. To reduce possible bias in the data, all members of tribal court systems were removed from the non-Public Law 280 reservation resident group respondents, thus removing any self-evaluation by tribal court and legal personnel. Twenty-one non-Public Law 280 reservation residents (42.8%, N=49) say that tribal court and legal personnel do not provide effective services for non-

Public Law 280 reservation residents. Twenty-eight non-Public Law 280 reservation residents (57.1%) believe that tribal court and legal personnel provide effective services to reservation communities. There is considerable disagreement among non-Public Law 280 reservation residents over the performance of tribal court and legal personnel. A majority, however, say that non-Public Law 280 tribal court and legal personnel provide effective court and legal services.

Seven tribal court personnel among the non-Public Law 280 reservation were withdrawn from the above analysis, and 85.7% (n=6) say that tribal court and legal personnel provide quality services to their reservation communities. When including tribal court personnel as non-Public Law 280 reservation residents, 60.7% (n=34) say that tribal court and legal personnel provide effective services. When tribal court personnel are included in the analysis, an increased majority of non-Public Law 280 reservation residents report that tribal courts and legal personnel provide effective services.

Returning again to analysis of non-Public Law 280 reservation residents, less the 7 tribal court workers' responses, some non-Public Law 280 reservation residents do not believe that tribal court and legal personnel provide effective services. Two main themes are apparent: favoritism-families-politics (16.3%), and staff-training-resource issues (22.4%). Some comments from respondents who say that tribal court and legal personnel do not provide effective services include:

It depends on the relationship, the families. I believe relatives in the court system are a major factor as to what the outcomes will be.

I have to say that I think they try. Because all I ever get is complaints about the courts and legal system, not being there and being supportive. And I think they try ...

I don't think so. I really don't. Right now, our court is staffed, it's really screwed up right now. Not only do they need some kind of education, but the awareness. You are taking some people off the street and putting them in. You have some people who have been there for awhile, and they get tired, and you come there and, "You want what? You are just another face to me." The same thing. It's just a constant shift of people in offices. How can you provide quality work if you cannot even provide quality staff? That is a big problem, I think.

Oh no. They are disorganized, and we need a more stable court system. We haven't got a stable court system. That is our fault. And the judges need to be more up on legal issues. They should be attorneys. But I don't know if we can afford the bill.

No. Because they lack the training they need to do their jobs, and politics and power come in. And because a lot of those jobs are elected, you know, they don't want to, they need the voters, and they shouldn't need them, so it comes back to them. ... I am going to be sitting in judgment of you, but I want your vote because I need this job. And there is only 10 big jobs that go around here every two years so, I mean, they are all scrambling for them, and there are not other jobs, and income is important, and it becomes political. And so, no, they are not, they don't do the best job they can do.

Like I say, they try, but there is always turmoil up there ... I don't know how to solve the problem. ... They tried appointing judges for life, and that didn't work. I don't know what the problem is. It's just turmoil. It's just constant.

Well, one thing, there is so much politics that goes on with the tribal court and the council, and it has been happening for some time. There might have been a time when it was really good, I don't know.

They try. Some have been there too long and are getting a little burned out.

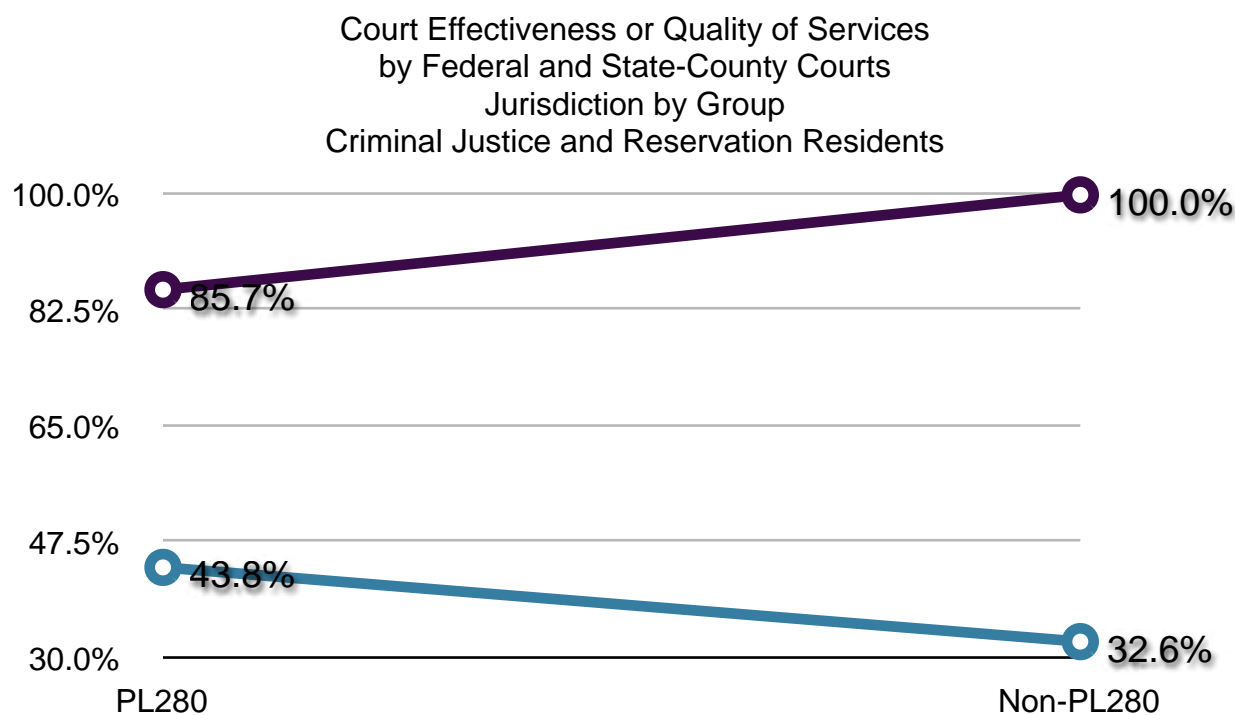
No. Well, number one, because they are seriously underfunded. Number two, they are seriously undertrained, and number three, the laws, the legal structure they are trying to work with is seriously underdeveloped. We deal with these old constitutions ... I almost can't blame them. Some of what they do is, frankly, horrendous. And other times, it seems like they are heroes for how hard they try. That is what they have. They kind of waver back and forth from day to day.

Not really. Again, money. Our department, we get money from our court system. We get money from the BIA, again. There is never enough ... and also with the prosecutors, also with the court staff. There is just not enough money. And right now we have an issue with the prosecutors because they are not trained.

Non-Public Law 280 criminal justice workers were asked to evaluate whether tribal court and legal personnel provide effective services to reservation communities they serve. Twenty-three provided comments and 5 (21.7%) say that tribal court and legal personnel do not provide effective services to non-Public Law 280 reservation communities. The respondents cite lack of jurisdiction over non-Indians, family favoritism, and lack of funding as reasons for the absence of effective services from tribal court and legal personnel. Eighteen non-Public Law 280 criminal justice personnel (78.3%) say the tribal court and legal personnel provide effective services to the reservation communities they serve. Several affirmative criminal justice respondents also suggest that tribal courts are underresourced, and need investigators and jail facilities. In non-Public Law 280 jurisdictions, more criminal justice personnel (78.3%) rate tribal court and legal personnel higher than do reservation residents (57.1%). A higher

proportion of non-Public Law 280 criminal justice workers say that tribal court and legal personnel provide effective services to tribal communities than do non-Public Law 280 reservation residents. Criminal justice personnel in non-Public Law 280 jurisdictions believe that tribal court and legal personnel operate more effectively than do non-Public Law 280 reservation residents.

Some of these data lend themselves to analysis in a 2X2X2 log-linear analysis for jurisdiction (Public Law 280 and non-Public Law 280), group (criminal justice and reservation residents) and court effectiveness, or quality, of non-tribal courts, good or not. As shown in Figure 8.5, this data sample will allow analysis of the effects of jurisdiction and groups on effective or quality court services of non-tribal courts on reservation communities. Since the data for non-Public Law 280 criminal justice comments on federal court and legal personnel contain only 5 cases, we have to be careful about the validity and robustness of the statistical results.



Percentage Affirming Quality Services  
Figure 8.5

With this caveat, the comparison generates a statistically significant result for interaction between group, jurisdiction, and court effectiveness, or quality ( $G \text{ square} = 43.3$ ,  $df = 4$ ,  $p < .0001$ ). The evaluations of respondents for court effectiveness are contingent on specific jurisdiction locations and group combinations. Law enforcement and reservation residents provide significantly different evaluations of non-tribal court effectiveness according to location in Public Law 280 or non-Public Law 280 jurisdictions. Public Law 280 criminal justice workers (85.7%) say that state and county court and legal personnel provide effective or quality services at a significantly higher rate than do Public Law 280 reservation residents (43.8%). In Public

Law 280 jurisdictions, criminal justice and reservation residents provide significantly different evaluations of the effectiveness, or quality, of county and state court and legal personnel. More Public Law 280 criminal justice workers say county and state court and legal workers are performing effectively than do Public Law 280 reservation residents. Public Law 280 criminal justice workers believe that the county and state court system works better than Public Law 280 reservation residents believe. County and state court criminal justice personnel rate their own performance significantly higher than Public Law 280 reservation residents.

A significantly higher proportion of non-Public Law 280 criminal justice workers (100%) say that federal court and legal personnel perform effectively and deliver quality services than do non-Public Law 280 reservation residents (32.6%). Non-Public Law 280 criminal justice workers believe that federal court and legal personnel are working effectively and providing quality services more than non-Public Law 280 reservation residents do. Whether they are from Public Law 280 or non-Public Law 280 jurisdictions, criminal justice workers believe that state/county and federal courts are more effective and provide quality services, while reservation residents are significantly less forthcoming and believe that state/county and federal courts are significantly less effective and provide significantly less quality services. Reservation residents and criminal justice workers significantly disagree about the effectiveness and quality of state/county and federal court and legal personnel in both Public Law 280 and non-Public Law 280 jurisdictions.

Criminal justice personnel rate the effectiveness or quality of court and legal personnel significantly higher than do reservation residents ( $G \text{ square} = 35.36$ ,  $df = 1$ ,  $p < .0001$ ). Criminal justice workers believe non-tribal courts provide effective or quality services, while fewer reservation residents believe non-tribal courts provide effective or quality services.

The main effects of jurisdiction, Public Law 280 and non-Public Law 280, are not statistically significant ( $G \text{ square} = 3.16$ ,  $df = 1$ ,  $p = .076$ , NS). Respondents in Public Law 280 jurisdictions do not make significantly different evaluations of non-tribal court and legal personnel effectiveness and quality of services compared with respondents in non-Public Law 280 jurisdictions. Respondents in our sample evaluate the effectiveness of non-tribal courts about the same for Public Law 280 and non-Public Law 280 jurisdictions.

We can add non-Public Law 280 criminal justice and non-Public Law 280 reservation-resident evaluations of tribal court and legal personnel to the analysis, and drop the non-Public Law 280 criminal justice evaluations of federal court and legal personnel, since the latter has so few cases ( $n=5$ ). According to our sample, as shown in Figure 8.6, the comparison yields a statistically significant result, there are differences in the evaluations of the effectiveness, or quality, of court and legal personnel by respondent groups, reservation residents and criminal justice personnel ( $\chi^2 = 36.85$ ,  $df = 4$ ,  $p < .0001$ ; Cramer's  $V = .35$ ). However, the differences in evaluation of effective services among reservation residents evaluating tribal (57.1%), state/county (43.8%), and federal court (32.6%) are similar. Reservation residents

evaluate court effectiveness lower than criminal justice personnel, who say state/county courts and non-Public Law 280 tribal courts are highly effective. Non-Public Law 280 reservation

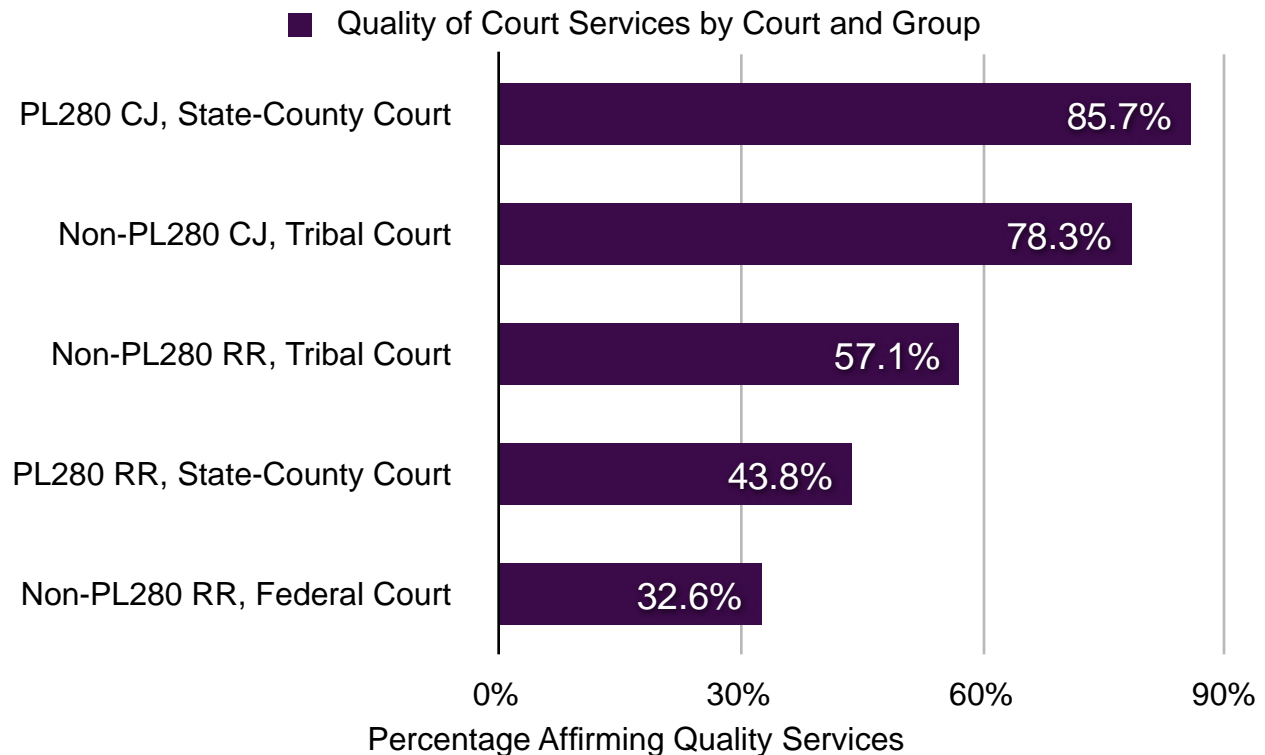


Figure 8.6

residents have similar views of the quality or effectiveness of tribal and federal court and legal personnel, and Public Law 280 reservation-resident evaluations of services from state/county court and legal personnel do not differ statistically. For these data, the trend suggests reservation residents evaluate tribal courts and legal personnel as more effective than state/county and federal court and legal personnel.

Criminal justice personnel in Public Law 280 jurisdictions rate effectiveness or quality of state/county courts very high, while also rating highly tribal court and legal personnel in non-Public Law 280 jurisdictions. The proportion of Public Law 280 criminal justice personnel who rank Public Law 280 state/county courts as providing effective or quality services is about the same as criminal justice evaluations of non-Public Law 280 tribal courts. In non-Public Law 280 jurisdictions, most criminal justice personnel and reservation residents agree about the positive effectiveness of tribal court and legal personnel.

The main differences between evaluations of the effectiveness, or quality, of court and legal personnel are comparisons between criminal justice and reservation residents. Public Law 280 criminal justice workers say state/county court and legal personnel are providing quality services more often than non-Public Law 280 reservation residents say tribal court workers are providing quality services; and Public Law 280 reservation residents say that state/county court and legal personnel are providing quality services; and non-Public Law 280 reservation residents

say federal court workers are providing quality services. Criminal justice workers in Public Law 280 jurisdictions self-evaluate their quality of services at rates that are higher than reservation residents evaluate the quality of services provided by federal, state/county, and tribal courts. Non-Public Law 280 criminal justice workers say non-Public Law 280 tribal court workers provide quality services more often than reservation residents say the same about state/county court workers in Public Law 280 jurisdictions. Non-Public Law 280 reservations residents also tribal court workers provide quality services more often than non-federal court workers. Except for agreement about non-Public Law 280 tribal court workers, criminal justice workers evaluate state/county and non-Public Law 280 tribal court workers as more often providing effective or quality services than reservation residents evaluate federal and state/county court and legal workers. Reservation residents significantly less often rate state and county court and legal personnel as providing effective services than criminal justice personnel rank state/county and non-Public Law 280 tribal courts.

These data lend themselves to a 2X2X2 log-linear analysis between groups (criminal justice workers and reservation residents) and courts (Public Law 280 state/county courts and non-Public Law 280 tribal courts) and quality of services by court and legal personnel, good or not. As represented in Figure 8.7, this sample of respondents suggests there is a relation between groups, courts, and effectiveness of courts ( $G^2 = 33.2$ ,  $df = 4$ ,  $p < .0001$ ). Significantly more criminal justice workers report court and legal personnel provide quality services than is reported by reservation residents ( $G^2 = 27.66$ ,  $df = 1$ ,  $p < .0001$ ). Criminal justice workers in Public Law 280 state/county courts rate the quality of service by state and county court and legal personnel significantly higher than do reservation residents. Criminal justice workers commenting on non-Public Law 280 tribal courts say that tribal court and legal personnel provide significantly better quality services than is reported by reservation residents. Criminal justice and reservation residents have significant and wide disagreement over the delivery of quality services by court and legal personnel. Criminal justice workers say that state/county and tribal courts provide relatively good or effective services, while significantly fewer reservation residents report that state/county and tribal court and legal personnel provide quality or effective services to tribal communities. One possible explanation is that both tribal and state/county courts conform more to the normative and professional expectations of court procedure and services, while tribal and state/county courts are more alien institutions for reservation residents who have different cultural and normative expectations from state/county and tribal courts. If this explanation is true, both non-Public Law 280 tribal courts and Public Law 280 state/county courts conform more to American court rules and norms, and are less accommodating and less well understood by tribal reservation community members. Most non-Public Law 280 reservation residents (57.1%) report that non-Public Law 280 tribal court and legal personnel provide good services, but significantly more non-Public Law 280 criminal justice workers report good-quality services provided to non-Public Law 280 tribal courts. A minority (43.8%) of Public Law 280 reservation residents report good services provided by state/county court and legal personnel, and disagree more widely than non-Public Law 280 reservation residents with Public Law 280 criminal justice worker evaluations (85.7%). Criminal justice workers report



more frequently than reservation residents that tribal and state/county court personnel are providing quality or effective services to Indian community members.

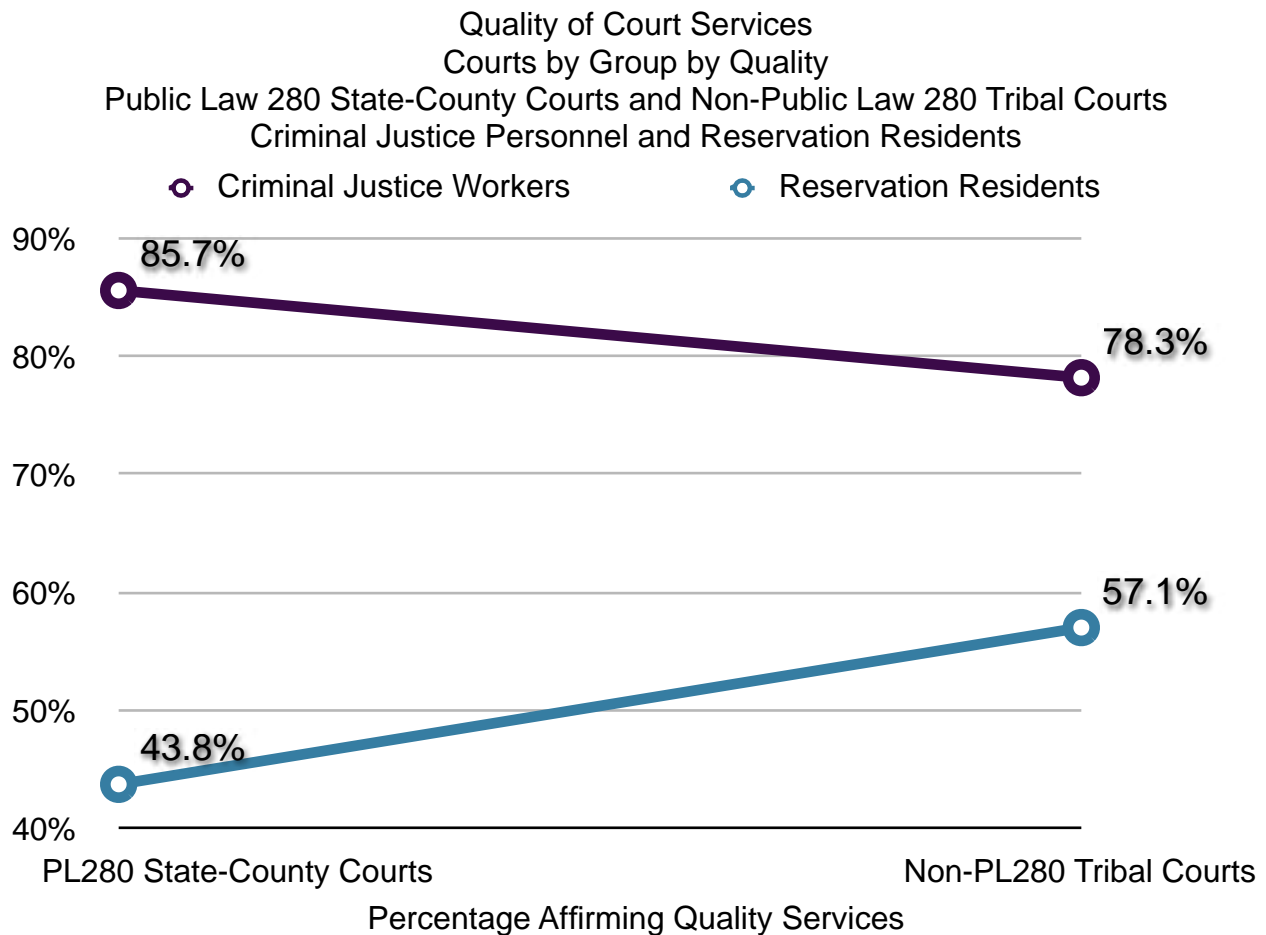


Figure 8.7

The effects of courts on quality of services, Public Law 280 state/county court or non-Public Law 280 tribal court, are not significant ( $G \text{ square} = 2.42$ ,  $df = 1$ ,  $p = .12$ , NS). The relation of Public Law 280 state court jurisdiction to quality of service is not significantly different from the effect of non-Public Law 280 tribal court jurisdiction.

Combining results from the immediately preceding three Figures 8.5, 8.6 and 8.7, these data indicate that criminal justice personnel significantly more often say that federal, state/county, and non-Public Law 280 tribal court personnel provide effective or quality services than reservation residents say about federal and state/county court and legal personnel. Criminal justice personnel say federal, state/county, and non-Public Law 280 tribal court workers provide effective services more often than reservation residents say that federal and state/county court and legal workers provide effective and quality services. Criminal justice workers more frequently evaluate the services provided by state/county, federal, and non-Public Law 280 tribal court workers as effective and good, while reservation residents disagree, and significantly fewer say state/county and federal court and legal workers provide good and effective services. There are no statistical differences among reservation resident ratings of federal, state/county, and non-Public Law 280 court worker effectiveness, although most reservation residents say that non-

Public Law 280 tribal courts provide good and effective services, and fewer reservation residents say that federal and state/county court and legal personnel are providing good and effective services to reservation resident communities.

Public Law 280 criminal justice respondents evaluate state/county court services as good and effective at significantly higher rates than reservation residents evaluate federal, state/county, and tribal court services. In Public Law 280 jurisdictions, criminal justice personnel and reservation residents disagree about the effectiveness of state/county courts. Public Law 280 criminal justice workers say more frequently that state/county court workers are effective, while reservation residents say significantly less often that federal, state/county, and non-Public Law 280 tribal courts have effective and quality services for Indian communities. Non-Public Law 280 criminal justice respondents say federal court services are good and effective significantly more frequently than reservation residents report the same about federal and state/county court and legal personnel. Non-Public Law 280 criminal justice workers and reservation residents disagree over the federal courts' service quality and effectiveness; most criminal justice respondents say that federal court and legal personnel are effective, while significantly fewer of reservation residents agree. In non-Public Law 280 jurisdictions, most criminal justice and reservation residents agree that tribal court and legal personnel provide effective and quality services to reservation communities. The main effects of jurisdiction, Public Law 280 or non-Public Law 280, is not a significant factor affecting respondent judgments of quality or effectiveness of court and criminal justice workers.

### How to Improve the Quality of Court and Legal Services

Public Law 280 criminal justice and reservation residents were asked how the quality of court and legal services can be improved. Ten county criminal justice workers and 4 reservation residents made comments, and since the responses are few it's difficult to discern reliable patterns. Public Law 280 reservation residents suggest more communication and cooperation, a greater effort to stop drug and other crimes, and less emphasis on arrests. Here are some comments made by Public Law 280 reservation residents:

I think they could take the initiative now and then, and come out and say, "What can we do better to serve the community?" instead of us having to go down there and try and make appointments to go visit with somebody and explain what is going on here, and see if we can get somebody out here. I think they should reach out and get into the communities a little more ... I think if there was a better line of communication. I know working hand and hand with probation officers here with some of the residents. We let the boys know we report to them on a monthly basis their activities, their behaviors, their attitudes, And if the boys are acting up or whatnot, we call probation. They will sit down and talk with them on the phone, help them get back stable. Help them realize that they are here, yet their probation rules and laws apply, so do ours. ... And our communication with them

and them allowing the boys to come here instead of shipping them off to a boot camp. Where this would be more therapeutic, more treatment. We can work with their families also. The families come here and they work with us. It's more healthy.

In the courts? In the county courts? ... I would be really shocked if that happened (peacemaking courts or diversion programs) ... because they are not bendable when it comes to tribe. I mean, I am thankful they are communicating with our judges, and hope the new people will.

Well, if you want to know the truth, I think they allow a lot of stuff to go on ... like, fairly important warrants on drug dealing and stuff ... I mean, can you just stand idle when you have a warrant involving major drug dealing, or a probation violation on that major drug dealing so you could pull them in. I mean, they just don't seem to ... there is a lot of criminal (activity). I don't want to say this, but there is a lot of drug dealing and a lot of criminality that just doesn't seem to stop. And I just don't think they care that much ... I think they should have come up with a better response by now ... I don't know what the answer is.

I think it could be improved all the way around there. You know, I know those things happen but there, I think it can be improved, but again you get back to the manpower, and you get back to the attitude of the people who are in charge, that are administering this. The problem is right now, of course, we have these hard feelings between the community (and county law and courts). I mean even though they will talk and not (that) we (don't) know it exists, and the way we know it exists is more arrests happen, I mean that is our indicator. ... Oh, yes, my wife, she is more into the rumor mill and all this grapevine thing, and she says, "They have been picking up Indian boys right and left." You know, after that they are coming down pretty hard. And I thought, "Oh my, what can we do? They are in charge."

Ten Public Law 280 criminal justice workers made comments for improving county court and legal services that focused on more communication and integration of services, formal agreements, and more programs. Some comments include:

I am actually pretty impressed with the relationship we have with the tribe and their involvement in our activities, our involvement in their activities. It's a really nice collaboration of partnership. As partnership and collaboration has developed in our county, they have come along right with us ... the county put all the departments of human services under one director. So public health, mental health, juvenile, at that time the youth programs were under one person. Then it built. It included the commission of children and families, and then service integration

came . (the director) wanted families to be able to do one-stop shopping for services rather than having to go here and there and (have people say), “I can’t help you.” You can go there. That is where the idea of collaboration and service integration started ... because we have included them (the local reservation community) from the beginning ... it wasn’t as if we brought it to them, you don’t want to come in like this and (say) “This is how we are going to do things.” You want to have us all go together. That is where they fit. ... So, the work that we did in the beginning has really paid off for us. And the tribe has been there all along. So now it’s a natural feel. Well, why wouldn’t we be asking those questions? Why wouldn’t we be looking for culturally appropriate resources because that is just a natural thought process now for those around the table? ... When you are forming case plans, as we are working on this plan for this family, we are OK, we are going to do this and the tribe will say “OK, we are going to pick up this piece. We get that happening where we are going to do this piece and you tie it.” We can’t do that, but oh this person can do this. When you have that relationship going around the table, you can get so much more done for a family.

I think what could be improved is probably the accessibility for treatment service. Better accessibility.

I think there could be enhanced cooperation amongst the different Indian communities. ... There is some internal politics happening that they would not send anyone to those programs because it was not developed for them, or ... so, there is a lot of internal issues that come up that interfere with the sense of cooperation ... I think we are making progress, but it still requires a lot of coordination and cooperation amongst the various tribes.

I think, perhaps, maybe a little more interaction with the tribe would be helpful although we do have some. And that is why it’s difficult, because funding is there, it’s overtime. You know it becomes a funding issue eventually.

We could all get on the same page. All the criminal justice systems could have means to communicate with each other. And treatment providers, too. We just have (no) communication.

I talked about added staff, culturally specific programming. Talked about transitional housing and the importance of family intervention, while a kid is placed elsewhere, or family work, generally. Also, our focus has been talking about kids because that is really where the hope is. And for the adult offender, it’s really almost 100% of the time being able to maintain sobriety, is being the important thing. That is, if we can maintain sobriety with our adult clients, they usually do just fine.

It's continuous building up bridges, a lot of times doing that through formalized agreements. Sometimes formalized agreement actually goes to the extension of a program working in partnership, or, you know, referral-based. A lot of us are following through on what we agreed to do. We can make good to each other, and have some shared outcomes or goals, and then outcomes that we can measure across agencies. There is room for providing, developing cultural competency programs as well as training surrounding it. So, an example could be through the human services category. ... The other arena where I think some work could be done could be through law enforcement agencies, and specific to this county. I think training, a series of training over time, not like you do it once and it's, like, well, we are culturally competent now ... because it's an issue for each of those agencies (police, justice, probation) on their own, we have strength in numbers, and the more people partner up to provide the training, the cheaper it becomes for everybody. It becomes a county-wide attitudinal approach, and I think there is a lot of room for more development there.

I think in terms of looking at trying to work with the tribes to develop a better cadre of services to meet the needs of Indian children. And again that stems from foster parenting and where the children are placed, what drug-and-alcohol services. Because, I don't know, I think some of the drug-and-alcohol services that come from the tribe that Indian children will be more receptive to participating, and that buy-in that might need to occur. So, I think if they are provided through their own culture, I think the opportunity for success is greatly improved.

I would like to see them have, like I say, they have a lot of programs out there, but they still need a few more. We need a good domestic violence program. One that is really in place that has a good psychologist or psychiatrist. And we also need, what we really need, a good mental-health program there, because they are intimidated about coming to this one here. In fact, most clients are ... I think they feel a stigma of it, and I am not too impressed with our county services ... so, I think it's important that they expand those (mental health) services. And, of course, that would include the domestic violence. And I think, I don't know what they have in place, if they have parenting classes, but I think that is something that is important.

Public Law 280 reservation residents and criminal justice workers suggest more and serial cultural training, culturally aware administration, more communication, and collaboration between tribal and state/county court and legal services as primary ways to improve the delivery of state/county court and legal services in Public Law 280 jurisdictions.

## Summary and Conclusions

With one exception, these data suggest the effects of jurisdiction, whether Public Law 280 and non-Public Law 280, are not significant along a series of measures for the quality of services provided by court and legal personnel. In Public Law 280 and non-Public Law 280 jurisdictions, criminal justice personnel agree on a series of work-quality-related issues: self-evaluation of their understanding of tribal cultures, thoroughness of legal services, respect for tribal authorities, perception of how reservation residents view legal services, satisfaction of reservation residents with courts, and to what extent reservation residents have a positive or negative view of courts. Criminal justice workers agree in both Public Law 280 and non-Public Law 280 jurisdictions that their colleagues have slightly below-average understanding of reservation cultures; are above average in providing thorough legal investigations; are highly above average in respect for tribal authorities; believe tribal members have above-average respect for courts; believe tribal members have below-average satisfaction with the courts; and believe few tribal members (14 to 20%) have positive views on state/county and federal courts. The agreement, or nonsignificant differences, reported by criminal justice personnel indicate jurisdiction, whether Public Law 280 or non-Public Law 280, does not significantly affect the quality of court and legal services as understood by criminal justice workers. The questions about quality of court services, however, are not complete measures of jurisdiction, since reservation residents were not asked comparable quantitative or ranking questions, and we do not know whether inclusion of reservation residents within the analysis will uphold agreement, or present significant differences between Public Law 280 and non-Public Law 280 jurisdictions. More research needs to be done to answer the jurisdiction question more comprehensively. These limited data suggest criminal justice workers in Public Law 280 and non-Public Law 280 jurisdictions agree about several aspects of the work quality among criminal justice workers, therefore indicating jurisdiction effects are not significant. We don't have comparable measures from reservation residents on many of the above criteria of quality of court services, and the pattern of the data suggests reservation residents often disagree with the views of criminal justice personnel, and those disagreements often depend on location in Public Law 280 or non-Public Law 280 jurisdictions. So, we should withhold judgment on the effect of jurisdiction until more data is available.

For this sample, our primary opportunity to evaluate jurisdiction effects occurs through analysis of the quality of non-tribal court services compared against differences in group evaluations. Here, respondents did not report significantly different evaluations of non-tribal court effectiveness according to location in Public Law 280 or non-Public Law 280 jurisdictions. The main jurisdiction effects are not significant. However, a significant interaction effect suggests a strong and complicated relation between jurisdiction, the quality of services in non-tribal courts, and group evaluations. Criminal justice personnel in non-Public Law 280 jurisdictions evaluate the quality of federal court services highest among respondents, while non-Public Law 280 reservation residents evaluate federal court effectiveness lowest. There may be a larger gap in evaluations for federal court effectiveness between criminal justice and reservation respondents than for Public Law 280 respondents for state/county court effectiveness.

In our sample, group effects refer to differences between the evaluations of criminal justice workers and reservation residents along measures of quality court and legal services provided to Indian communities. Most respondents agree communication between reservation residents and court and legal personnel in state/county and federal courts is not good. Respondent groups report good communication ranging from 5.9% to 42.9%, and none over half. There is a general consensus among most respondents suggesting state/county and federal court and legal personnel do not communicate well with tribal members. For our sample, criminal justice and reservation-resident respondents report cultural understanding among court and legal personnel is similar. Criminal justice and reservation residents report agreement about how well court and legal personnel understand tribal cultures.

Reservation residents and criminal justice workers voice significantly different views about quality or effectiveness of legal services delivered to tribal members. More criminal justice workers report courts are providing quality or effective legal services to tribal communities than are reported by reservation residents. Criminal justice workers and reservation residents significantly disagree about the quality and effectiveness of court and legal services in federal, state/county, and non-Public Law 280 tribal court jurisdictions. Criminal justice workers in all jurisdictions say court and legal personnel provide good services to tribal members, while in all jurisdictions, significantly fewer reservation residents report court and legal workers provide quality, or effective, court and legal services.

In Public Law 280 jurisdictions, reservation residents who say court and legal workers are not providing good services say state/county courts: do not provide sufficient protection; are not fair; use adversarial methods rather than nurturing and recovering community members in trouble; and lack cultural understanding of Indian communities. Reservation residents in non-Public Law 280 federal court jurisdictions say federal courts: do not communicate well with tribal communities; lack knowledge about Indian reservation cultures; and have difficulties with large caseloads, reliability, speed, and prioritization of cases. The main reasons non-Public Law 280 reservation residents give for saying non-Public Law 280 reservation courts do not provide stronger services are favoritism, family connections and related politics, lack of staff training, and insufficient resources. Fewer reservation residents than criminal justice respondents say court workers provide quality services to tribal communities; however, reservation residents give different reasons for court performances.

Reservation residents complain about the lack of understanding of cultural and tribal legal relations in Public Law 280 state/county courts and non-Public Law 280 reservation courts. Respondents say non-Public Law 280 tribal courts understand reservation cultures very well, while Public Law 280 state/county courts understand tribal cultures at only low levels. Some reasons given by reservation residents for why Public Law 280 state/county courts have less cultural understanding than non-Public Law 280 tribal courts are that state/county court personnel are biased against Indian tribal members, indifferent to Indian culture, have too

infrequent contact with Indian tribal members, and do not have enough knowledge about tribal cultures.

Reservation residents commenting on Public Law 280 state/county courts and non-Public Law 280 federal courts are concerned about lack of understanding of culture and its effect on the delivery of court and legal services to their communities. However, reservation residents do not report similar concern about lack of cultural understanding affecting delivery of court and legal services in non-Public Law 280 tribal courts. Furthermore, non-Public Law 280 reservation residents say federal courts are more like state/county courts than non-Public Law 280 tribal courts, suggesting federal courts also are significantly less understanding of tribal cultures. The causes of differences between criminal justice and reservation-resident evaluations of quality or effective court and legal services vary by jurisdiction. The data suggest non-Public Law 280 tribal courts and non-Public Law 280 federal courts have significantly different cultural understandings of tribal communities that affect the delivery of court and legal services to tribal communities. The cultural relations operable within non-Public Law 280 tribal court social and cultural environments are significantly different from Public Law 280 state/county courts and non-Public Law 280 federal courts and affect the delivery of services. According to our sample, reservation residents say non-Public Law 280 tribal court and legal personnel provide better services than state/county and federal courts, because non-Public Law 280 tribal court and legal personnel have better cultural understanding, although reservation residents emphasize lack of resources and tribal-family-community political relations as reasons for why the tribal courts do not deliver stronger services to reservation communities.

In Public Law 280 state/county courts, reservation residents are primarily concerned about the absence of sufficient protection in the courts, while in non-Public Law 280 federal courts, reservation residents are about equally concerned about lack of good communication, lack of cultural understanding, and caseload difficulties. Reservation-resident respondents for non-Public Law 280 tribal courts are less explicitly concerned about lack of cultural knowledge or communication, but are more concerned about the politicization of tribal court proceedings and lack of resources to maintain tribal courts.

These results suggest non-Public Law 280 court jurisdictions have two culturally different court systems in operation: The federal courts do not understand tribal cultures very well, but tribal courts have a good understanding of reservation cultures. Non-Public Law 280 jurisdictions are more multicultural than Public Law 280 jurisdictions, where court and legal services are largely in the hands of state and county court and legal personnel. If cultural understanding by court and legal personnel is a critical issue affecting the delivery of court services in Indian country, then tribal courts, which have greater understanding of tribal cultures, should be analyzed separately from federal and state/county courts. The category of non-Public Law 280 jurisdiction may be too general, and covers over differences in critical cultural understandings held by federal and tribal court workers. More effective analysis and understanding of the processes of justice in Indian country may be gained by taking cultural



understanding into account and analyzing non-Public Law 280 federal courts and non-Public Law 280 tribal courts as separate entities. For cultural understanding of tribal communities, non-Public Law 280 federal courts and Public Law 280 state/county courts are similar. Courts in Indian country may be categorized according to degree of tribal-cultural knowledge, as well as differences in administration of Public Law 280 and non-Public Law 280 legal codes and procedures. All three court systems, Public Law 280 state/county, non-Public Law 280 federal, and non-Public Law 280 tribal courts are different and integral parts to understanding the administration of justice in Indian country.

Suggestions for improving communication, court services, and cultural understanding were solicited from respondents. Respondents report communication between courts and tribal community members is not good. Suggestions for improving communication included more meetings, direct face-to-face contact with community members, community groups, and tribal government. The meetings should include useful information, but also should address current issues from the Indian communities and address issues of concern from court and legal personnel.

We asked criminal justice respondents how they became aware of specific features of Indian cultures, hoping respondents would share their experiences gaining knowledge about tribal cultures. Public Law 280 criminal justice workers expressed their new awareness of Indian cultures by making comments about gaining increased understanding of Indian families and elders, ethical-normative relations, and religion and spirituality. Non-Public Law 280 criminal justice workers emphasized normative patterns as the main issues they learned about, but showed less awareness of religion and spirituality, and less awareness of Indian family and elder relations than emphasized by Public Law 280 court workers. These data suggest Public Law 280 criminal justice court and legal personnel are more broadly and deeply aware of tribal cultural diversity in terms of family, elders, and religion than are non-Public Law 280 federal criminal court and legal personnel. The federal court workers appear to have direct contact with some Indian clients, and so draw their knowledge from personal interaction, but have less comprehensive understanding and direct experience with tribal reservation cultures than Public Law 280 court and legal personnel. The more limited jurisdiction of federal courts over reservation offenses, centering on major crimes and interracial crimes, may begin to explain this lesser degree of awareness. In contrast, state/county courts in Public Law 280 jurisdictions can hear nearly all criminal matters involving Indians arising on the reservations.

As means to improve the delivery of court and legal services in Public Law 280 jurisdictions, Public Law 280 criminal justice and court personnel suggest state and county workers need more, and sustained, serial cultural training, more culturally aware administration, more communication, and greater collaboration between tribal and state/county court and legal services.

## CHAPTER 9

### Court Case Management in Indian Country

Criminal justice workers in both Public Law 280 and non-Public Law 280 jurisdictions were asked to respond to a series of questions about the logistics of their caseloads and issues related to caseload management and dispositions. Some questions were specifically crafted to investigate case-processing decisions of prosecutors, while public defenders and probation officers also responded to specific inquiries about their case management and processes. We hope that these data will provide additional insight into decision-making processes and case dispositions for cases involving Indian defendants and victims. Differences between Public Law 280 and non-Public Law 280 jurisdiction in case management and disposition are investigated.

#### How Heavy Is the Caseload?

Criminal justice workers in Public Law 280 and non-Public Law 280 jurisdictions were asked: Can you estimate the number of cases you deal with that involve Indian victims or defendants? Two groups of criminal justice workers commenting on state/county (N=39) and non-Public Law 280 tribal (N=19) courts provide enough responses to discuss. The data, however, are difficult to interpret: The respondents reporting on non-Public Law 280 courts estimate cases per year, while probation officers, judges, and prosecutors, community advocates and public defenders have different patterns of caseloads. Community advocates and public defenders in non-Public Law 280 jurisdictions usually have relatively low caseloads, ranging from 10 to 15 Indian cases per year. The Indian caseloads for non-Public Law 280 probation officers range from 50 to 4,000, and the cases loads for non-Public Law 280 judges and prosecutors range from 225 to 3,000 Indian cases per year. It's difficult to determine a pattern for the non-Public Law 280 caseload data, since many factors may contribute to caseload size.

Public Law 280 criminal justice workers (N=39) commenting on caseload numbers for state/county courts provide some comparative data with non-Indian state/county court caseloads. Some respondents gave average caseload estimates. In this subset of responses, probation officers say their caseloads are average, or others say they range between 12 and 200 Indian cases per year. These data are based on 3 respondents and most likely are not reliable indicators. Several Public Law 280 state/county judges and prosecutors (n=6) say that their caseloads range from 20 to 1000, but most caseloads are reported in the under-200 range. One community advocate said they handle 10 cases each year on average; one public defender served 12 clients; and a small public defender office says they manage about 144 cases involving Indian clients annually. These data are based on too few respondents to be reliable, but they indicate a somewhat smaller caseload than criminal justice workers report for non-Public Law 280 tribal courts.

Most Public Law 280 criminal justice responses (n=25) are in estimated percentages of total caseload, containing Indian and non-Indian cases, and with some comment on whether the percentages of Indian cases were proportionate or disproportionate within their general caseload population. Nineteen Public Law 280 criminal justice respondents (48.7%) say that they handle a disproportionately high percentage of Indian cases compared to non-Indian cases. The percentages given range from 5% to 95%. Seven Public Law 280 criminal justice workers (17.9%) say that they do not handle a disproportionate number of Indian cases compared to non-Indian cases in the state/county court or legal service system. Seven Public Law 280 respondents (17.9%) could not answer the questions, suggesting some uncertainty over the magnitude of Indian caseloads in state/county courts.

The Indian caseload data do not yield easy or direct comparisons between Public Law 280 and non-Public Law 280 jurisdictions. Perhaps the only reliable result from these data are that 48.7%, nearly half, of Public Law 280 criminal justice court and legal personnel say their Indian caseloads are disproportionately higher than non-Indian cases.

### Do Cases Move Fast Enough?

Criminal justice respondents were asked: Do you feel that cases move fast enough through the court system where you work? There were very few responses to the question, but 17 non-Public Law 280 criminal justice personnel commented on how fast cases moved through the tribal courts. Three non-Public Law 280 criminal justice workers (23.5%) say that cases do not move quickly enough through tribal courts. They say that alcohol-related cases, case backlogs, and the unwillingness of witnesses to testify all contribute to the slow processing of tribal cases. Thirteen non-Public Law 280 criminal justice respondents (76.5%) say that cases move through tribal courts in a speedy manner. Most non-Public Law 280 criminal justice respondents say that cases move through tribal courts at acceptable speeds. There are not enough data to make comparisons to Public Law 280 jurisdictions.

### Which Cases Take the Most Time and Resources?

Criminal justice court and legal personnel in Public Law 280 and non-Public Law 280 jurisdictions were asked: What types of cases require more time and resources? Thirty-eight criminal justice workers in Public Law 280 jurisdictions and 17 criminal justice workers in non-Public Law 280 jurisdictions commented about the types of cases that took the most of their time and resources. In both groups of respondents, some commented about several types of cases that incurred excessive time and resources. For example, 1 Public Law 280 respondent said, “DUI, domestic violence, and alcohol-related felonies (and) assaults.” To get a profile of the types of cases that required more time and resources, we counted every time any type of case was mentioned. In the above quote, three types of cases emerge: alcohol-related cases, major crime cases involving felonies or assaults, and domestic violence cases. Usually the case issues are overlapping; for example, many crimes are reported linked to alcohol or drug abuse. The

respondents' comments were counted three times: once for major crimes cases, once for alcohol-related cases, and once for domestic crimes. In this way of counting, Public Law 280 criminal justice workers (38) mentioned time- and resource-consuming cases 70 times. Similarly, non-Public Law 280 criminal justice workers (17) mentioned 30 times cases that were highly time- and resource-consuming. On average, respondents mentioned about two types of cases that were significantly time and resource consuming. To better understand the frequency and distribution of time- and resource-consuming cases, we will analyze how many times different types of cases are deemed time- and resource-consuming, and see whether any patterns or comparisons suggest overall trends or differences in Public Law 280 and non-Public Law 280 jurisdictions.

Public Law 280 criminal justice workers describing the most time-consuming cases mention cases involving major crimes, violent crimes, felonies, assaults, and sexual assaults 25 times, or 35.7%, of the total number cases mentioned (70). For Public Law 280 criminal justice workers in state and county courts, cases involving major or violent crimes were mentioned most often as the most consuming of time and resources. Some comments on major crimes from Public Law 280 criminal justice workers include:

Burglaries. Domestic violence, usually alcohol-related or drug-related cases. Battery cases. The serious felonies generally take more time.

Well, for us, we do all criminal offenses from a legal left turn to murder. We haven't done as many murder cases in the last couple of years because we are a small program, and our last murder case took three months, both one of the attorney's time and the one legal assistant's time out of a staff of eight, and that is, I guess, broken down to three attorneys and two legal assistants. And for us to just shut down for one case for a three-month period and (inaudible) staff on a full time basis is just kind of a large drain on resources itself. But felony cases take most of our time. ...

Well, I guess, generally speaking, you know that more serious cases would take more time than misdemeanors and more serious felonies more time than less serious felonies. But, you know, I think, domestic violence crimes are always kind of difficult, as well as more serious property crimes and things of that nature.

You know, I don't know that I can answer that kind of question. Murders always take more time and resources than others. Children in need of protection or service ... the family-welfare cases where the child is a runaway or the child is into some other issue which is not safe for them or poses a danger to the community, not in a criminal way, requires a lot of time.

The second most frequently mentioned type of time-consuming cases are alcohol- and drug-related cases, which were mentioned 19 times (27.1%). Some comments include:

Well, I think the drug cases ... because the way we handle the drug cases. ... Because that seems to be (a) prevalent offense, and they have them come in at least two a month into the office; we test, we do all those things. And, of course, then you have the chronic users who (are) always in the revolving door. And so, there is a lot of different activity that goes on with them...

I think the ones where there is some type of substance abuse or alcohol abuse because a lot of time the condition of probation will be that a client (is) going to a program and that requires status reviews, and some of them do better in-program than others. So, if there are problems along the way, they call and explain what is going on with those, too.

Drug and alcohol. Domestic violence. Sex offending.

Drugs and major assaults, and assault-type behaviors ... Probably because the risk of going to prison is so much greater and more likely to be headed to trial than any other case, (like a) misdemeanor (is) not likely going to be going to trial. We could settle them a lot easier without spending a lot of time.

Drug cases ... pretty intense follow-up ...

I would say the ones that are involved with use of alcohol. It has been my experience that ... whether the offense is an assault or a burglary, that a large percentage of them, the defendant has been using alcohol. If there is any common denominator for all types of offenses and difficulties, it's the use of alcohol.

Well, the alcohol-related offenses ... easily, 95% of my cases are alcohol related in that alcohol is the primary drug of use even by my drug-abusing clients. And those, of course, are the ones that we are spending most resources on trying to find ways of dealing with alcohol and other drug-abuse issues.

Domestic violence as a type of case incurring significant time and resources is mentioned 11 times (15.7%) by Public Law 280 criminal justice workers.

I would say definitely domestics ... and, obviously, domestic assaults or violations of orders for protection. Those kinds of prosecutions ... when you have a prosecution that has a victim, that in itself immediately adds additional resources and time because we have an obligation to, at least a good faith effort, to contact and reach the victim and gather input. In a domestic case, I think that gets

multiplied maybe two or three times ... and I think that the dynamic on the reservation can make it even more complicated still, because it's a small, tight-knit community, and a lot of people are related to each other. In any domestic assault there is often concerned about recanting. In my experience with prosecuting domestic assaults on the reservation, there is an even greater possibility of it, and a greater confusion because parties are so close-knit that there is a even greater difficulty and, maybe not unwillingness, but a hesitancy for people to want the matter resolved outside the family circle, for instance.

Cases involving domestic violence ... just what I indicated. The lack of resources. The lack of resources and the lack of — and I don't necessarily believe that it's intentional or willfulness on the part of some of the tribes not to really work hard in helping certain people, especially, again, that they are on the outs with the tribal members or council. Domestic violence cases and the other, because you have to deal with the cultural issue. And a lot of times, you are dealing with younger people ... But when it comes to in-patient, and DV, when you talk about domestic violence, you are going to have to comply with the statute that says 52 weeks of anger management ... so one of our clients unfortunately lacked the finances or don't have transportation ... or sometimes they end up getting violated because they don't have the finances or the ability to comply. So again, it's just lack of resources overall. I think it's just lack of resources per se, just for our clients, let alone more difficulty when you talk about persons of different cultures.

Domestic violence requires a lot of time. Sexual-assault cases require a lot of time ... child in need of aid. Where the state takes the child out of the home because the parents have some sort of deficiency that they need to work on.

Public Law 280 criminal justice respondents mention less often other types of cases that involve expense and are time consuming including child welfare cases (4.3%), child neglect and abuse (4.3%), and child-protection orders (4.3%). Child welfare, neglect, and protection cases make up 12.9% of time- and resource-consuming cases. The remainder of cases mentioned as time- and resource-consuming are cases related to property crimes (2.9%), juvenile cases (1.4%), family law cases (1.3%), and Public Law 280 jurisdiction cases (1.3%).

In non-Public Law 280 jurisdictions, criminal justice workers (N=17) commented on the cases that were most time- and resource-consuming for tribal courts. For the non-Public Law 280 jurisdictions, the 17 respondents made mention 30 times of the types of cases that cost in significant time and resources. The pattern is somewhat different from the county and state courts in Public Law 280 jurisdictions. The most frequently mentioned type of costly and time-consuming cases reported by non-Public Law 280 criminal justice workers are alcohol and drug cases (33.3%). Major crimes — assaults, felonies, and sexual assaults — are mentioned 23.3% of time, while domestic violence cases are mentioned 20% of the time as incurring the most time

and resources to manage. Child-welfare, custody, abuse, and paternity issues are cited 13.3% of the time as difficult and time-consuming cases. Juvenile court issues are mentioned 10% of the time as difficult-to-manage cases. In non-Public Law 280 tribal courts, children- or juvenile-related cases make up 23.3% of the most difficult cases to manage, the same rate as major crimes. An important factor that may explain the results for non-Public Law 280 tribal courts is the limitation on sentencing found in the Indian Civil Rights Act.<sup>1</sup> Under that Act, tribes may not impose criminal punishments exceeding one year in jail and a \$5,000 per offense. Taking those conditions into account, tribal courts often defer to federal courts for the trial of serious felonies committed by Indians.<sup>2</sup>

<b>Most Time- and Resource-Consuming Cases</b>	<b>Major Crime Cases</b>	<b>Alcohol- &amp; Drug-Related Cases</b>	<b>Domestic Violence Cases</b>	<b>Child-Welfare and Juvenile Cases</b>
<b>PL 280, State/ County Court</b>	35.7%	27.1%	15.7%	14.3%
<b>Non-PL 280, Tribal Court</b>	23.3%	33.3%	20.0%	23.3%

Percentage of Most Time- and Resource-Consuming Cases  
Figure 9.1

For Public Law 280 jurisdictions, major crimes were mentioned more frequently than in non-Public Law 280 jurisdictions as the most difficult cases to manage in terms of time and resources. Non-Public Law 280 tribal courts, according to non-Public Law 280 criminal justice workers, meet with greater financial and time constraints from cases involving alcohol and drugs, domestic violence, and child and juvenile cases than Public Law 280 criminal justice workers report for Public Law 280 jurisdictions. Public Law 280 jurisdictions have more financial and time constraints managing major crime cases than do non-Public Law 280 criminal justice workers speaking about non-Public Law 280 tribal courts. Public Law 280 tribal courts have clear limitations on the disposition of major crimes, which are generally managed by federal courts and, hence, are less of concern, but not completely absent from, tribal court case-management responsibilities. While non-Public Law 280 tribal courts have less engagement with major-crimes cases, non-Public Law 280 courts experience correspondingly greater time and financial constraints from their increased attention to cases involving drugs and alcohol, domestic violence, child welfare, and juveniles. Nevertheless, major crime cases remain a significant portion, almost a quarter of all cases, of the most time- and resource-consuming cases

<sup>1</sup> 25 U.S.C. sec. 1302(8).

<sup>2</sup> The federal government has jurisdiction over certain serious crimes, even if committed by one Indian against another, through the Major Crimes Act, 18 U.S.C. sec. 1152.

for Public Law 280 tribal courts. A chi square analysis of the data, represented in the table above, does not yield a statistically significant result (chi square = 2.34, df= 3, p=.50, NS). Public Law 280 and non-Public Law 280 criminal justice court and legal personnel agree about the types of cases they consider most time- and resource-consuming. The types and patterns of cases that are most time- and resource-consuming are not significantly different for Public Law 280 and non-Public Law 280 criminal justice court and legal personnel.

### What Are the Greatest Problems Working with Indian Clients?

Criminal justice court and legal personnel were asked: What are the greatest problems you face when working with Indian clients? Too few respondents answered the question for reliable analysis and comparisons. Twelve Public Law 280 and 6 non-Public Law 280 criminal justice workers provided comments. Since the question is open ended, many respondents provided complicated answers with multiple themes and viewpoints. We investigate the responses for possible patterns.

Among the 12 Public Law 280 criminal justice respondents, 6 (50%) mention cultural issues, 4 (33.3%) comment on program issues, and 1 each commented on lack of funding, systemic reservation community issues, and stereotypes. Three (25%) of Public Law 280 criminal justice workers say that there are no problems working with Indian clients, relations with Indian clients are the same as elsewhere in the United States. Among the 6 non-Public Law 280 criminal justice, 1 each (16.7%) mentioned deception of criminal justice workers, community environment, and no problems working with Indian clients. One non-Public Law 280 respondent mentioned legal and program issues, and a second commented on issues related to poverty and Indian spirituality. While these data are limited, they suggest that Public Law 280 criminal justice workers are more concerned about cultural and programmatic issues than non-Public Law 280 criminal justice court and personnel, although the non-Public Law 280 responses are too few to establish a reliable pattern.

### Non-Prosecution Owing to Lack of Jurisdiction?

In the literature, there are references to issues of lack of jurisdiction of tribal courts over non-Indians, and often ambiguous understanding of concurrent jurisdiction between state/county and tribal courts in Public Law 280 jurisdictions. Reservation residents and criminal justice respondents were asked: Are there some cases you feel are very important that are not prosecuted because of lack of jurisdiction? We seek to investigate whether there are different rates of case prosecution owing to lack of jurisdiction between Public Law 280 and non-Public Law 280 jurisdictions.

One hundred thirty-five Public Law 280 reservation residents commented on the question, and 10 (7.4%) said they could not answer the question. Sixty-eight Public Law 280 reservation residents (50.4%) say that they are not aware of significant cases that are not



prosecuted owing to lack of jurisdiction. A slight majority of Public Law 280 reservation residents say they are not aware of any significant cases that are not prosecuted because of lack of jurisdiction by state or county courts. Fifty-seven Public Law 280 reservation residents (42.2%) say significant cases are not prosecuted owing to lack of jurisdiction. Many kinds of cases are mentioned by the respondents including child-welfare and -protection cases, alcohol- and drug-related cases, major crimes, animal control, trespass, elderly protection, property theft, nonmembers, sexual abuse, traffic, child abuse, and others.

Sixteen Public Law 280 criminal justice workers commented and 9 (56.3%) said they are not aware of significant cases that are not prosecuted because of lack of jurisdiction. Seven Public Law 280 criminal justice workers (43.8%) affirm that some significant cases are not prosecuted by county or state courts. The Public Law 280 criminal justice respondents note several kinds of cases including: curfew, environment cases, and traffic. The proportion of Public Law 280 reservation residents and criminal justice workers who say that significant cases are not prosecuted is very similar, 43.8% and 42.2%, respectively. A significant minority of Public Law 280 criminal justice and reservation-resident respondents say that there are significant cases that are not prosecuted within the county and state court systems because of lack of jurisdiction.

Forty non-Public Law 280 reservation residents commented on whether they were aware of significant cases that were not prosecuted in federal courts because of lack of jurisdiction. Seven respondents (17.5%) were not able to answer the question. Nineteen non-Public Law 280 reservation residents (47.5%) say they are not aware of significant cases that should be prosecuted but are not prosecuted in federal courts. Fourteen non-Public Law 280 reservation residents (35%) report there are some significant cases that are not prosecuted in the federal court system. The latter respondents say some cases that are not prosecuted include non-tribal members and non-Indian cases, child abuse, and hunting- and fishing-rights cases. At least 6 of the respondents (15%) mentioned non-Indian and non-tribal member issues as situations that arise where the non-Indian or non-tribal member is not prosecuted owing to lack of jurisdiction.

Turning now to cases in non-Public Law 280 tribal courts, 46 reservation residents made comments about whether there are significant cases that are not prosecuted in non-Public Law 280 tribal courts because of lack of jurisdiction. Nine non-Public Law 280 reservation residents (19.6%) say they do not have enough information to provide an answer to the question. Eighteen non-Public Law 280 reservation residents (39.1%) say they are not aware of significant cases that are not prosecuted by the non-Public Law 280 tribal courts. Nineteen respondents (41.3%) say there are important cases that should be prosecuted in non-Public Law 280 courts, but are not. Among the cases mentioned are drug-related cases, domestic violence, land jurisdiction — disputes over government administration, child welfare, hunting- and fishing-issues, and non-Indian and non-tribal member jurisdictional situations. At least 11 non-Public Law 280 reservation residents (23.9%) say that the inability of tribal courts to prosecute non-Indians and

non-tribal members is a significant problem, and that these cases should be prosecuted in non-Public Law 280 tribal courts.

Seven non-Public Law 280 criminal justice workers commented, and 2 (28.6%) say there are no significant cases that are not prosecuted in non-Public Law 280 tribal courts. Five non-Public Law 280 criminal justice workers (71.4%) say there are significant cases that are not prosecuted in non-Public Law 280 courts because of lack of jurisdiction. Since there are only 7 non-Public Law 280 criminal justice workers commenting on this question, the results given should be held as preliminary until more data are available. Non-Public Law 280 criminal justice workers mention juvenile cases and non-Indian and non-tribal members as cases that do not receive prosecution in non-Public Law 280 tribal courts. Four respondents mentioned jurisdictional cases involving non-Indians and non-member Indians (57.1%), suggesting from these limited data that non-Public Law 280 criminal justice workers are aware of the problems of prosecuting non-Indians in non-Public Law 280 tribal courts.

As shown in Figure 9.2, we compare the proportions of all five groups of respondents, according to whether they met with situations where significant cases were not prosecuted. While non-Public Law 280 criminal justice workers commenting on tribal courts

	<b>Non-PL 280 RR, Federal Courts</b>	<b>Non-PL 280 RR, Tribal Courts</b>	<b>PL 280 RR, State/ county Courts</b>	<b>PL 280 CJ, State/ county Courts</b>	<b>Non-PL 280 CJ, Tribal Courts</b>
<b>No Prosecution Because of Lack of Jurisdiction</b>	35.0%	41.3%	42.2%	43.8%	71.4%

Percentage Affirming No Prosecution

Figure 9.2

has a relatively large percentage, there are too few cases (n=7), and therefore that figure does not affect the overall statistical significance of the data. Reservation residents and criminal justice workers in both Public Law 280 and non-Public Law 280 jurisdictions report at about the same rate that there are significant cases that are not prosecuted (chi square = 3.33, df = 4, p = .50). Except for the few non-Public Law 280 criminal justice workers reporting on tribal courts, the respondent groups report concern over non-prosecuted cases in the 35-44% range. A substantial minority of respondents are aware of cases that they believe should be prosecuted in federal, tribal, or state/county courts but are not because of lack of jurisdiction. There appear to be no significant differences between Public Law 280 and non-Public Law 280 jurisdictions over awareness of cases not prosecuted for lack of jurisdiction.

## Legal Problems When Prosecuting or Defending an Indian Case?

Where appropriate, criminal justice workers in Public Law 280 and non-Public Law 280 jurisdictions were asked: Do you encounter legal problems when trying to prosecute? Alternatively, criminal justice respondents were asked: Do you encounter any legal problems when trying to defend an (Indian) client? The Public Law 280 criminal justice workers (N=28) commented about state and county courts, and the non-Public Law 280 respondents (N=10) commented on tribal courts. Public Law 280 criminal justice workers (60.7%) say they do not come across legal problems when trying to prosecute or defend Indian-related cases in county or state courts. Seven Public Law 280 criminal justice respondents (39.3%) say they do meet with legal programs, mainly jurisdictional problems, when trying to prosecute or defend Indian-related cases in county or state courts. Some comments are:

First of all, the jurisdiction involved, obviously if they want to see something prosecuted and they are very vigilant about that, I do think that that makes a difference with any DA. And I am not talking about just a tribal group. Any group that feels strongly about the issue, if they get behind it as a victim's advocate group or whatever, it does tend to help it through the system. The tribe obviously has some strong feelings in relation to natural-resource issues, whether it be fish or wildlife situations or other natural resource things where there are violations of the law ... the Native American community, I think, feels much more strongly about certain issues related to fish and wildlife because of culture. And another example would be Native American artifacts.

Well, yeah, it's. Because nobody really knows the full extent of it ... whether (they) really have jurisdiction or not. ... Or you don't kind of wonder about, but it could be more work than it's usual ... because there is a jurisdictional issue ... the tribal cops. I guess, their exact status right now is kind of an issue.

(T)hat defense attorney said, when we brought the complaint that ... you do not have jurisdiction in this case because it happened on the reservation, was a tribal member, and the types of charges that you brought are civil regulatory under Public Law 280, and they are not criminal prohibitory. So, yeah, we have legal hurdles that we have to overcome all the time.

Ten non-Public Law 280 criminal justice workers commented on non-Public Law 280 tribal courts and legal difficulties trying to prosecute or defend an Indian cases, and 7 (70%) say they meet with significant difficulties. Thirty percent of non-Public Law 280 criminal justice workers say they do not come across significant legal difficulties when trying to prosecute or defend Indian cases. Some cases that created legal difficulties include regulatory-jurisdiction

issues, establishing probable cause, and different cultures and court systems. Some comments are:

I would say (procedural issues) becomes an issue 3% of the time, roughly 3 to 5% of the time. ... I think for the tribal people it's probably a little better ... I mean, you know, you compare our criminal code, the (tribal) code, to the (state) criminal code, and there are far more statutes and offenses and exceptions to the rule. It's a pretty simple criminal code in (the reservation), and generally it can be followed. There are a few things that are a little arcane. For example, adultery is a crime on the reservation, and it's not off reservation. But it doesn't get prosecuted much.

And they (non-Indian lawyers) come in like steamrollers, no knowledge, no understanding of tribal court whatsoever and they start challenging everything and anything. Their expectation being that it's a failure if tribal court doesn't perform or tribal police don't perform the same as, say state cops or superior court. So they come in and at trial, what they then do is mock the tribal police. And hold a standard in front of jurors the standard that they deal with everyday that has no cultural relevance whatsoever. It's not the way we work out here ... and those sorts of things that implies there is some deficiency here, when in fact it's just different. And that poses a real legal problem for me.

(Regulatory ) gets to be a gray area. I think criminal is fairly clear as to what our criminal jurisdiction is. I think there are some misperceptions (and need for education for) these prosecutors and make them realize that state law does not apply on this reservation here.

Although the data are few, and therefore most likely unreliable, the trend suggests non-Public Law 280 criminal justice workers are noticing in non-Public Law 280 courts higher rates of prosecutorial legal difficulties than Public Law 280 criminal justice workers report in Public Law 280 county and state courts.

#### Does Knowledge of Indian Culture Affect Decisions to Prosecute or Defend Cases in State or County Court?

Criminal justice workers in Public Law 280 jurisdictions were asked: Do you think that knowledge of culture ever affects decisions to prosecute or defend a case? Thirty-one respondents gave comments, and 17 (54.8%) say that culture does not affect the decision to prosecute or defend a case. Thirteen respondents (41.9%) say that cultural knowledge is an influence on decisions whether to prosecute or defend Indian-related cases in state or county courts. Some comments given affirmatively include:

Oh yes, absolutely. ... You know, I have had cases where part of our defense is the problems that people have with identifications of different races. Invariably subjectively how somebody responds to something, like an officer with a gun in their face, is going to be dictated, or at least influenced by, their social background. You know, the way you or I may respond compared to South Central Los Angeles ... often catastrophically different ... so it becomes very relevant. So, as a prosecutor or as a soon-to-be prosecutor, it's going to be, certainly going to be relevant in your evaluation of the case, your evaluation of the appropriate sentencing, of your preparation ...

Oh, sure it does. It does. And I don't think it's in any instance that I do something this way because of that, but it's always something that is in my mind. I am always trying, in my own mind, to have a better understanding of their culture as I am dealing with it. But I don't profess to have the inside track, either.

I don't know. We have sort of done this information look-see of some of the cases, and I do believe this: More off the record than on the record, that Natives are treated differently. ... Well, you see they get more jail time, that the cases get prosecuted that I think if they had attorneys and a more assertive nature, (they) wouldn't get prosecuted.

I think it does. You need to be aware of and recognize cultural differences. Evaluating somebody's culpability or evaluating why people do things that they do. In evaluating any case, there are all kinds of things a person takes into consideration ... cultural differences.

Personally, when I am handling juveniles, sometimes I know that there is a whole family pulling behind the kid, and maybe he just stepped over the line once or twice. And if I back off a little bit, the family will take care ... and I can keep things off his record. I have had parents and grandparents and aunts and uncles call me and explain the situation to me. This was one time ... can he have another chance? And it's a 50-50 deal. I will give ... a chance, and 50% of the time it works, and I never see him again.

A majority of Public Law 280 criminal justice workers report that culture does not affect their decisions to prosecute or defend an Indian related case in county or state courts. Those who do not take culture into account, say, "No, because I think a felony is a felony ... it doesn't matter what color you are, I don't care where you work, whatever you are doing, it's the same crime. No I don't. A crime is a crime." Most Public Law 280 prosecutors try to treat all their clients, Indian and non-Indian, in the same way, and evaluate the cases and decisions to prosecute primarily on the facts of the cases. A minority of Public Law 280 criminal justice workers

(41.9%), however, say they try to take culture into account when evaluating and managing cases involving Indians in state and county courts.

### What Factors Affect Decisions to Prosecute?

Criminal justice workers in Public Law 280 and non-Public Law 280 jurisdictions were asked: What factors, cultural or legal, influence decisions to prosecute a case? Many respondents answer the question negatively, meaning that cultural factors do not influence decisions to prosecute, but standard evidence and procedures for organizing a criminal case are used, and are the same throughout the United States. Most did not interpret the gathering of evidence as a legal factor, but rather as an objective procedure. Thirty-one Public Law 280 criminal justice workers commented on whether legal or cultural factors influence decisions to prosecute cases in state and county courts. Three (9.7%) Public Law 280 respondents say they could not answer the question, and 27 Public Law 280 criminal justice workers (87.1%) say that there are no significant cultural factors that influence decisions to prosecute a case. One respondent (3.2%) said that prosecution decisions were influenced by cultural and interest-group persistence. A large majority of Public Law 280 criminal justice respondents say that cultural and legal factors are not among the main reasons decisions are made whether to prosecute cases involving Indians. Most Public Law 280 criminal justice workers say that decisions to prosecute are the same as elsewhere for cases involving Indians in county or state courts. Some comments given by the Public Law 280 criminal justice workers are:

I would say the (main factor is) the heinousness of the offense. I find the more heinous the offense, the more quickly they prosecute it. The rest of the stuff gets plea bargained.

(I)t depends on the nature and quality of any physical evidence that might be obtained.

As general rule, the answer is no. If you were to ask me, have there been specific incidences where your charging decisions were a little different because of circumstances and the people involved, the answer would be yes. But the answer would be yes for non-Native American situations as well.

We make our decisions to prosecute basically on the basis whether a crime has occurred and whether or not we can prove beyond a reasonable doubt that that crime occurred. If those two criteria are met, then we prosecute, and it's the same for the tribe as it's for the rest of the country.

Sixteen non-Public Law 280 criminal justice workers answered a similar question and commented about the factors that influence non-Public Law 280 tribal court prosecution decisions. Like the Public Law 280 respondents, the non-Public Law 280 criminal justice

respondents mix legal and case-evidence information, and respond negatively when saying that cultural factors do not significantly affect decisions to prosecute in tribal courts. Reading data in this way yields the following results: Two non-Public Law 280 respondents (12.5%) say they cannot answer the questions, while 9 non-Public Law 280 criminal justice workers (56.3%) say that cultural factors do not significantly affect decisions to prosecute cases in non-Public Law 280 tribal courts. Seven non-Public Law 280 criminal justice workers (43.8%) say that cultural factors do influence decisions to prosecute in non-Public Law 280 tribal courts. The cultural factors that respondents say influence decisions to prosecute in non-Public Law 280 tribal courts include peacemaking, personalities, family ties, and tribal politics.

There are relatively few data for the non-Public Law 280 criminal justice workers, and so those data should be interpreted cautiously regarding prosecution of court cases. If we can assume that the trends observed will hold, comparing differences in the patterns of Public Law 280 and non-Public Law 280 criminal justice respondents on whether they rely on legal or evidentiary procedures as opposed to cultural factors when deciding to prosecute cases in their respective courts. As shown in Figure 9.3, according to our sample of criminal justice workers,

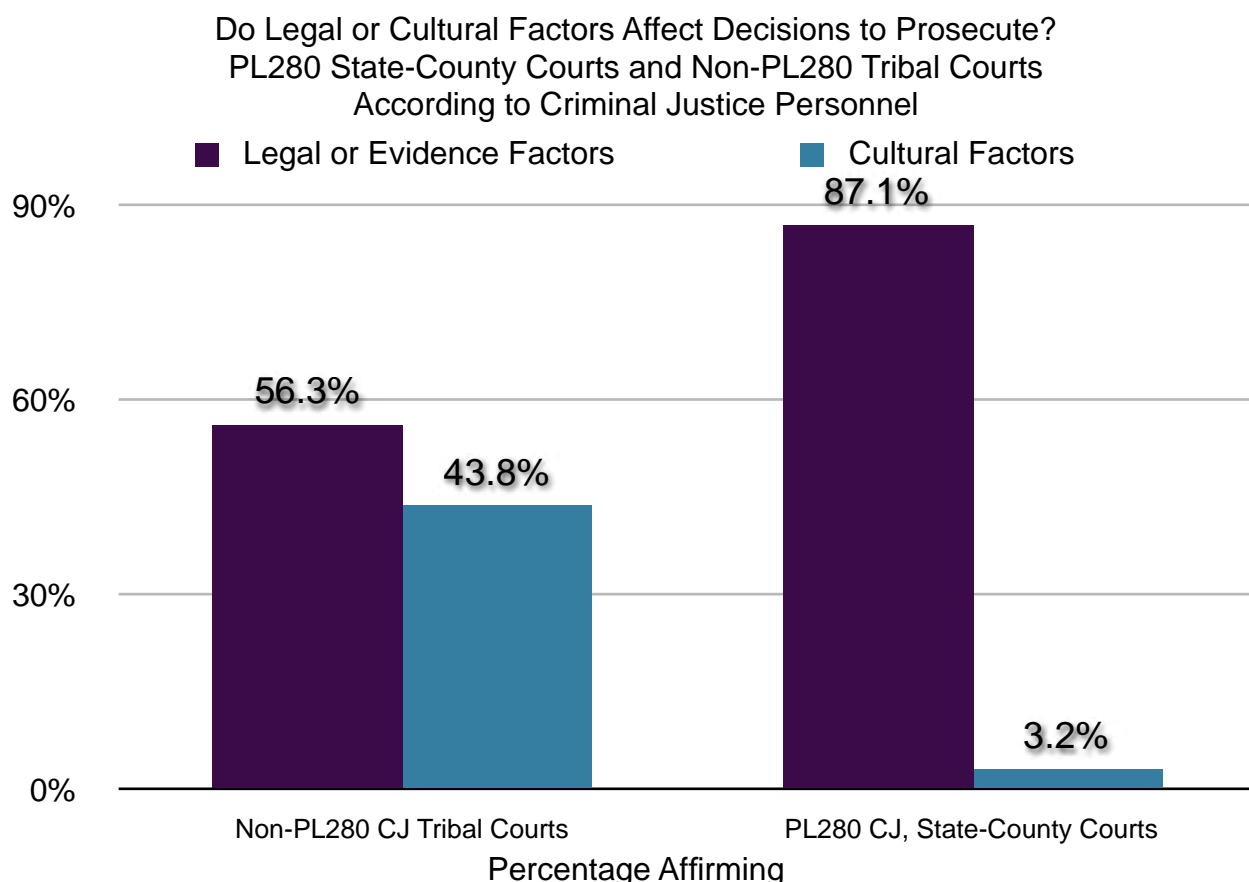


Figure 9.3

there are more cultural influences, or non-legalistic or non-evidentiary influences, in non-Public Law 280 tribal courts than there are in Public Law 280 county and state courts (Fisher's Exact Probability Test,  $df = 1$ , one-tail  $p = .04$ ). A very high proportion of Public Law 280 county and

state court criminal justice workers say that legal or evidentiary matters are the primary influences on decisions to prosecute cases involving Indians in Public Law 280 jurisdictions. Very few Public Law 280 criminal justice workers observe cultural influences in decisions to prosecute Indian-related cases. Most non-Public Law 280 criminal justice workers report legal or procedural methods are used to decide on prosecution of cases in non-Public Law 280 tribal courts. However, the non-Public Law 280 criminal justice workers also say a significant proportion of non-Public Law 280 court prosecutions (43.8%) are amenable to the influence of cultural or other non-legal factors. Criminal justice workers in Public Law 280 and non-Public Law 280 jurisdictions perceive that cultural and legal factors influence prosecution decisions significantly differently in non-Public Law 280 tribal courts and Public Law 280 state/county courts.

### How Cooperative Are Reservation-based Witnesses?

Criminal justice workers in Public Law 280 and non-Public Law 280 jurisdictions were asked: Do you have difficulty getting cooperation from witnesses on the reservation? Twenty-one Public Law 280 criminal justice workers commented, and 15 (71.4%) say they do not have difficulty, or that the difficulties they meet with are the same as anywhere else. Six Public Law 280 respondents (28.6%) say they meet with difficulties getting cooperation from reservation-based witnesses. Some comments include:

Well, I have had a number of assault-related cases where there are multiple witnesses, and maybe the only person who is willing to be cooperative is the actual victim. ... The defendants themselves are often more forthright than witnesses would be, maybe more than non-Indian communities.

(A) lot of times on the reservation, because there is some interest to protect each other even though there might be some animosity, I just think the types of cases that we deal with, most people, they are not going to talk to you. And I don't think it's because they are not trying to be cooperative, I just think they say the right thing, and sometimes they just don't want to be involved in the system.

I just depends, I just wouldn't separate it as a tribal versus non-tribal. It's what family is involved. Who are the players? And there are some tribal members that are historically and continually opponents to law enforcement. And you have a case involving them, you are going to have a problem. There are other tribal members which are very supportive of what we do...

Non-Public Law 280 criminal justice workers (n=12) answer a similar question about non-Public Law 280 tribal courts. Seven non-Public Law 280 respondents (58.3%) say they do not experience difficulties getting cooperation from reservation-based witnesses, while 5 (41.7%)



say they experience difficulties, at least sometimes, when trying to secure cooperation from such witnesses. Some comments include:

Yes. Sometimes. From Witnesses. Sure. You know, I am such an outsider ...

If you are a prosecutor, it's going to happen more often than not whether on or off the reservation. Sometimes witnesses are afraid of retaliation or scorn from other tribal members.

The trend in the sample data, comparing rates of noncooperative witnesses in Public Law 280 (28.1%) and non-Public Law 280 jurisdictions (41.7%) as reported by criminal justice workers, is not significant (Fisher's Exact Probability Test,  $df=1$ ,  $p=.70$ ). Criminal justice workers in both Public Law 280 and non-Public Law 280 jurisdictions say the reservation-based witnesses are uncooperative at about the same rate. The proportion of Public Law 280 criminal justice workers commenting on state/county court systems and reporting noncooperative reservation-based witnesses is about the same as non-Public Law 280 criminal justice personnel reporting noncooperative reservation-based witnesses in non-Public Law 280 tribal courts. The effects of jurisdiction, Public Law 280 or non-Public Law 280, on the reporting of noncooperative reservation-based witnesses are about the same for criminal justice workers in state/county and tribal courts, respectively.

#### Is It Difficult to Get Information to Prosecute or Defend Indian Cases?

Public Law 280 criminal justice personnel, usually prosecutors, were asked: "When prosecuting tribal members, do you have difficulty getting information to prosecute them?" Other respondents, usually public defenders, were asked a variation of the first question: "Do you have difficulty getting information to defend your clients?" Forty-four Public Law 280 criminal justice workers provided comments and 22 (50%) say they do not have trouble securing information from tribal residents, or they meet with no significant difficulties that are not met in non-Indian jurisdictions. Twenty-one Public Law 280 criminal justice workers (47.7%) say they have encountered difficulties securing information from tribal members. One respondent (2.3%) says that availability of information is case specific depending on the persons involved and what infraction is committed. Some comments from Public Law 280 criminal justice workers who met with difficulties gaining needed information from tribal members include:

Absolutely. It's not uncommon, and one of the things I see very often, I find it actually a little humorous, is many witnesses say, "Well, yeah, I will talk to you, but I am not going to give you a written statement."

Yes. There are a couple of places where we have difficulty getting information — trust lands of the property which is more BIA ... but some tribes will not disclose

tribal convictions. ... Many times it's very difficult to get that kind of information. Their convictions are not readily available to us.

No, it's somewhat more difficult getting convictions done because the witnesses are hesitant to speak. So, I don't think lack of information from the client but more difficulty getting investigators out (to the reservation). ... I think there is, sometimes, a difficulty getting things from the tribal government ... so then you write a letter to the reservation saying, you know, did you send in your voting records (for jury-panel selections), did you send in license (numbers), and they are completely noncooperative.

Because witnesses, they are so afraid that they are going to get somebody in more trouble, bigger trouble, then they try to fib with me. And I tell them that I will not tolerate lying to me, because if you are lying to me then I don't need you as a witness.

Slightly less than half of Public Law 280 criminal justice respondents say they experience some difficulty securing information to prosecute or defend Indian-related cases in Public Law 280 state and county courts.

### Logistical Difficulties Associated with Prosecuting Indian Cases

Twenty-two Public Law 280 criminal justice personnel responded to the question: Do you find it to be logistically more difficult to prosecute tribal members? Do you find it to be logistically more difficult to defend Indian clients? Sixteen Public Law 280 criminal justice personnel (72.7%) report that the logistical difficulties associated with prosecuting or defending Indian cases are not significantly different from those associated with non-Indian cases in state or county courts. Six respondents (27.3%) say they come across logistical difficulties prosecuting or defending Indian cases because of rural locations, poverty of defendants, and the need for more court staff. The number of respondents is too small to make reliable analysis, but the trend indicates that a very high proportion of Public Law 280 prosecutors report that the logistical issues associated with prosecuting Indian cases in county and state courts are not significantly different from those associated with the prosecution of non-Indian cases.

### Cooperation in the Process of Prosecution

Some reservation residents working in the tribal courts and state/county criminal justice workers in Public Law 280 jurisdictions were asked whether they cooperated with state/county or tribal officials, respectively, in determining the nature and sequence of prosecution of Indian

cases in county or state courts.<sup>3</sup> Public Law 280 reservation residents were asked: To what extent do you cooperate with the county/state officials in determining the nature and sequence of prosecution? County criminal justice workers were asked: To what extent do you cooperate with tribal officials in determining the nature and sequence of prosecution?

Twenty-seven Public Law 280 reservation residents responded to the question, 3 (11.1%) could not answer the question, and 1 (3.7%) said it depended on which jurisdiction made the initial arrest. Eleven PL 280 reservation residents (40.7%) report they do not participate in cooperative discussions with state or county officials in determining the nature and sequence of Indian-related cases in county or state courts.

Twelve Public Law 280 criminal justice workers commented and 8 (66.7%) report they do not cooperate with tribal officials in determining the nature and sequence of prosecution in Indian-related cases in county or state courts. Four Public Law 280 criminal justice workers (33.3%) say that they cooperate with tribal officials in determining the nature and sequence of prosecution of Indian-related cases in county or state courts.

A higher proportion of Public Law 280 criminal justice workers (66.7%) say they do not participate with tribal officials in determining the nature and sequence of prosecution of Indian-related cases than Public Law 280 reservation residents (40.7%) report. The differences are not statistically significant ( $F=2.25$ ,  $df=1$ ,  $37$ ,  $N=39$ ,  $p=.14$ ). Criminal justice workers and Public Law 280 reservation residents agree that the rate of noncooperation between tribal officials and state/county officials in determining the nature and sequence of prosecution for Indian-related cases in county or state courts is in the range of 41 to 67%. The trend is toward reporting of less cooperation by state/county officials, but the data are few, and more targeted studies are needed to clarify how tribal and state/county criminal justice workers cooperate in determining the nature and sequence of prosecution of Indian-related cases in state/county courts.

### Are Cases Dropped Because of Legal Uncertainties?

Criminal justice workers in Public Law 280 and non-Public Law 280 jurisdictions were asked: Do you ever see cases dropped because of legal uncertainties? We are looking for comments about Public Law 280 jurisdictional ambiguities, but respondents answered this question in a variety of ways. Twenty-two Public Law 280 criminal justice personnel responded, and 14 (63.6%) report they do come across dropped cases owing to legal uncertainties. Nine Public Law 280 criminal justice workers (36.4%) say they have observed cases dropped because of legal uncertainties, such as Public Law 280 regulatory cases, lack of jurisdiction, unreliable witnesses, or insufficient evidence.

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<sup>3</sup> As we have shown in Chapter 1, where tribal courts exist in Public Law 280 jurisdictions, few exercise criminal authority. Juvenile- justice jurisdiction is more common on such reservations.

Nine non-Public Law 280 criminal justice workers provided comments, and 3 (33.3%) say they have not observed dropped cases because of legal uncertainties. Six non-Public Law 280 criminal justice personnel (66.7%) report some cases dropped because of legal uncertainties, such as technicalities in written complaints, insufficient evidence, and cases involving lack of jurisdiction over non-Indians.

These data suggest a trend toward more cases dropped because of legal uncertainties in non-Public Law 280 tribal courts and less in Public Law 280 state/county courts, but the numbers of respondents are too few to provide reliable results. Statistical testing does not yield a statistically significant result (Fisher's Exact Probability Test,  $df=1$ ,  $p=.13$ , NS). More data might solidify a trend and provide a significant result, but these data are not statistically different. Criminal justice workers in Public Law 280 state/county courts and non-Public Law 280 tribal courts report similar rates of dropped cases due to legal uncertainties.

### Difficulties Managing Indian Cases?

Ten Public Law 280 criminal justice workers responded to the question: When serving Indian clients, do you have difficulty managing the cases of Indian clients? Seven Public Law 280 respondents (70%) say they do not have difficulties, or they do not have difficulties that are significantly different from non-Indian cases. Three Public Law 280 criminal justice personnel (30%) say they meet with difficulties managing Indian cases, and suggest that cultural differences, substance-abuse cases, and transportation issues are primary difficulties. Most Public Law 280 criminal justice respondents say they do not have any special difficulties working with Indian clients or cases. The numbers of respondents are small, and although these data suggest a possible trend, more data are required to create greater confidence in the direction of the data.

### Suggestions for Improving Services to Indian Clients

Twenty-one probation officers provided suggestions for improving services to Indian clients. Eleven Public Law 280 Probation officers suggested strategies for improving county services to Indian clients. The Public Law 280 probation officers say that tribally based treatments are preferred, there is need to learn about the Indians' culture and community, and engage in community activities and organizations. The most frequently mentioned suggestion was to learn the culture and learn directly in the community (72.7%). Some comments include:

Well, actually getting involved with some events in the community is helpful. I can understand that staff would be saying, probation officers would be saying, "When would I find the time to do that, have you looked at my caseload?" So, that sort of stuff ... teaming up with people that work out there (on the reservation). Because we are outsiders coming in, so that can occur for public safety purposes that can come with ride-alongs or staff, or law enforcement up

there. But it can also come in participation in school-attendance review board. I suspect one of the things that can occur up there can include the legal and ethically appropriate and allowable, multidisciplinary teams that we have seen in a lot of different areas of the county, which allows people, the appropriate people with the appropriate level of training regarding confidentiality with the appropriate signed consents and all of that, to share appropriate information across agencies with the goal of better serving families.

I think be a little bit aware of ethnic differences and just awareness, and they are people like any other people.

They need to learn the community. They need to learn the culture. I think Europeans tend to think that all native cultures are exactly the same. ... It's like (they believe) every reservation is exactly the same, but I have been to a lot of reservations nationwide, and it's totally different, and you almost have to go in there assuming you don't know anything, because you really don't ...

So, I think the agents would benefit by being able to think outside the box a little bit. And I am not saying, you know, break the rules, but I am saying think about the fact that the person who stole the loaf of bread maybe isn't just a thief. Maybe he stole a loaf of bread because his kids needed to eat. And put yourself in their place a little bit. ... So stop being so rigid, and black and white.

Get to know the culture. Get to know the people you are dealing with in terms of the law enforcement jurisdiction goes.

I would probably tell them to do just like I did. Get involved. Go out to the reservations. Read a book or two ... take classes ... there are classes taught here at the college. ... I think it's very important to get the historical perspective.

Get to know the community. Get to know the people out there. Identify the key players out on the reservations. Some people can be a real, major resource. Law enforcement, tribal police, get to know those officers out there. Because they are an excellent resource. Even when you are interviewing your clients, get to know as much about them as you possibly can, you know, family members.

I think gaining a better understanding of what the culture is all about, again I think our officers, generally speaking, do not receive adequate training in the area of cultural competency around Native American issues and their culture.

Ten non-Public Law 280 probation officers, who are serving tribal courts, gave suggestions for improving services to Indians on probation. They suggest more cultural training

and learning Indian cultures; keeping objectivity; getting to know tribal priorities; and more staff, space, and other resource issues. Some comments include:

So yeah, they might be feeling their emotions, but you have always got to be a probation officer. You are not a counselor, and once your instincts stay that way, then it's more than likely you are going to be a more effective probation officer, and you will see more success rates.

To understand as best as possible, to learn and understand what the tribal priorities and needs are, and why. Because I figure we are not here to develop something that we think ought to be, but what the tribe wants to have us do and carry out for them.

Just to be understanding. To be understanding, and to be able to work with the person. ... They have got to be held accountable.

I will tell you, Indian people are definitely unique to their culture and in their thinking. I don't know any strategies. I just know that there is a lot of prejudice from the Indian to the whites, and you think that it's prejudice from white folks to Indians, but it goes both ways. ... So it's generations of prejudice and anger and negativity that is passed on. It's just so concentrated in the Indian communities. I think it's just a matter of having a certain rapport and being able to come in and talk to them and get them to listen. I don't think it's any more than that, and I don't know how you get that.

## Summary and Conclusions

Jurisdiction effects, meaning differences between Public Law 280 and non-Public Law 280 respondents, is our primary hypothesis. For the case-management data, there are a series of case-management comparisons between Public Law 280 criminal justice state or county workers, and non-Public Law 280 criminal justice workers commenting on tribal court and legal personnel. We don't have reliable data for non-Public Law 280 criminal justice workers commenting on federal courts, or for reservation residents in Public Law 280 and non-Public Law 280 jurisdictions commenting on case-management issues. The data limitation constricts the comprehensiveness of the findings and suggests the need for more research on Indian country case-management processes. The data we have suggest that jurisdictional effects, differences in Public Law 280 and non-Public Law 280 responses, are not significant for most of our measures of case management processes. Public Law 280 and non-Public Law 280 criminal justice respondents commenting on Public Law 280 state/county courts and non-Public Law 280 tribal courts, respectively, agree or give similar responses about the list of crimes that take the most time and resources, the proportion of crimes that are not prosecuted because of lack of jurisdiction, the difficulties of encountering legal problems in prosecutions, and the proportion of

dropped cases due to legal difficulties. Jurisdiction does not affect the above measures of case management, according to Public Law 280 and non-Public Law 280 criminal justice workers.

Measures of whether cases involving Indians move quickly enough through the courts, whether it's logistically more difficult to prosecute Indian-related cases, whether Indian culture affects decisions to prosecute, and how difficult Indian caseloads are do not have enough data for comparison or analysis. The data for caseloads involving Indians suggests that 48.7% of Public Law 280 criminal justice respondents believe that Indian caseloads are disproportionately higher than non-Indian caseloads. Indians are disproportionately represented in state/county courts when compared to non-Indian cases and population. Only a few non-Public Law 280 criminal justice workers responded to the question about whether cases moved quickly enough through the courts, and over three-fourths of non-Public Law 280 criminal justice respondents say cases involving Indians move quickly through the non-Public Law 280 tribal courts. A minority of Public Law 280 criminal justice workers (27.3%) report that Indian cases are more difficult logistically to prosecute than non-Indian cases, but there are no data for comparisons with reservation residents or non-Public Law 280 criminal justice workers. Among Public Law 280 criminal justice respondents, 41.9% say that knowledge of Indian culture affects decisions to prosecute or defend a case. This question involved issues of defending and managing cases through court from the perspectives of public defenders, juvenile and probation officers, and involves both defense and prosecution decisions. In a similar question answered below, only factors affecting prosecution are solicited, and there Public Law 280 criminal justice workers report very little cultural influence on their decisions to prosecute cases involving Indians. Again, however, there are no data for comparison with non-Public Law 280 criminal justice workers or with Public Law 280 reservation residents, so we cannot determine jurisdiction or group effects.

Two measures of case management — greatest problems managing Indian cases, and whether cultural or legal factors affect decisions to prosecute cases involving Indians — indicate jurisdictional differences. Public Law 280 criminal justice workers say that the greatest problems working with tribal defendants or victims are cultural issues and programs needed to support Indian clients, while non-Public Law 280 respondents do not provide a clear pattern, although, with too few non-Public Law 280 interviews for reliable results, there is mention of cultural, resource, and program issues. There are significant differences between Public Law 280 criminal justice workers and non-Public Law 280 criminal justice workers commenting on state/county court and legal personnel and non-Public Law 280 tribal court workers, respectively, when responding to whether legal or cultural factors affect decisions to prosecute a case involving Indians. Public Law 280 criminal justice workers report that state/county court and legal personnel rarely allow cultural factors to enter into decisions to prosecute, and almost entirely use evidentiary or legal factors to decide whether to prosecute a case involving Indians. Non-Public Law 280 criminal justice workers, however, say that evidentiary information is most often used to decide whether to prosecute in non-Public Law 280 tribal courts, but cultural factors are used in nearly 44% of the cases. Court and legal personnel in non-Public Law 280 tribal courts take into account cultural factors when deciding whether to prosecute Indian-related

cases significantly more often than Public Law 280 state/county court and legal personnel. This finding complements earlier results that Public Law 280 tribal court and legal personnel understand and use cultural knowledge in court proceedings more frequently than do state/county and federal court and legal personnel.

Our secondary hypothesis investigates group effects — differences in responses between reservation residents and criminal justice workers. Group effects, as measured by several case court-management criteria, are not significant. Differences between Public Law 280 criminal justice workers and Public Law 280 reservation residents for meeting with significant cases that are not prosecuted because of lack of jurisdiction, and noncooperation between tribal officials and state/county courts over the nature and sequence of prosecuting Indian-related cases, are not significant. Public Law 280 respondents report similar rates of noncooperation (41% to 67%) between tribal officials and state/county court and legal personnel in making decisions about the nature and sequence of prosecutions for cases involving Indians. The trend is toward higher proportion of noncooperation among Public Law 280 criminal justice workers and more data might generate a statistically significant result, but these data are not significant. A similar proportion (42% to 44%) of Public Law 280 criminal justice workers and Public Law 280 reservation residents agreed they meet with significant cases that are not prosecuted because of lack of jurisdiction, although, as the comments suggest, the types of jurisdictional problems they come across may be very different.<sup>4</sup> Similar proportions (35% to 41%) of non-Public Law 280 reservation residents reporting on both non-Public Law 280 federal and tribal courts say that they have met with significant cases that were not prosecuted because of lack of jurisdiction. The non-Public Law 280 reservation-resident reports are not statistically different from non-Public Law 280 criminal justice workers, who say that 71.4% came across significant cases that have not been prosecuted because of lack of jurisdiction.

Suggestions for improving court case management in Public Law 280 communities encourage criminal justice workers to seek tribally based solutions, learn about Indian cultures, and engage personally in reservation community activities, organizations, and with Indian individuals as ways to learn directly about community and culture. Non-Public Law 280 probation officers suggest learning about Indian cultures, more cultural training, keeping objectivity, understanding tribal priorities, and the need for additional program resources.

Jurisdiction and group effects for court case-management issues, generally, are not significantly different. These data suggest that Public Law 280 and non-Public Law 280 differences and differences in criminal justice and reservation-resident perceptions are not significant in the reporting of case-management issues in Indian country. Criminal justice workers and reservation residents agree that court cases are managed similarly in Public Law 280 and non-Public Law 280 jurisdictions. This conclusion, however, is not complete, since these

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<sup>4</sup> For tribal courts, found more often in the non-Public Law 280 jurisdictions, the biggest problem tends to be lack of criminal jurisdiction over non-Indians. For state or county courts, of interest only in the Public Law 280 jurisdictions, problems are often associated with the uncertain scope of the Public Law 280 statute itself.



data do not support multiple comparisons of jurisdiction and group effects that support statistical testing that will enable more powerful means to determine both jurisdiction and group effects. Additional investigations will require more comprehensive data than the generally non-comparative or binary comparisons provided by these data. The primary significant result that cultural factors are used significantly more often by non-Public Law 280 tribal court and legal personnel for prosecution decision-making of Indian-related cases than Public Law 280 state/county court workers complements similar findings of how well Public Law 280 tribal courts are culturally informed.

## CHAPTER 10

### Crime Rates and Crime Reports

Crime statistics for reservation communities are often difficult to find and often incomplete. Usually reservation crime statistics are collected either by the Bureau of Indian Affairs (BIA) police, tribal police, or by county sheriff offices. None of these agencies is well positioned to provide comprehensive statistical information about crime rates and related information. The BIA does not systematically collect data on reservation communities, and is not well equipped to collect and report the information. Reports about jail conditions and crimes are often generated by police or reservation agency staff, who usually have not conducted surveys or systematic data collection. When data are reported to the FBI, they are reported in the aggregate, rather than by individual reservations. Tribal police departments are generally so underfunded and understaffed that data collection and reporting are not high priorities.

County police often collect data within the county about arrests and crime reports, but most counties do not collect crime data on whether the incidents took place on reservations. FBI crime-report forms require considerable information about each report, but these requirements do not include the location of the incident within or outside Indian country. Increasingly, with new national crime-report databases under discussion and technological advances in computer access and database programming, we should expect more systematic and complete data collection in the future. Some county sheriff's departments that were contacted through the study were not now able to provide data about crime reports on the reservations within their jurisdiction. Generally, the absence of reservation crime data from county police is due in part to databases and procedures that did not distinguish incidences of crime on reservation territories. Most county sheriff's departments did not make distinctions between reservations and other parts of the county, despite the daily presence of Public Law 280 jurisdictional issues. In some of these cases, sheriff's departments told us that they did not have enough staff, programming capability, or operating procedures enabling collection or retrieval of crime data within reservation contexts. On the other hand, at least one sheriff responded to our research inquiry by reprogramming his county data-collection system to include an Indian country designation. He later informed us that his staff did not find this task time-consuming, costly, or burdensome.

Because of the difficulties at the federal, tribal, and county level, crime data for Indian reservations are often incompletely reported and, therefore, of relatively little value for systematic or comparative statistical analysis. Uniform procedures for crime-data collection in Indian country are necessary for gaining better understanding of reservation crime and crime rates. Both national uniform crime codes and data systems, as well as county and reservation police, need to work with functionally interactive database systems that share data and report mutually congruent crime statistics.

The reports in the present study differ from crime statistics reports collected by police and BIA agency staff. Usually those statistics are counts of the frequency of crime reports and

related incidents. In this survey study, we ask respondents quantitative and qualitative questions about the frequencies of crimes, and also about their perceptions about the most serious crimes, police and community priorities about managing crimes, whether some crimes go unreported and why, whether there are informal ways of managing crime issues with tribal and/or federal-BIA and state/county officials, to whom tribal members report crimes, and whether respondents feel that reported crimes get prosecuted. The respondents are reservation residents, law enforcement personnel, and criminal justice personnel. Most respondents work with crime-related issues and are generally well informed about crime, court, and policing issues on Indian reservations. Reservation-resident respondents are individuals who are employed on the reservation, an Indian person living on the reservation, or a tribal member. Most reservation residents are tribal members on the reservation in question, but non-Indian tribal employees and non-tribal member Indian employees and residents are also part of the reservation-resident sample. Reservation residents are chosen because they are community elders or leaders, or their work is engaged with police, court, social services, or related crime issues. Law enforcement personnel generally are police officers and related personnel who work for county or BIA police departments. Tribal police officers who work for and are funded by a tribal government are classified as reservation residents in the Public Law 280 jurisdictions, while police officers who work for the BIA or federal government, as well as tribal police in non-Public Law 280 jurisdictions, are classified as law enforcement personnel. Criminal justice personnel are judges, attorneys, public defenders, probation officers and other related personnel who work as county, federal, or, in the non-Public Law 280 jurisdictions, tribal employees, or who work in the courts, such as legal advocates, public defenders, and attorneys. Tribal judges and tribal court personnel who work for the tribal government in Public Law 280 jurisdictions are classified as reservation residents, and reservation court and legal personnel who work for the tribe, the BIA or the federal government in non-Public Law 280 jurisdictions are classified as criminal justice personnel.

The key to the distinction between reservation residents and the categories of law enforcement and criminal justice personnel is who has responsibility for criminal jurisdiction. In the Public Law 280 jurisdictions, where tribal police and court personnel exist, they are treated as reservation residents because they are not generally exercising criminal jurisdiction. They may be enforcing state/county law under cross-deputization agreements or enforcing civil laws. However, where questions ask reservation residents in Public Law 280 jurisdictions to evaluate tribal police and courts, the respondents in those categories are excluded from the reservation-resident sample. In the non-Public Law 280 jurisdictions, in contrast, there are crimes over which the tribe has exclusive jurisdiction, and therefore where tribal police and courts exist, they are generally exercising criminal jurisdiction. Thus, in these jurisdictions the tribal police are treated as law enforcement personnel, and the tribal court and related staff are treated as criminal justice personnel.

Our assumption in constructing the reservation-resident category is that reservation residents will have different work, community, and government experiences than law enforcement and criminal justice personnel, and they may express these views and orientations based on their understandings and experiences with police and courts. The groupings of

reservation residents, law enforcement personnel, and criminal justice personnel are not based on racial or tribal membership. Many non-Indians work for tribal governments and they are classified as reservation residents, except where they are policing or administering justice in non-Public Law 280 jurisdictions. Many tribal members work for county police departments, some are county judges, or work for BIA police departments or courts. The latter tribal members are classified as law enforcement or criminal justice personnel because their occupations are outside of tribal government management, and these tribal members are entrusted to carry out county, state, or federal laws and procedures, and not tribal government law and policing practices.

We investigate whether each group with different locations within the administration of justice and policing in Indian country yields different viewpoints about court and police implementation. This study is designed to make comparisons between the group responses between reservation residents, law enforcement personnel, and criminal justice personnel. One of our primary hypotheses investigates whether group differences among reservation residents, law enforcement, and criminal justice personnel yield significantly different orientations toward the administration of court and police services in Indian country. In the present chapter, we seek to investigate group differences in the perceptions of the most serious crimes, frequencies of crimes, police and community priorities about managing crimes, perceptions about crime reporting, and perceptions about the best ways to approach policing on reservations. Our null hypothesis is that each group approaches and perceives crimes in a similar manner, and there are no statistically significant differences between reservation residents, law enforcement, and criminal justice personnel. In the null hypothesis scenario, reservation residents, law enforcement, and criminal justice personnel agree about the frequency, priorities, and management of crime on Indian reservations. The alternative hypothesis suggests that reservation residents, law enforcement personnel, and criminal justice personnel disagree about the frequency, police priorities, patterns of unreported crimes, rates of crime prosecution, and management of crime on reservations. In the latter scenario, we expect to see statistical differences among the collective responses of reservation residents, law enforcement personnel, and criminal justice personnel when they express their perceptions about the most serious crimes, police crime priorities, community crime priorities, patterns of unreported crimes, rates of crimes prosecution, and the best ways to manage crime issues on reservations.

The primary hypothesis for the study suggests there are significant differences in the administration of justice and policing in Indian country between Public Law 280 and non-Public Law 280 jurisdictions. Policing and courts in Public Law 280 jurisdictions are primarily managed by states and counties, while non-Public Law 280 reservations generally are under tribal, federal, and/or BIA police and court administration. Our hypotheses investigate respondent perceptions about patterns of difference between policing and court administration on Public Law 280 and non-Public Law 280 reservations. The null hypothesis suggests that there are no differences in respondent perceptions of police or court administration on Indian reservations in Public Law 280 and non-Public Law 280 jurisdictions, and, in this case, no statistically significant differences. If the null hypothesis is upheld, then respondents have similar perceptions of policing and court administration in both Public Law 280 and non-Public

Law 280 jurisdictions. For purposes of investigating crime rates and crime reports in this chapter, the null hypothesis suggests respondents, in both Public Law 280 and non-Public Law 280 jurisdictions, agree about patterns of crime frequency, the most serious crimes, police crime priorities, community crime priorities, the patterns of unreported crimes, rates of crime prosecutions, and the best ways to manage crime issues. The alternative hypothesis suggests that respondents will report significant differences or disagreement among Public Law 280 and non-Public Law 280 respondents about crimes frequencies, crime reporting, and the other crime issues.

### Crime Frequency and Police Priority

Respondents were asked to rank on a 10-point scale the crimes that occurred most frequently in their reservation or the reservation in question. Then the respondent was asked to rank the same list of crimes according to how police gave priority or attention to each crime. The respondents ranked crime frequencies and police priorities on a scale of 1 to 10.<sup>1</sup> The higher the score, the more frequent the respondents say they perceive the crime occurring within the reservation community. Twelve crimes were ranked by the sample: domestic violence, DUI (or driving under influence of alcohol), drug offenses, aggravated assault, larceny-theft, child abuse, burglary, auto theft, robbery, rape, arson, and homicide. Respondents were constrained by the exercise to rank-order the presented crimes list and could not add or subtract other crime possibilities. The exercise was designed to gain systematic quantitative information about crimes respondents believe are most frequent and to gain comparative data on respondent perceptions of police priorities in attending to crimes.

### Crime Frequency and Law Enforcement Priority for All Respondents

Our primary investigation will focus on the effects of jurisdiction and groups; but since the frequency of crimes and police priorities in Indian country are of general interest and are under-investigated, we begin by reporting crime frequencies and police crime priorities for all reporting respondents in the sample. The data are shown in Figure 10.1. For most crime-frequency rankings, 318 respondents reported, except for drug offenses (N=293) and child abuse (N=266). The rankings for law enforcement priorities were reported by 298 respondents, except for drug offenses (N=273) and child abuse (N=247). The respondent rankings fall into three (high, medium, and low) clusters of crime frequencies. Domestic violence, DUIs, and drug offenses form a cluster that is ranked highest by all respondents, with scores of about 7.9 or 8.0 out of a possible 10. This first group of crimes is a cluster that is more often mentioned by the

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<sup>1</sup> Most respondents, about 80%, were given a twelve- point scale and were asked to assign a number to each crime. One (1) was for the crime most frequently occurring and twelve (12) for the crime least often happening within the community. The first series of interviews listed only 10 crimes on a 10-point scale, but two more crimes were added to the list. For purposes of analysis, a 10-point scale is used. Since about 20% of the sample only ranked 10, or 11 items rather than 12 crime items, the scale is reduced to points to make the ranking data comparable. The lowest rankings (10, 11, 12) are all recoded to 10. The ranks are then reversed so that the crime item given the highest rank, the crime occurring most often is coded 10, the second highest coded 9, and so on. The 10-point scale reads the higher the score the more frequent the crime as perceived and ranked by the respondents.

sample respondents than any other crime grouping. Drugs, alcohol and driving, and domestic violence are the most frequently occurring crimes within reservation communities, according to our sample. The scale method for determining frequency of crimes has the advantage of requiring the respondent to make choices, but limits any holistic or contextual discussion of the crime-frequency information. The second cluster of most frequent crimes, ranging from 5.8 to 5.3, includes aggravated assault, larceny or theft, child abuse, and burglary. Child abuse and

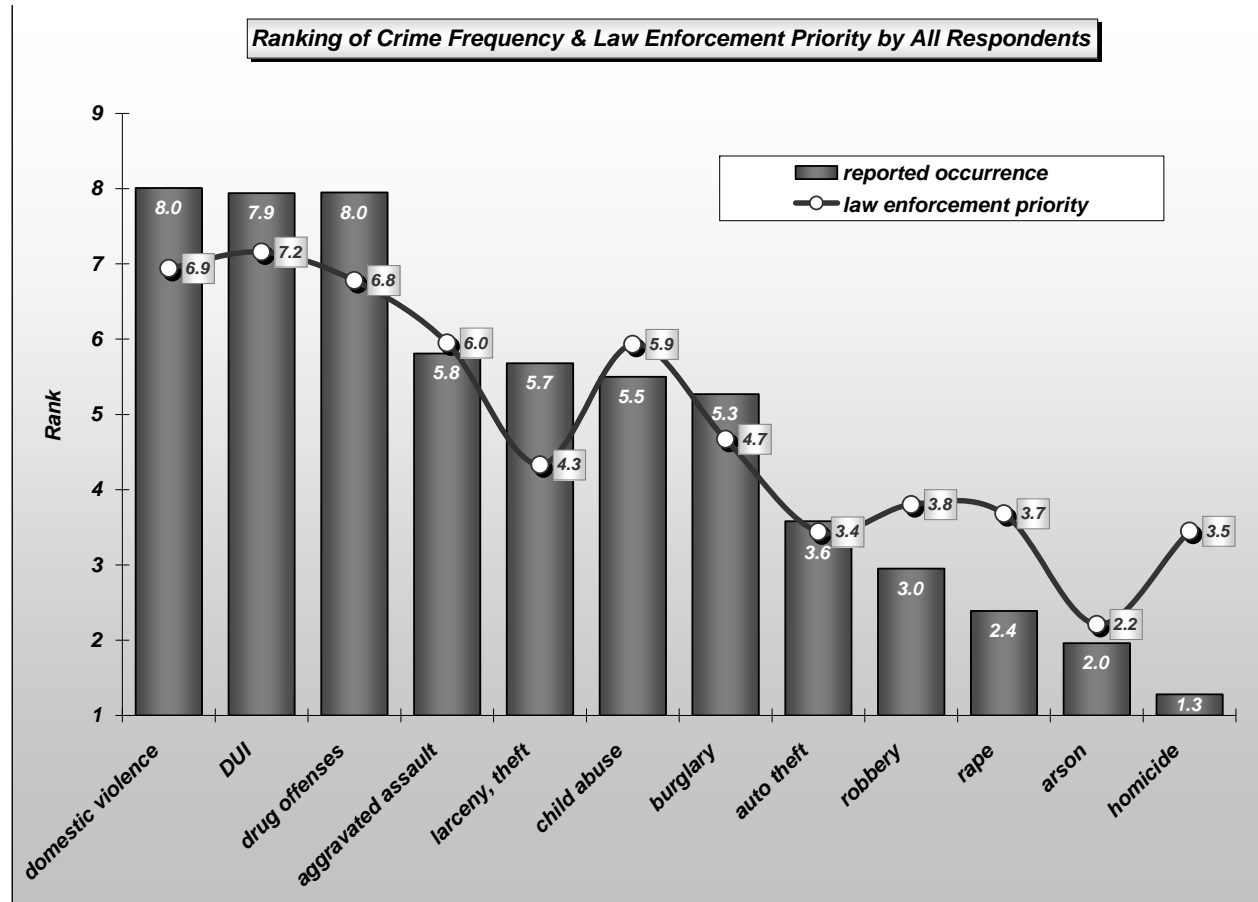


Figure 10.1

aggravated assault are crimes of excessive force, while burglary, larceny, and theft are property crimes. Both types of crimes are possibly linked to the drug and alcohol use implied in the first cluster of crimes. Drug use and alcohol use may lead to theft or property crimes, and are often associated with domestic violence, child-abuse, and aggravated-assault situations. A third cluster of crimes is ranked by all respondents as lowest in frequency, with ranking scores ranging from 3.6 to 1.3. Automobile theft, robbery, rape, arson, and homicide are rated by all respondents as low-frequency crimes in reservation communities.

The rankings for law enforcement priority suggest respondents perceive that police give attention to crimes in somewhat different patterns than crime frequency. Respondents say that law enforcement gives most attention to domestic violence, DUIs, and drug offenses with scores

ranking from 6.8 to 7.2. The middle cluster of crimes, containing aggravated assault, larceny or theft, child abuse, and burglary, range from 4.3 to 6.0. A third cluster of crimes ranges from 3.8 to 2.2. The low-end, third cluster of crimes, the crimes ranked as low priority for police, includes automobile theft, robbery, rape, arson, and homicide. The rankings form clusters of crimes that are similar for respondents who perceive domestic violence, DUIs, and drug offenses as the most frequent crimes, and the crimes that gain the highest priority for police. The crime cluster of aggravated assault, larceny or theft, child abuse and burglary is perceived as occurring in medium frequencies and gains about a medium level of police attention. The third crime cluster, of auto theft, robbery, rape, arson, and homicide, is ranked for lowest frequency and gains the lowest attention from police.

The patterns of rankings for crime frequency and police priorities, however, show some interesting disparities. Respondents rank crime frequency more extremely than police priorities. The first cluster of crimes, including DV, DUIs, and drug offenses, are ranked higher than police priorities; the lowest crime cluster, including auto theft, robbery, rape, arson, and homicide, is ranked lower by frequency than by police priority. Respondents rank police crime priorities in a flatter curve than they do crime frequencies. For high-frequency crimes, respondents perceive that police are giving too little attention to high-frequency crimes and too much attention to low-frequency crimes. The low-frequency crimes of rape, robbery, and homicide, according to respondents, get too much police attention, although this may be understandable since all three crimes involve extreme use of force. The high-frequency crimes of domestic violence, DUIs, and drug offenses get the most police attention, but not enough attention to match crime frequencies, according to respondents.

We investigate the discrepancies between crime frequency and police crime priorities with statistical comparisons. By subtracting each individual respondent's law enforcement priority ranking from their ranking of crime frequency, a scale is generated that measures discrepancy between police crime priority and crime-frequency scores. A positive score means respondents rank police priority higher than crime frequency. A negative score means respondents say that the frequency of the crime outranks the priority police give to the crime. We can test for statistical differences to ascertain whether respondents believe police are giving too much, not enough, or balanced attention to crimes according to frequency of occurrence.

Figure 10.2 presents the data on discrepancies between reported crime occurrence and law enforcement priorities. We use the nonparametric statistic Wilcoxon Signed Ranks test, which by convention is expressed as a "Z" value. Respondents say that homicide ( $Z = -8.46$ ,  $p < .001$ ), rape ( $Z = -6.61$ ,  $p < .001$ ), robbery ( $Z = -5.50$ ,  $p < .001$ ), and child abuse ( $Z = -2.52$ ,  $p < .012$ ) receive significantly more police attention than their reported occurrences suggest. Police have balanced approaches to arson ( $Z = -1.82$ ,  $p = .07$ , NS), aggravated assault ( $Z = -.073$ ,  $p = .47$ , NS), and auto theft ( $Z = -1.01$ ,  $p = .31$ , NS). Respondents' rankings of police priorities and crime frequencies for arson, aggravated assault, and auto theft are not significantly different. According to respondents, police provide about the same amount of attention to arson, aggravated assault, and auto theft as the crimes occur in reservation communities. Crime

frequencies were ranked higher than police priority for burglary ( $Z = -3.3$   $p < .001$ ), DUIs ( $Z = -3.64$ ,  $p < .001$ ), drug offenses ( $Z = -5.37$   $p < .001$ ), domestic violence ( $-6.73$ ,  $p < .001$ ), and larceny/theft ( $Z = -6.79$ ,  $p < .001$ ). Respondents believe that police give significantly less attention to burglary, DUIs, drug offenses, domestic violence, and larceny-theft than their occurrence in reservation communities. The most frequent crimes on reservations — drug offenses, domestic violence, and DUIs — are given too little attention by police. The property crimes of

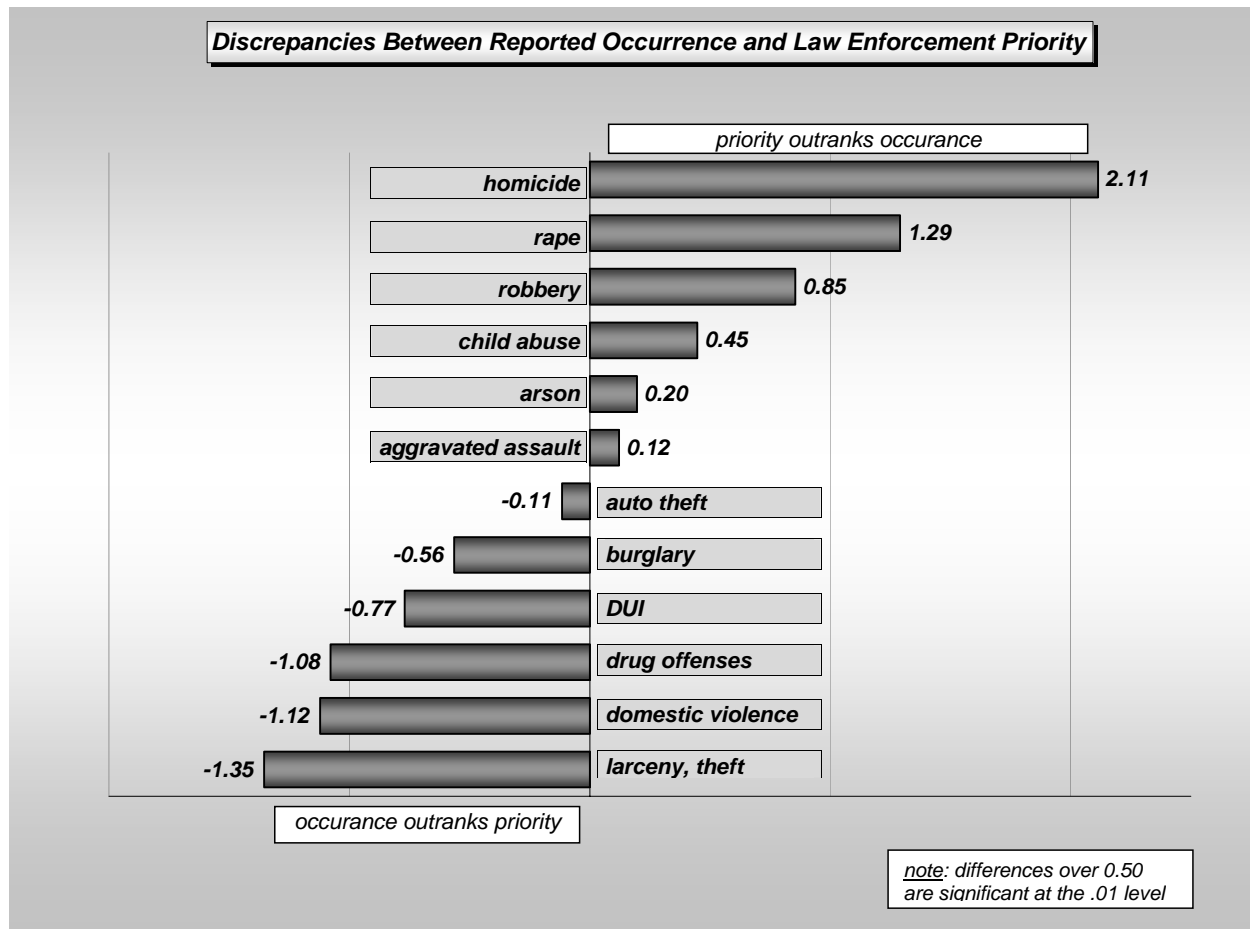


Figure 10.2

burglary, larceny, and theft are not given enough police attention. The low-frequency crimes of homicide, rape and robbery are given too much police attention and time. Many low-frequency crimes are violent and gain police attention, but respondents say police give too much attention to the violent, low-frequency crimes, and not enough attention to the social and economic effects of alcohol and drug crimes that often are related to domestic violence and, perhaps, to property - theft crimes. Respondents indicate that police have a hard time matching crime priorities with crime frequencies. Police tend to spend too much time on less frequent crimes and not enough attention on more frequent crimes. Respondent rankings indicate that police should spend proportionately more time solving the probably interrelated issues of alcohol and drug crimes,



domestic violence, and property theft, and give proportionately less attention to the violent but low-frequency crimes of child abuse, homicide, rape, and robbery.

The investigation of the crime frequency and police priorities of all respondents gives an overall view of sample perceptions. Our primary task, however, is to investigate differences in Public Law 280 and non-Public Law 280 jurisdictions and group differences between reservation residents, law enforcement personnel, and criminal justice personnel. In the following sections we examine jurisdiction and group effects through investigation of qualitative and quantitative data about crime frequencies, police priorities, and processes of crime reporting and management.

### Crime Frequency and Police Priority by Group and Jurisdiction

The rankings for crime frequency were answered by 148 Public Law 280 reservation residents, except for child abuse (N=113) and drug abuse (N=132), while 59 non-Public Law 280 reservation residents provided rankings for all crimes. A comparison of crime rankings for Public Law 280 and non-Public Law 280 reservation residents is given in Figure 10.3. Except for the frequency of drug offenses and arson, reservation residents in Public Law 280 and non-Public Law 280 reservations agree on the frequency of crimes on their reservations. For both

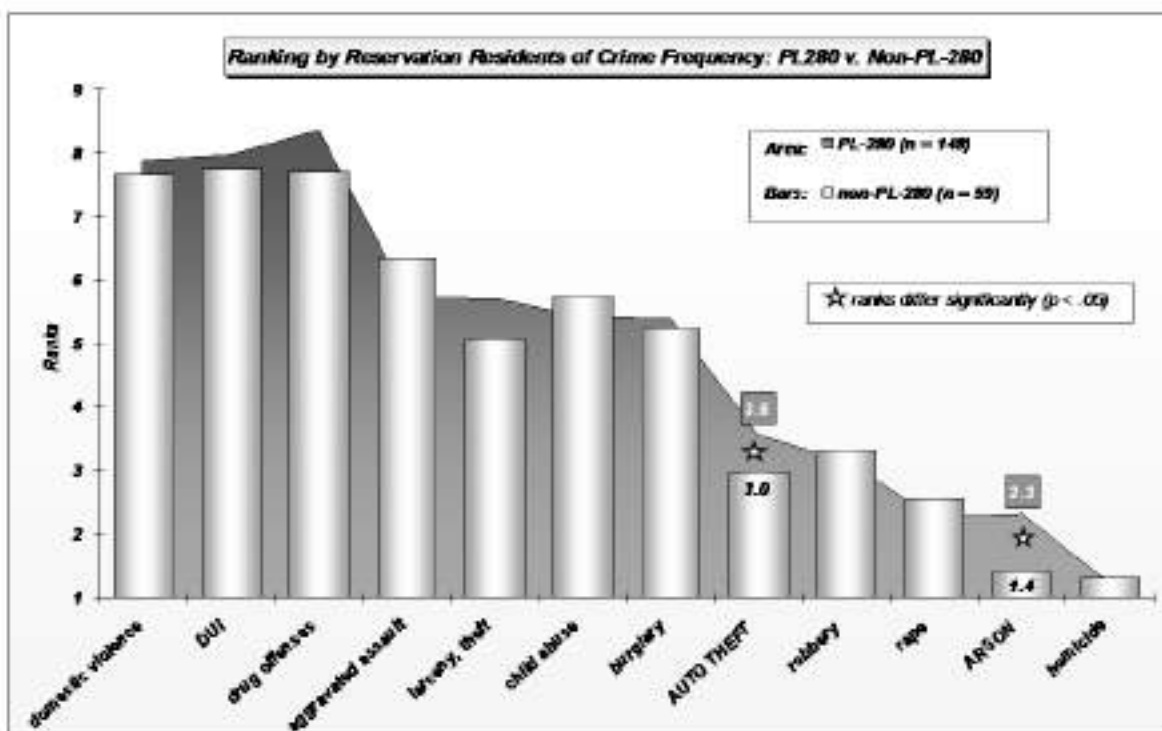


Figure 10.3

Public Law 280 and non-Public Law 280 jurisdictions, reservation residents rank the crime frequency similarly. Reservation residents in Public Law 280 jurisdictions rank the occurrence of arson (Wilcoxon  $W = 4992.5$ ,  $p < .001$ ) and auto theft (Wilcoxon  $W = 5336.0$ ,  $p = .037$ ) significantly higher than reservation residents in non-Public Law 280 jurisdictions. Reservation residents say arson and auto thefts occur more frequently on Public Law 280 reservations than on non-Public Law 280 reservations, while all other crimes are ranked about the same in both jurisdictions.

Police crime priorities were ranked by 140 Public Law 280 reservation residents, except for drug offenses ( $N=123$ ) and child abuse ( $N=123$ ), while 57 non-Public Law 280 reservation residents ranked all 12 police crime priorities. The comparison of police crime priorities yields four significant differences. As presented on Figure 10.4, our sample of non-Public Law

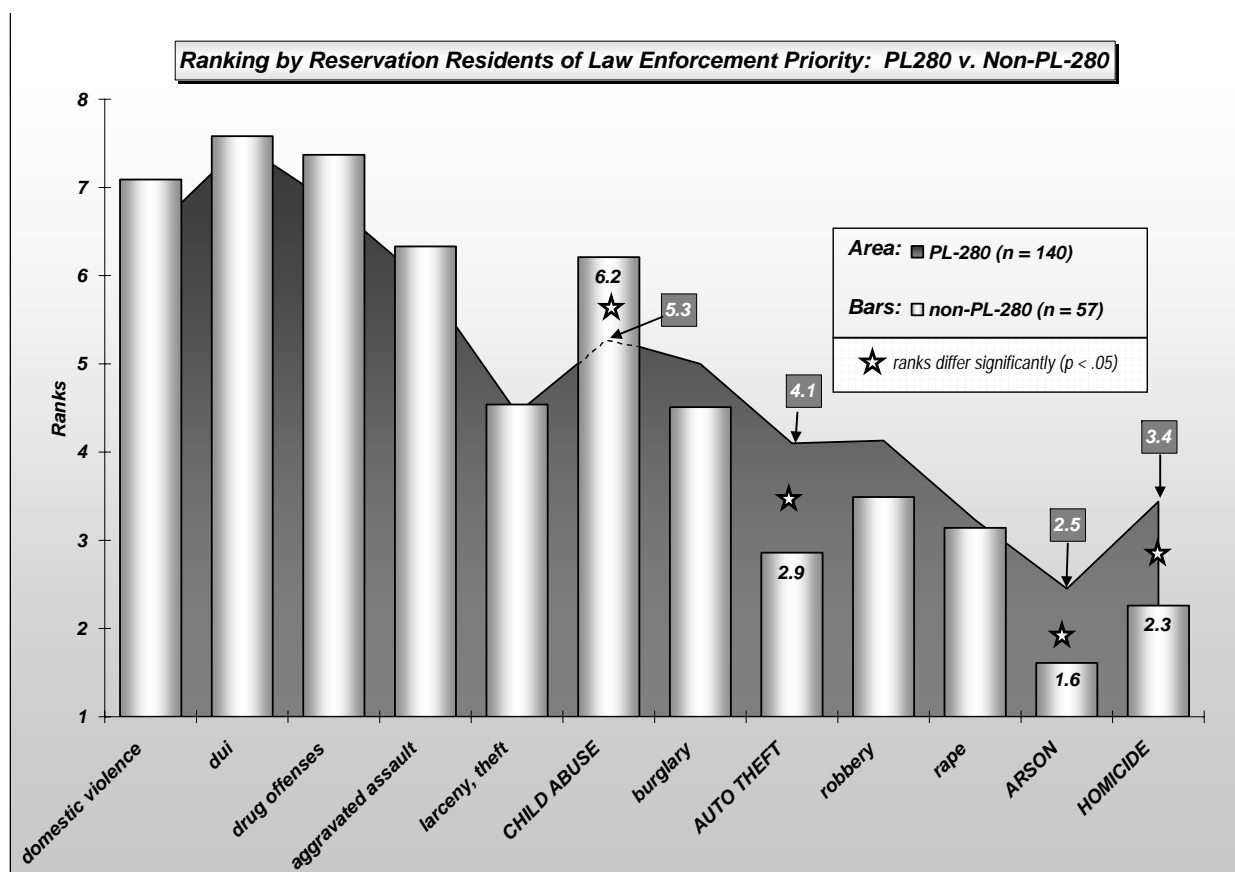


Figure 10.4

280 reservation residents rank police priorities attending to child abuse significantly higher (Wilcoxon  $W = 7944.0$ ,  $p < .03$ ) than Public Law 280 reservation residents. Police give significantly more attention to child abuse in non-Public Law 280 jurisdictions than police provide in Public Law 280 jurisdictions. Police in Public Law 280 jurisdictions provide significantly greater priority for automobile theft (Wilcoxon  $W = 4597.0$ ,  $p < .003$ ), arson (Wilcoxon  $W = 4756.5$ ,  $p < .007$ ), and homicide (Wilcoxon  $W = 4893.0$ ,  $p < .013$ ) than police provide in non-Public Law 280 jurisdictions. While Public Law 280 police gave more attention

to automobile theft, arson, and homicide, the latter crimes are among the less frequently occurring crimes. Public Law 280 police provide more attention to less frequent crimes than non-Public Law 280 police, according to reservation residents. Non-Public Law 280 police provide significantly more attention to child-abuse cases than Public Law 280 police (Wilcoxon  $W = 7994.0$ ,  $p = .03$ ).

Law enforcement personnel in both Public Law 280 and non-Public Law 280 jurisdictions provided rankings for crime frequencies in Figure 10.5. In Public Law 280 jurisdictions, 29 law enforcement personnel ranked 10 crimes, while 24 ranked drug offenses, and 22 ranked child-abuse crimes. Seventeen non-Public Law 280 law enforcement personnel ranked all 12 crimes. Law enforcement officers in Public Law 280 and non-Public Law 280 jurisdictions agree on the ranking and order of 10 crimes, and disagree about larceny/theft, (Wilcoxon  $W = 249.5$ ,  $p = .001$ ) and burglary (Wilcoxon  $W = 286.0$ ,  $p = .009$ ). Public Law 280 law enforcement suggest that larceny-theft and burglary are committed more frequently on Public Law 280 reservations than non-Public Law 280 law enforcement personnel say about non-Public Law 280 reservations. Public Law 280 law enforcement personnel say that property crimes, larceny, theft, and burglary should be ranked among the highest cluster of crimes, along with drug offenses, domestic violence, and driving under influence of alcohol (DUIs).

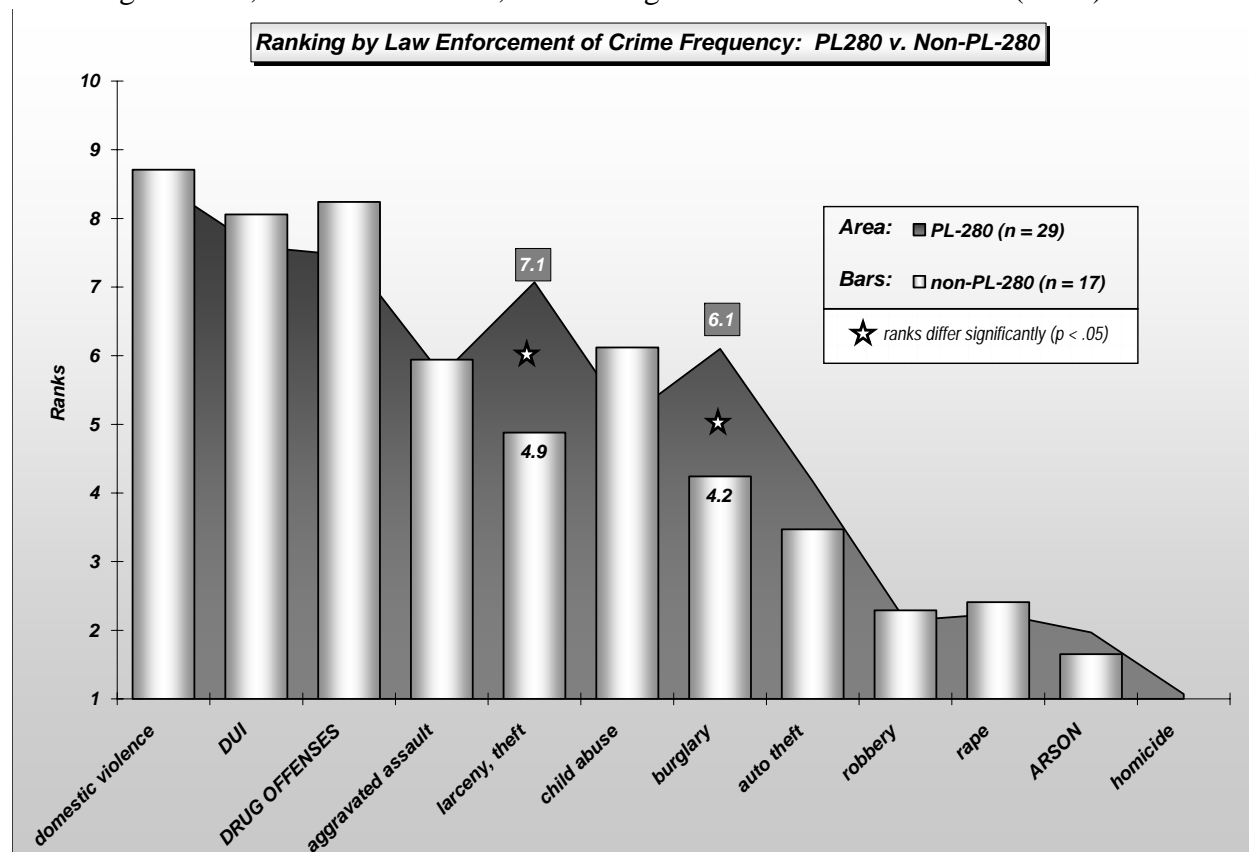


Figure 10.5

According to Public Law 280 law enforcement, property crimes maybe associated with a cluster of crimes where alcohol use and drug offenses are committed together with domestic violence,

larceny, theft, and burglary. Public Law 280 reservations, according to Public Law 280 law enforcement personnel, may have a clearer set of relationships from a cluster of high-frequency crimes. The cluster of high-frequency crimes suggested by Public Law 280 law enforcement differs from non-Public Law 280 law enforcement rankings and also from reservation-resident rankings in both Public Law 280 and non-Public Law 280 jurisdictions. Reservation residents and non-Public Law 280 law enforcement personnel say burglary, larceny and theft occur less frequently than reported by Public Law 280 law enforcement personnel.

As represented in Figure 10.5, Public Law 280 and non-Public Law 280 law enforcement personnel self-report police crime priorities. Twenty-seven Public Law 280 law enforcement personnel ranked 10 crimes, while 23 ranked drug offenses and 21 ranked child abuse. Fifteen non-Public Law 280 personnel ranked all 12 police crime priorities. None of the comparisons between Public Law 280 and non-Public Law 280 law enforcement rankings of police crime priorities are statistically significant. Public Law 280 law enforcement and non-Public Law 280 law enforcement personnel agree on the rank and patterns of police crime priorities. While law enforcement personnel agree about police priorities in both jurisdictions, both agree about high police crime priority rankings for child abuse. Law enforcement personnel in Public Law 280 jurisdictions rank police priority for child abuse at 6.62, and non-Public Law 280 law enforcement rank police priority for child abuse at 7.47. Law enforcement personnel self report strong concern about child-abuse crimes, and rank them among the highest cluster of police crime priorities, including domestic violence, DUIs, drug offenses, and aggravated assault.

Criminal justice personnel ranked frequency of crimes for both Public Law 280 and non-Public Law 280 jurisdictions. Forty-four Public Law 280 criminal justice personnel ranked 10 crimes while 40 ranked drug offenses and 34 ranked child-abuse crimes. Twenty-one non-Public Law 280 criminal justice personnel ranked all 12 crimes. Except for auto theft (Wilcoxon  $W = 486.0$ ,  $p < .003$ ) and larceny-theft (Wilcoxon  $W = 550.5$ ,  $p = .043$ ), criminal justice personnel in Public Law 280 and non-Public Law 280 jurisdictions agree on ranking of crime frequencies. Public Law 280 criminal justice personnel say that auto theft and larceny theft occur significantly more often than non-Public Law 280 criminal justice personnel. Except for occurrences of auto theft and larceny theft, criminal justice personnel see crime frequency patterns similarly in Public Law 280 and non-Public Law 280 jurisdictions.

Figure 10.6 shows criminal justice rankings of police crime priorities, 38 Public Law 280 criminal justice personnel ranked 10 crimes, 34 ranked drug offenses, and 28 ranked child-abuse crimes. Twenty-one non-Public Law 280 criminal justice personnel ranked all 12 police crime priorities. Among the 12 police crime priorities, criminal justice personnel say that police priorities are significantly different for four crimes. Public Law 280 criminal justice personnel rank Public Law 280 police crime priorities significantly lower than non-Public Law 280 criminal justice rankings for non-Public Law 280 police crime priorities for domestic violence (Wilcoxon  $W = 980.0$ ,  $p < .011$ ). Public Law 280 criminal justice workers suggest Public Law 280 police give too little attention to domestic violence when compared to non-Public Law 280 criminal justice rankings of police crime priorities. Public Law 280 criminal justice personnel

rank Public Law 280 police crime priorities significantly higher than non-Public Law 280 criminal justice personnel rank non-Public Law 280 police crime priorities for robbery (Wilcoxon W = 505.5,  $p < .046$ ), rape (Wilcoxon W = 483.5,  $p < .019$ ), and homicide

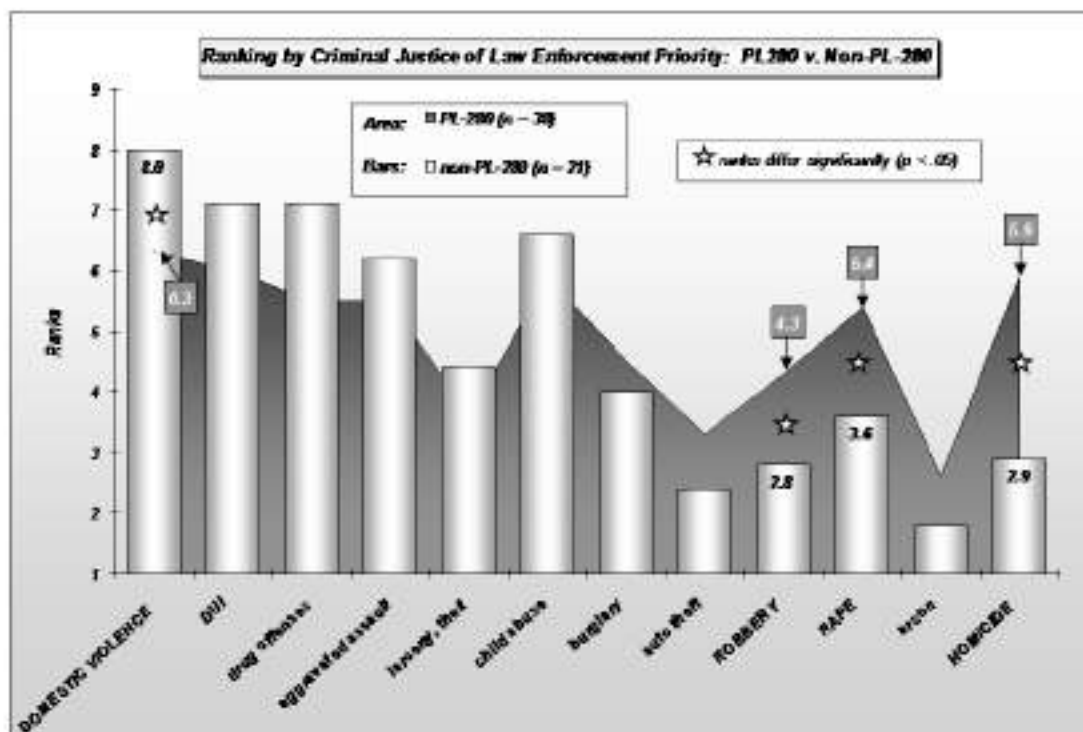


Figure 10.6

(Wilcoxon W = 4778.5,  $p < .008$ ). According to Public Law 280 criminal justice personnel, Public Law 280 police priorities are too high for low-frequency crimes such as robbery, rape, and homicide when compared to non-Public Law 280 criminal justice rankings of non-Public Law 280 police crime priorities. Criminal justice personnel believe that Public Law 280 police tend to underemphasize the more frequent crime of domestic violence, while at the same time overemphasize attention to violent, but relatively infrequent crimes, such as robbery, rape, and homicide. Reservation residents, analyzed above, make similar observations that Public Law 280 police tend to give more attention to less frequent crimes, while underemphasizing the crimes that tribal community members believe are more frequently occurring in their reservation communities.

In sum, law enforcement personnel in Public Law 280 and non-Public Law 280 jurisdictions generally agree about the pattern and distribution of police crime priorities, but reservation residents and criminal justice personnel suggest Public Law 280 police tend to give too little attention to high-frequency domestic abuse crimes, while concentrating too much time and too many resources on violent crimes that occur relatively infrequently within Public Law

280 reservation communities. Public Law 280 police tend to focus on violent crimes, such as homicide, rape, and robbery. However, the more frequently occurring crimes of domestic violence, and related property-theft and abuse crimes or incidents, are under-served by Public Law 280 police, according to reservation residents and criminal justice personnel. Tribal communities and criminal justice personnel indicate that Public Law 280 police should give more focus and attention, and develop more user-friendly tactics to address the high-crime issues that confront Public Law 280 reservation communities. Domestic violence, and related issues of domestic- and child abuse and property crimes, need more attention. Public Law 280 police appear less interested in addressing the more social, economic, and psychological issues associated with high rates of domestic and child abuse, as well as property crimes, in favor of concentrating on arrests and investigations for violent, but relatively infrequent, crimes. Public Law 280 police may be giving less attention to the crimes that reservation residents and criminal justice personnel view as most frequent because the police have greater difficulty in detecting these particular higher-frequency crimes, achieving cooperation in investigations, and managing the criminal conduct that is involved. Such difficulties may be particularly acute where police are perceived as alien to or outside the community, and particularly acute for crimes for which proof is difficult absent community cooperation. Our sample of reservation residents and criminal justice workers suggests that Public Law 280 police should give more focus to higher frequency domestic and child-abuse crimes on Public Law 280 reservations.

#### Jurisdiction and Group Effects on Crime Frequency and Police Crime Priority

We now turn to analysis by two 2X3 ANOVAs that will help us sort out group and jurisdiction effects for crime frequencies and police crime priorities. The 2X3 ANOVAs are performed for all 12 crimes compared by Public Law 280 and non-Public Law 280 jurisdiction, and all three groups — reservation residents, law enforcement personnel, and criminal justice personnel.

We start with an analysis of jurisdiction and group effects with respect to ranking of crime frequencies. Do crime-frequency rankings differ according to jurisdiction and group, or are there interaction effects? By investigating jurisdiction and group effects, we seek explanations for differences between groups, between jurisdictions for crime frequency, and police crime priorities. The analysis should provide better understanding of respondent rankings insofar as jurisdiction and police crime priorities are determined or explained by differences in group, jurisdiction, or interaction effects. We investigate whether there are significant differences between jurisdiction and groups for crime-frequency rankings. Do crime-frequency rankings vary by Public Law 280 and non-Public Law 280 jurisdictions? Do crime frequencies vary according to how different groups experience and understand crime? A significant jurisdiction result provides some insight into the differences in crime-frequency perceptions between Public Law 280 and non-Public Law 280 respondents. Differences in crime frequency perceptions among reservation residents, law enforcement personnel, and criminal justice personnel suggest crime-frequency rankings are a reflection of group perceptions. The 2X3 ANOVA detects interaction effects between jurisdiction and groups, so that if respondent

perceptions of crime frequency are dependent on specific combinations of jurisdiction and specific groups, we can detect and analyze those relations.

Figure 10.7 presents the results of 12 nonparametric 2X3 ANOVAs with transformed scale data for crime-frequency rankings. There are five statistically significant jurisdiction effects, two significant group effects, and no interaction effects for respondent rankings of crime frequency. The crime-frequency rankings for DUI, drug offenses, burglary, rape, arson, and domestic violence not significant by group or jurisdiction, suggesting respondent agreement among all three groups and for both jurisdictions. Reservation residents, law enforcement personnel, and criminal justice personnel in both Public Law 280 and non-Public Law 280 jurisdictions agree on similar crime-frequency rankings for DUI, drug offenses, burglary, rape, arson, and homicide. There is respondent agreement for the rankings of the high-frequency crimes of DUI and drug offenses, and agreement about the low-frequency crimes of burglary, rape, arson, and homicide.

## Comparisons of Crime Frequency Rankings

### Nonparametric 2X3 ANOVA

Two (PL280 vs. Non-PL280) by Three (Rez Residents vs. Law Enforcement vs. Criminal Justice)

jurisdiction		group		interaction		crimes
F	p	F	p	F	p	
3.13	0.078	1.98	0.140	0.68	0.506	<a href="#">homicide occurrence</a>
0.86	0.355	0.00	0.997	0.08	0.924	<a href="#">rape occurrence</a>
4.07	<b>0.045</b>	6.84	<b>0.001</b>	0.47	0.629	<a href="#">robbery occurrence</a>
4.25	<b>0.040</b>	0.16	0.855	0.41	0.665	<a href="#">aggravated assault occurrence</a>
0.00	0.982	5.87	<b>0.003</b>	0.05	0.952	<a href="#">domestic violence occurrence</a>
3.07	0.081	1.12	0.328	1.04	0.354	<a href="#">burglary occurrence</a>
16.70	<b>&lt; .001</b>	2.19	0.115	2.95	0.054	<a href="#">larceny, theft occurrence</a>
8.37	<b>0.004</b>	2.92	0.056	2.14	0.120	<a href="#">auto theft occurrence</a>
0.10	0.749	0.42	0.655	2.21	0.111	<a href="#">arson occurrence</a>
0.00	0.952	1.85	0.160	0.17	0.841	<a href="#">DUI occurrence</a>
0.02	0.898	1.85	0.160	1.33	0.266	<a href="#">drug offenses occurrence</a>
6.65	<b>0.010</b>	0.01	0.987	1.33	0.267	<a href="#">child abuse occurrence</a>

Figure 10.7

As represented on Figure 10.7, this sample of respondent rankings for larceny-theft, child abuse, robbery, aggravated assault, and auto theft yield statistically significant jurisdiction effects, suggesting respondent perceptions of crime frequency vary by Public Law 280 or non-

Public Law 280 jurisdictions. Non-Public Law 280 respondents rank child-abuse crimes, aggravated assault, and robbery significantly more frequently than do Public Law 280 respondents. See Appendix G for descriptive data relevant to making comparisons for the data represented by Figure 10.7. Public Law 280 respondents perceive that auto theft and larceny-theft occur significantly more frequently in Public Law 280 jurisdictions than in non-Public Law 280 jurisdictions. There are no differences in, nor there is agreement about, crime ratings by jurisdiction for domestic violence, DUI, drug offenses, rape, arson, and homicide. Larceny-theft, and auto theft, both property crimes, are perceived to occur more frequently in Public Law 280 jurisdictions than non-Public Law 280 jurisdictions, while child abuse, aggravated assault, and robbery, more physically violent crimes, are ranked more frequently occurring in non-Public Law 280 jurisdictions.

For this sample, group effects, differences in the ratings of reservation residents, law enforcement personnel, and criminal justice personnel, are significant for robbery and domestic violence. The three groups rate crime frequency of the other 10 crimes similarly. Law enforcement officials say occurrences of domestic violence are higher than reported by criminal justice personnel, who in turn believe domestic violence occurs more frequently than reservation residents report. Reservation residents rank the occurrences of robberies higher than criminal justice personnel, who in turn report higher frequencies of robberies than do law enforcement personnel. There are no significant interaction effects.

As presented in Figure 10.8, respondent rankings for law enforcement priority or police crime priority yield six statistically significant results: three for jurisdiction effects and three group effects. Eight crimes do not show statistically significant effects suggesting that respondents agree about police crime priorities for those crimes. Respondent rankings of police crime priority do not yield significantly different jurisdiction, group, or interaction effects for: homicide, DUI, drug offenses, aggravated assault, larceny-theft, burglary, robbery, and arson. For the latter eight crimes, respondents report similar perceptions of police priorities in both jurisdictions and for all three groups: reservation residents, law enforcement personnel, and criminal justice personnel.

As presented on Figure 10.8, our sample yields three significant jurisdiction results suggesting differences in perceived police priorities for domestic violence, auto theft, and child abuse. Public Law 280 respondents say police allocate greater priorities to auto theft than is reported by non-Public Law 280 respondents. See Appendix H for descriptive data relevant to making comparisons for the data represented by Figure 10.8. Auto theft gets more police attention in Public Law 280 jurisdictions than in non-Public Law 280 reservations. However, non-Public Law 280 respondents say child abuse and domestic violence get more police priority in non-Public Law 280 jurisdictions than they do in Public Law 280 reservations. According to our sample, child abuse and domestic violence are under-served by police in Public Law 280 jurisdictions, although police give extra attention to auto theft on Public Law 280 reservations.



Group effects — differences among reservation residents, law enforcement and criminal justice personnel — yield three significant results for child abuse, domestic violence, and rape. Three respondent groups disagree about the concentration of police priorities for child abuse, domestic violence, and rape. Law enforcement and criminal justice personnel believe police give more priority to domestic violence, child abuse and rape cases than reservation residents report. Among all three respondent groups, reservation residents believe police are under-serving domestic violence, child abuse, and rape cases on reservations.

## Comparisons of Law Enforcement Priority Rankings Nonparametric 2X3 ANOVA

Two (PL280 vs. Non-PL280) by Three (Rez Residents vs. Law Enforcement vs. Criminal Justice)

jurisdiction		group		interaction		crimes
F	p	F	p	F	p	
3.27	0.072	2.46	0.088	0.99	0.372	<a href="#">homicide priority</a>
1.45	0.229	4.09	<b>0.018</b>	1.23	0.295	<a href="#">rape priority</a>
0.28	0.595	1.79	0.169	0.92	0.401	<a href="#">robbery priority</a>
2.69	0.102	0.44	0.643	0.74	0.480	<a href="#">aggravated assault priority</a>
4.69	<b>0.031</b>	7.04	<b>0.001</b>	2.40	0.093	<a href="#">domestic violence priority</a>
0.67	0.415	1.50	0.225	0.02	0.984	<a href="#">burglary priority</a>
1.72	0.191	0.55	0.576	0.34	0.709	<a href="#">larceny, theft priority</a>
5.39	<b>0.021</b>	1.21	0.299	0.12	0.885	<a href="#">auto theft priority</a>
0.19	0.668	0.08	0.923	0.59	0.553	<a href="#">arson priority</a>
0.11	0.737	2.20	0.113	0.54	0.585	<a href="#">DUI priority</a>
0.30	0.582	2.02	0.135	0.27	0.764	<a href="#">drug offenses priority</a>
4.36	<b>0.038</b>	3.88	<b>0.022</b>	0.04	0.964	<a href="#">child abuse priority</a>

Figure 10.8

Both domestic violence and child abuse have significant results for both jurisdiction and group effects. When there are two significant effects in an ANOVA, then the results are independent and additive. The differences in jurisdictional effects suggest that Public Law 280 respondents rank police priority for domestic violence significantly lower than non-Public Law 280 respondents rank non-Public Law 280 police priority for domestic violence. Public Law 280 respondents believe that police give significantly less attention to the high-frequency domestic violence crimes than non-Public Law 280 respondents perceive about non-Public Law 280 police. For group effects, reservation residents believe police give significantly less priority to domestic violence and child-abuse crimes than do law enforcement personnel and criminal justice personnel. Law enforcement personnel, in both Public Law 280 and non-Public Law 280 jurisdictions, say police give their highest priority of all crimes ranked to domestic violence

crimes. Reservation residents and Public Law 280 respondents say police give significantly less attention to domestic violence and child-abuse crimes than reported by law enforcement personnel, criminal justice personnel and non-Public Law 280 respondents.

### Discrepancies Between Crime Frequency and Police Priority Rankings

We investigate the relations between crime frequency and police crime priority rankings by subtracting crime-frequency rankings from police crime-priority rankings for each respondent. The resulting ranking gives a score for the discrepancy between crime-frequency rankings and police priority rankings. The discrepancy rankings provide a measure of the overemphasis, balanced emphasis, and under-emphasis of police crime priority relative to crime frequency. A positive discrepancy ranking indicates that perceived police crime priority is ranked higher than crime frequency. A negative discrepancy ranking indicates that crime frequency is ranked higher than police crime priority. See Appendix I for descriptive statistics on

#### Comparisons of Discrepancies Between Crime Frequency

##### v. Law Enforcement Priority Ranking

##### Nonparametric 2X3 ANOVA

Two (PL280 vs. Non-PL280) by Three (Rez Residents vs. Law Enforcement vs. Criminal Justice)

jurisdiction		group		interaction		crimes
F	p	F	p	F	p	
5.50	<b>0.020</b>	1.84	0.161	1.44	0.240	<a href="#">homicide discrepancy</a>
2.73	0.100	4.10	<b>0.018</b>	0.60	0.552	<a href="#">rape discrepancy</a>
3.58	0.060	0.89	0.412	1.03	0.359	<a href="#">robbery discrepancy</a>
0.41	0.524	0.02	0.983	0.22	0.801	<a href="#">aggravated assault discrepancy</a>
4.90	<b>0.028</b>	0.64	0.527	1.86	0.159	<a href="#">domestic violence discrepancy</a>
0.52	0.473	0.48	0.616	0.80	0.450	<a href="#">burglary discrepancy</a>
16.40	<b>&lt; .001</b>	1.85	0.160	1.71	0.183	<a href="#">larceny, theft discrepancy</a>
0.04	0.849	5.93	<b>0.003</b>	1.03	0.359	<a href="#">auto theft discrepancy</a>
0.75	0.387	0.60	0.549	0.29	0.750	<a href="#">arson discrepancy</a>
0.07	0.794	5.21	<b>0.006</b>	0.88	0.415	<a href="#">DUI discrepancy</a>
0.53	0.466	0.02	0.976	1.06	0.348	<a href="#">drug offenses discrepancy</a>
0.00	0.958	2.46	0.088	0.71	0.491	<a href="#">child abuse discrepancy</a>

Figure 10.9

discrepancy rankings. A score near zero suggests police priorities are in balance with crime frequency. A large positive or negative score suggests police priorities are not in balance with crime frequency. Positive discrepancies indicate that police are over-serving a crime, or giving

too much attention relative to crime frequency. Negative discrepancies suggest police are under-serving a crime or giving too little attention compared to the frequency of the crime's occurrence. A discrepancy ranking near zero suggests that police have a balanced approach where crime frequency and police crime priority are matched.

We investigate discrepancies between crime frequency and police crime priority by analyzing for the effects of jurisdiction, group, and interaction effects in a nonparametric 2X3 ANOVA. As presented on Figure 10.9, for our sample, there are three significant jurisdiction effects, and three significant group effects, but no significant interaction effects. Six crimes show no significant results; respondents suggest police balanced attention and resources to robbery, assault, burglary, arson, drug offenses, and child abuse. In Public Law 280 jurisdictions, respondents say police are under-serving domestic violence and larceny-theft while giving too much attention to homicides. See Appendix I for a display of means, standard deviations and case numbers corresponding to the discussion of comparisons in Figure 10.9. Non-Public Law 280 respondents rank the discrepancies between crime frequencies and police priority for domestic violence about balanced. Both Public Law 280 reservation residents and criminal justice personnel suggest state/county police are significantly under-servicing communities for domestic violence, but state/county police evaluate themselves as providing a higher and near-balanced approach between frequency and police priority for domestic violence issues. Similarly, Public Law 280 respondents say police are under-serving larceny-theft issues on their reservations, while non-Public 280 respondents indicate they experience only moderate under-service for larceny-theft cases. Respondents in both jurisdictions report tribal communities are over-served by police when attending to homicides. However, Public Law 280 respondents report significantly greater discrepancies toward police over-service of homicides. In non-PL 280 reservations, respondents say police are only moderately over-serving homicides; Public Law 280 respondents, however, say police give too much attention to homicides in Public Law 280 communities. Public Law 280 respondents say their reservation communities are over-served by police for homicides but under-served for domestic violence and larceny-theft.

Group effects measure differences of viewpoint among reservation residents, law enforcement and criminal justice personnel. Three discrepancy measures are significant: rape, auto theft and DUIs. There are no significant group effects for homicide, robbery, assault, domestic violence, burglary, larceny-theft, arson, drug offenses, and child abuse. All three groups agree about the balance of crime frequency and police attention for the latter nine crimes. DUI is a high frequency crime, and our sample of reservation residents rates DUI as moderately under-served by police, but law enforcement and criminal justice personnel suggest police are significantly under-serving DUI crimes. The three groups of respondents also disagree about police attention to auto theft. Reservation residents believe police responsiveness to auto thefts is about balanced between frequency and police priority. Law enforcement and criminal justice personnel, however, say police are significantly under-serving auto-theft crimes. Rape is a low frequency crime, and all three groups suggest that police are over-serving, or giving too much attention, to rape cases. Reservation residents say police are moderately over-serving rape cases,

while law enforcement and criminal justice personnel suggest that police are significantly over-serving, or spending too much time and attention on, rape cases, given their crime frequency.

For our sample, the discrepancies between police priorities and crime frequency are accounted for at least in part in differences by jurisdiction for homicide, domestic violence, larceny-theft; and by group differences in rape, auto theft, and DUI. The high crime frequency crimes of DUI and domestic violence are both significantly under-served, according to our sample. The violent, but less frequent, crimes of homicide and rape are both over-served by police. The main pattern of police over-service of low frequency but violent crimes and under-service to more frequent crimes is accounted for by differences in police attention to homicide, rape, domestic violence and DUIs. We now recapitulate the discussion of police priorities according to the emergent patterns of high, medium and low crime frequencies.

Domestic violence crimes are ranked significantly differently by jurisdiction. Respondents in PL 280 jurisdictions say that police under-serve domestic violence cases, while respondents within non-PL 280 jurisdictions say the police attention to domestic violence is slightly negative, but relatively balanced. There are differences among the PL 280 respondents. Both PL 280 reservation residents and criminal justice personnel say that PL 280 police give too little attention to domestic violence, while PL 280 law enforcement personnel say that police attention to domestic violence is balanced and appropriate. Respondents in both jurisdictions and all groups say that police are under-serving domestic violence crimes, a result that fits the overall pattern that high frequency domestic violence crimes are under-served. PL 280 police are significantly under-serving domestic violence crimes relative to non-PL 280 police, according to PL 280 reservation residents and criminal justice personnel, although PL 280 police say they have a balanced approach to domestic crimes.

Reservation residents, law enforcement personnel, and criminal justice personnel do not agree about police attention to DUIs. All respondent groups for both jurisdictions and all three groups give negative discrepancy ratings for police responsiveness to DUI cases, which corresponds to the overall pattern that high frequency DUI crimes are under-served by police. Criminal justice personnel in both Public Law 280 and non-Public Law 280 jurisdictions and law enforcement personnel in non-Public Law 280 jurisdictions give strong rankings of police under-service for DUI cases. Reservation residents in both jurisdictions say police do not give enough attention to DUI cases but believe police are providing relatively more balanced responsiveness than do law enforcement personnel and criminal justice personnel. Law enforcement personnel and criminal justice personnel say that police need to give significantly more attention to DUI cases.

The third high-frequency crimes are drug offenses, and there is no significant effect for jurisdiction, groups, or interaction. All respondent groups in both jurisdictions agree that drug offenses are under-served by police, a result which conforms to the pattern of police under-service for high-frequency crimes. Public Law 280 reservation residents, non-Public Law 280 law enforcement personnel, and Public Law 280 criminal justice personnel give relatively high under-service rankings to police for drug offenses. However, non-Public Law 280 reservation

residents, Public Law 280 law enforcement personnel, and non-Public Law 280 criminal justice personnel give relatively low police under-service rankings for drug offenses. Jurisdiction and group differences do not help explain the patterns of police under-service for drug offenses.

Among the medium-frequency crimes of aggravated assault, larceny-theft, child abuse, and burglary, there is considerable agreement about police service patterns, and one significant result. The discrepancy rankings for aggravated assault are not significant, suggesting agreement among groups and across jurisdictions. All respondent groups for both jurisdictions say police provide similar patterns of attention to responding to aggravated assaults.

Larceny and theft are medium-frequency crimes with a statistically significant result for jurisdiction. Respondents in Public Law 280 jurisdictions say that Public Law 280 police significantly under-serve larceny and theft cases, while non-Public Law 280 respondents say non-Public Law 280 police under-serve larceny and theft cases, but significantly less than Public Law 280 jurisdictions. All respondent groups in both jurisdictions say that police under-serve larceny and theft crimes. Respondents say that Public Law 280 police under-serve larceny and theft crimes significantly more often than non-Public Law 280 police.

The respondent discrepancy rankings for child abuse are not significant for group, jurisdiction, and interaction effects. Reservation residents in Public Law 280 jurisdictions say Public Law 280 police slightly under-serve child abuse but provide close to balanced service. Non-Public Law 280 reservation residents, law enforcement personnel, and criminal justice personnel say police over-serve child abuse, or provide too much attention to child-abuse cases. Law enforcement personnel in both jurisdictions give the highest rankings for police over-service to child-abuse cases. Police in both jurisdictions think that they give too much attention to child-abuse cases beyond their frequency. Since there is no statistically significant result, police service patterns for child abuse are not explained by jurisdiction, group, or their interaction effects.

The rankings for burglary do not yield statistically significant results. All respondent groups for both jurisdictions say police under-serve, or give too little attention to, burglary crimes. The respondents agree that burglary crimes are under-served. The rankings are negative but relatively low, indicating that police are moderately under-serving burglary crimes. Public Law 280 law enforcement personnel give the highest ranking for under-service, and suggest that police should give more attention to burglary.

The low-frequency crimes break into two patterns between the physically violent crimes of homicide, rape, and robbery; and the property crimes of auto theft and arson. There are three statistically significant effects out of five for the low-frequency crimes. Auto theft yields a statistically significant group effect, suggesting differences in opinion over police service among reservation residents, law enforcement personnel, and criminal justice personnel. Criminal justice personnel and law enforcement personnel say that auto theft is under-served by police, while reservation residents suggest that police are providing slightly too much attention, but

close to balanced service for auto thefts. According to criminal justice personnel and criminal justice, police should give more attention to auto thefts; reservation residents say, however, that police are giving sufficient attention, and are leaning toward giving too much attention. Auto theft, a low frequency and relatively non-violent crime, is ranked as under-served by law enforcement and criminal justice, but reservation residents report balanced police attention and slight police over-attention.

All respondents — reservation residents, law enforcement personnel, and criminal justice personnel for both Public Law 280 and non-Public Law 280 jurisdictions — indicate that police priority and frequency are balanced for arson cases. Arson, a low frequency crime, is ranked by all respondents to attract balanced police attention relative to arson-case frequency.

The low frequency and more violent crimes of robbery, rape, and homicide yield two statistically significant results, suggesting violent low-frequency crimes are significantly over-served by police in specific ways related to jurisdiction or group effects. Respondent discrepancy rankings for robbery yield a marginally non-significant jurisdiction effect. All respondent groups in both jurisdictions say police are giving balanced attention to robberies given their frequency. This pattern conforms to overall results that suggest police give too much attention to the low frequency, but violent, crime of robbery.

Respondent discrepancy rankings of the low frequency, violent, rape crime yields a statistically significant group effect. Reservation residents, law enforcement personnel, and criminal justice personnel disagree about police responsiveness to rape crimes. All three groups give relatively high police over-service rankings to rape crimes. Reservation residents give the lowest over-service rankings, law enforcement personnel give the next highest ranking, and criminal justice personnel believe that police are giving the most over-attention to rape cases. All respondent groups in both jurisdictions say that police give too much attention to rape cases when compared to frequency of occurrence. This overall pattern suggests that low frequency but violent crimes attract too much police attention. Criminal justice personnel believe that police give significantly more attention to robbery crimes than law enforcement and reservation residents.

The low frequency, violent, crime of homicide yields a statistically significant effect for jurisdiction. Public Law 280 respondents say Public Law 280 police give significantly more over-service to homicide crimes than non-Public Law 280 respondents report for non-PL 280 police. In particular, Public Law 280 criminal justice personnel say Public Law 280 police give too much attention to homicide cases in Public Law 280 jurisdictions. All respondent groups in both jurisdictions say that police are providing too much attention to homicide cases. This result reflects the overall pattern that all respondents say police focus too much on low frequency, violent crimes. The present analysis suggests Public Law 280 police are over-focused on homicides to a degree significantly higher than non-Public Law 280 police. Non-Public Law 280 police also overemphasize homicide, but give significantly less attention than Public Law 280 police.

The pattern of police over-attention to violent but low-frequency crimes is partially explained by both jurisdiction and group effects. Differences between Public Law 280 and non-Public Law 280 jurisdictions help explain police overemphasis on the low frequency, but violent, homicide crimes, while group effects, differences between criminal justice personnel, law enforcement personnel, and reservation-resident rankings, help explain police overemphasis on the violent but low frequency crime of rape.

There is an overall pattern of police under-emphasis on high-frequency crimes, such as domestic violence, and DUI, and police overemphasis on low frequency violent crimes, such as rape, and homicide. Both jurisdiction and group effects combined help explain the overall pattern. Public Law 280 police significantly under-serve domestic violence and larceny-theft crimes; and significantly overemphasize homicide cases. Criminal justice personnel say police, in both jurisdictions, significantly underemphasize DUIs, and auto thefts, giving too much attention to rape. For medium-frequency crimes, criminal justice and law enforcement personnel agree that police give too little attention to the low frequency auto-theft crime, while reservation residents say police efforts are balanced. Public Law 280 police under-serve the medium frequency larceny-theft crimes, while non-Public Law 280 police are under-serving but provide more balanced attention to larceny-theft crimes. Jurisdiction and group effects do not provide explanatory value for discrepancy rankings for drug offenses, child abuse, robbery, burglary, and arson. In particular, the pattern of police service to high-frequency drug offenses does not depend on jurisdiction or group effects, although drug offenses fit into the overall pattern of a high frequency crime that is under-served by police. A combination of jurisdiction and group effects helps explain the pattern of police under-serving high-frequency crimes, while giving too much attention to violent, low-frequency crimes.

### What Are Your Most Serious Law-and-Order problems?

Crime rates were explored through a question designed to elicit respondents' views about the most serious law-and-order issues on the reservation. Respondents were asked: In your experience, what are the most serious law-and-order problems on the reservation? The question is open ended, and respondents were encouraged to give their judgments based on work or life experience. The open-ended question seeks somewhat different information than the quantitative rankings analyzed above. Respondents provided their own lists and defined the problems in their own way. In the quantitative rankings of 12 crimes, we forced respondents to make judgments about relative crime frequency and police priorities from a given set of crimes. With the qualitative question, the respondent is allowed to make whatever ranking and crime conceptualization that she or he believes makes sense. The open-ended question seeks to identify the most serious law-and-order problems, and, therefore, seeks only the most frequent, or the most serious. It's not clear that the most serious are the same as the most frequent. Since only the most serious law-and-order problems are solicited from the respondents, only the high end of the crime-seriousness spectrum is reported. If we compare with the quantitative rankings of 12 crimes, then we expect to see the high-frequency crimes mentioned, if we can equate crime

frequency with crime seriousness. We can expect high-frequency crimes will be mentioned and low-frequency crimes will not be mentioned, if we can assume that the crime-frequency rankings are similar to the most serious law-and-order problems. If crime frequency and seriousness are similar, then we can expect that the high-frequency crimes of domestic violence, DUI, and drug offenses will be mentioned most often, and the low-frequency crimes of auto theft, robbery, arson, homicide, and rape will be mentioned less often, or not at all.

When answering the questions, most respondents provide a list of crimes or issues that are the most serious law-and-order problems on their reservation or a reservation within a county. Respondents provided answers from all three groups — law enforcement personnel, reservation residents, and criminal justice personnel — and for both Public Law 280 and non-Public Law 280 jurisdictions. Most respondents supplied a list of most serious crimes or issues, and often commented about interrelations among the crimes on the list. Respondents most often mention alcohol crimes and issues, drug offenses, and domestic violence among their lists for most serious law-and-order problems. Many respondents remark that alcohol use, drug use, and drug trafficking lead to other crimes, including domestic violence, juvenile crimes, sexual abuse, child abuse and neglect, violence, and others. Drug offenses, alcohol abuse, and domestic violence are seen as the most serious law-and-order problems on reservations. Drug use and alcohol use lead to other crimes and disturbances, and often lead to criminal actions by tribal members who otherwise are not prone to criminal activity.

Drug offenses, DUI, and domestic violence were ranked by respondents in the quantitative ranking, discussed above, as the most frequently occurring crimes out of 12 listed crimes. DUI is not mentioned very often in the open-ended questionnaire responses. Many respondents talk about alcohol use and abuse, and its role in motivating disruptive actions, such as domestic violence, child abuse and neglect, and violent attacks, as well as DUIs and other related crimes or infractions. DUIs are one manifestation of alcohol abuse. Drug abuse is seen in a similar light, as a cause for other crimes, such as violence, domestic violence and abuse, property theft, and sometimes drug trafficking and manufacture. Drug and alcohol use is seen by many respondents as a central, if not the most serious, of law-and-order issues, and as the cause of a variety of other law-and-order issues on Indian reservations. In the quantitative crime-frequency rankings, domestic violence was ranked most frequent, DUIs second most frequent, and drug offenses ranked the third most frequent crime.

For the qualitative question of most serious law-and-order problems, respondents most often comment about drug offenses, then alcohol abuse second, and domestic violence a far third. For all reporting respondents (N=341), there were 730 separate identifications of serious law-and-order problems. Respondents mentioned drug offenses and related crimes 298 times, or 40.8%, of all law-and-order problems mentioned by respondents. Drug offenses include drug use, drug trafficking, and directly related crimes. Alcohol use is cited by all reporting respondents 128 times or 17.5% of all law-and-order problems. Alcohol use means use and abuse of alcohol, but also includes DUIs, bootlegging, and other directly related crimes. DUIs are mentioned 15 times, or about 2%, of the total most serious law order problems mentioned.



Alcohol use is a better measure of serious law-and-order problems than are DUIs. Respondents cite domestic violence 93 times (12.7%) as a serious law and order issue. The three most frequent crimes ranked by respondents are similar to the three most serious law-and-order problems. Drug offenses, alcohol abuse, and domestic violence compose the majority of law-and-order problems cited by respondents totaling 519, or 71.1%, of all mentioned serious law-and-order problems. Many other serious law-and-order problems are mentioned by respondents but none are as frequently mentioned as drug offenses, alcohol abuse, or domestic violence. Other mentioned serious crime problems include sex abuse, violence, property theft, poverty, juvenile issues, gangs, child abuse, tribal politics, court administration issues, and others.

We can investigate the patterns of most serious law-and-order problems for differences in jurisdiction and group effects. As shown in Figure 10.10, the data for more often mentioned serious law-and-order problems can be separated into a 2X3X2 log-linear analysis. For this analysis, we will use the measures of how often serious law-and-order problems are mentioned (N=730), and concentrate on the three most often cited problems: drug offenses, alcohol use, and domestic violence. Each respondent's mention of a distinct serious law and order problem is given a single count. The reporting respondents cited 730 distinct serious crimes, from which we can calculate the percentages for each crime and group of crimes. Does the frequency of drug offenses, alcohol abuse, and domestic violence maintain a consistent pattern of most serious law-and-order problems across Public Law 280 and non-Public Law 280 jurisdictions and among groups — reservation residents, law enforcement personnel, and criminal justice personnel?

The Most Serious Law and Order Problems  
Comparison by Jurisdiction and Group

<b>Percentage of drug offenses, alcohol abuse, and domestic violence combined</b>	<b>Reservation Residents</b>	<b>Law Enforcement Personnel</b>	<b>Criminal Justice Personnel</b>
<b>Public Law 280</b>	72.4% N=312 n=226	71.2% N=59 n=42	69.1% N=97 n=67
<b>Non-Public Law 280</b>	68.1% N=141 n=96	75% N=36 n=27	71.7% N=85 n=67

Figure 10.10

Figure 10.10 provides the combined percentages of drug offenses, alcohol abuse and domestic violence from the total number of serious problems in law and order by group and jurisdictions. For example, alcohol abuse, drug offenses, and domestic violence account for 226

counts from a total of 312 serious law-and-order problems provided by Public Law 280 reservation residents. The log-linear analysis yields a significant interaction effect between jurisdiction, group, and the most serious law-and-order problems, drug-alcohol-domestic violence issues, or not ( $G \text{ square} = 17.48$ ,  $df = 7$ ,  $p = .015$ ), suggesting a relation. However, the comparisons do not yield a statistically significant main effect for jurisdiction or group effects, suggesting that respondents agree among groups, and between jurisdictions. Respondents in Public Law 280 and non-Public Law 280 jurisdictions agree that drug offenses, alcohol abuse, and domestic violence are the three most serious law-and-order problems on Indian reservations ( $G \text{ square} = .02$ ,  $df = 1$ ,  $p = .89$ , NS). Reservation residents, law enforcement personnel, and criminal justice personnel agree that drug offenses, alcohol abuse and domestic violence are the most serious law-and-order problems ( $G \text{ square} = .42$ ,  $df = 2$ ,  $p = .81$ , NS). According to our sample, all three respondent groups in both jurisdictions agree that drug offenses, alcohol abuse, and domestic violence are the most serious law-and-order problems for reservations.

Most respondents for the most serious law-and-order problems question provided lists with multiple issues or crimes, and often indicated the interrelatedness of several crimes. Thus, crimes seem to come in related bundles. Drug and alcohol offenses were seen by many respondents as root causes of other related crimes and law-and-order issues. If we consider each respondent's response as a bundle of related issues or crimes, rather than independent issues, then another way of observing and analyzing the most serious law-and-order problems data is possible. For example, a respondent might say that the most serious law-and-order problems are drug use, alcohol use, domestic violence, and violence. Each respondent gave a list of most serious law-and-order problems. By counting the number of responses that include drug offenses, alcohol abuse, and domestic violence, a measure of the three most frequent law-and-order problems is achieved. Those respondents who do not mention alcohol, drug abuse, or domestic violence, then are counter cases and are suggesting alternative interpretations for the

<b>Percentage of respondents citing drug offenses, alcohol abuse, or domestic violence</b>	<b>Reservation Residents</b>	<b>Law Enforcement Personnel</b>	<b>Criminal Justice Personnel</b>
<b>Public Law 280</b>	78.6% N=154 n=121	92.6% N=27 n=25	76% N=50 n=38
<b>Non-Public Law 280</b>	80% N=65 n=52	87.5% N=16 n=14	93.1% N=29 n=27

Figure 10.11

most serious law-and-order problems. Instead of considering each issue or crime in isolation,

respondent lists are counted as interrelated bundles of crime or law-and-order issues. As shown in Figure 10.11, our sample in a 2X3X2 log-linear analysis yields no statistically significant results for jurisdiction, group, or interaction effects. Public Law 280 and non-Public Law 280 respondents agree that drug offenses, alcohol abuse, and domestic violence and related crimes and issues are the most serious law-and-order problems ( $G \text{ square} = .08$ ,  $df = 1$ ,  $p = .78$ , NS). Reservation residents, law enforcement personnel, and criminal justice personnel agree that drug offenses, alcohol abuse, domestic violence, and related crimes and issues are the most serious law-and-order problems for reservations ( $G \text{ square} = 2$ ,  $df = 2$ ,  $p = .37$ , NS). The interaction effect is not significant ( $G \text{ square} = 8.1$ ,  $df = 7$ ,  $p = .32$ , NS).

Respondents say that the most serious law-and-order problems are drug offenses, alcohol abuse, and domestic violence. All groups in both jurisdictions agree that drug offenses, alcohol abuse, domestic violence, and related crimes and issues are the most serious law-and-order problems confronting reservation communities.

Some comments about drug offenses, alcohol abuse, and domestic violence as the most serious problems for law and order include:

Drugs. Without a doubt. Drugs. And alcohol ... methamphetamines? I think that is probably the worse one, yeah.

Like every reservation, the bulk of the crime is transient children, child sexual assaults. It's got to be your most prevalent crime anywhere on a reservation. Narcotics. (On the reservation), they have got some narcotics issues up there. And then the small crimes would be thefts and domestic violence.

I think drugs is one of them. I know there is a lot of drugs going on up there. ... There has been a number of murders because of drinking and getting beat up. Gang fights.

Our most serious problems are chemical and drug use. Definitely. We do have a large concern with, because of human services, we have a lot of concern with domestic child-protection issues. Actually, criminal activities are farther down the list than chemical dependency issues, the drug use, child protection issues, like that.

Theft and drugs. And drugs among young people. 12-, 13-, 14-year-olds, that I know adults are providing for them, and how come we are not catching them? If we know, everybody seems to know who is who, but nobody will tell us.

Sexual abuse of children and women, adult women ... the violence.

Domestic violence ... I think domestic violence and chemical dependence ... I don't think we [have] ever had a domestic violence where there wasn't alcohol involved.

Drugs, alcohol, and domestic abuse.

Assaults, domestic assaults, stealing of cars, intoxication. I would say just violence in general.

I think the drug use is a large problem here. There is a lot of crack, methamphetamine use, and joblessness creates that problem. On this reservation, we have a high population and a small land base, and there are no jobs. ... There is a homelessness here. ... If homelessness is at 581 (families) now, it will be over 1,000 in 10 years.

(T)here are limited jobs, and with unemployment comes a lot of problems that come hand-and-hand with unemployment. And there tends to be high alcoholism rates with higher unemployment rates, and domestic violence issues are higher. So, I would say that drugs and alcohol and domestic violence would be pretty serious problems, not only on the reservation here but in the surrounding communities, as well.

Probably DUI. We are having a lot of people being beaten up and just left to die. That is serious beating up ... they use all kinds of weapons now. And most times they are violent, either on drugs or under the influence of alcohol, and they are really violent. We are finding that a lot of older people drink, they get out or lose control, and the kids take advantage of that opportunity and beat them up. ... Now we are getting into drugs. Meth ... it's a major epidemic here, and it's not good.

### Police Crime Priorities and Focus

How do police priorities and focus match with respondent perceptions of the most serious law-and-order issues? Two questions about tribal police priorities, and the focus of federal-BIA and state/county police activities were asked of respondents. The open-ended questions provide insight into the primary police activities and emphasis. Responses report patterns of police priority or focus, and allow comparison with findings about the most serious law-and-order issues, largely drug offenses, alcohol abuse, and domestic violence.

A total of 275 respondents answered the questions: What are the priorities for tribal law enforcement? What do they focus on? Respondents gave answers similar to those provided in response to questions about the most serious law-and-order problems, giving often interrelated lists of crimes or issues they believed the police focus on. While all groups — reservation

residents, law enforcement personnel, and criminal justice personnel — for both Public Law 280 and non-Public Law 280 jurisdictions — gave responses, the number of respondents for Public Law 280 law enforcement personnel (n=5), Public Law 280 criminal justice personnel (n=4), and non-Public Law 280 law enforcement personnel (n=11) are small and don't allow for a comprehensive statistical analysis such as a 2X3 ANOVA. We can isolate the responses that conform directly to the most serious law-and-order issues of drug offenses, alcohol abuse, and domestic violence. If a respondent mentions one or more of the most serious law-and-order problems as a tribal police priority, then we say that the tribal police are in conformity with, or are addressing, respondent law and order needs. If a respondent does not mention one or more of the most serious law-and-order issues as a tribal police priority, then the respondent does not believe the tribal police is addressing directly the most serious law-and-order problems.

Among 275 respondents, 101 (36.7%) do not say that drug offenses, alcohol abuse, or domestic violence are priorities for tribal police. Most respondents (174 or 63.3%) say that tribal police are focusing on drug offenses, alcohol abuse, or domestic violence, as well as other, often related, issues or crimes. For example, a respondent says tribal police give priority to assaults, drug use, alcohol abuse issues, domestic violence, as well as healing and cooperation among social service agencies and police. Many respondents believe that drug offenses, alcohol abuse and domestic violence are core issues, and other issues, such as assaults, child abuse and neglect, and property theft are related, or attendant, issues.

The 36.7% of respondents who do not see tribal police focus on drug offenses, domestic violence, and alcohol abuse, provide alternative interpretations of tribal police priorities. Thirty-six (13.1%) of the alternative interpretations concentrate on community policing, safety, and protection as the most important tribal police focus. Arrests, patrolling, traffic, and responding to calls account for 22 (8%) respondent reports. Most respondents say that tribal police are performing too narrowly when they concentrate on arrests, patrolling, traffic, and responding to calls. The tribal police are seen as reactive, not engaged, and too narrowly focused on apprehensions when they concentrate on the more technical aspects of tribal police work. Most respondents prefer the community approach to tribal policing. Sixteen respondents (5.8%) could not or would not answer the question.

How do respondents see tribal police priorities by groups and jurisdiction? Since the data are sparse for several groups, we do not have an overall statistical test, but we can observe trends and use any statistical comparisons the data will allow. Most non-Public Law 280 law enforcement personnel say tribal police concentrate on drug offenses, alcohol abuse, or domestic violence (81.8%, N=11). There are only 5 Public Law 280 law enforcement respondents, and 3 (60%) say tribal police focus on the major law-and-order issues for tribal communities — drug offenses, alcohol abuse, or domestic violence. Only 4 Public Law 280 criminal justice personnel answered the question, and 1 (25%) agrees that tribal police focus on one or more of the most serious law-and-order issues. Non-Public Law 280 criminal justice personnel provided 24 responses, and 21 (87.5%) say that tribal police give priority to one or more of the three most serious law-and-order issues.

Among 57 non-Public Law 280 reservation-resident respondents, 25, or 43.9%, say tribal police focus on drug offenses, alcohol abuse, or domestic violence. Five non-Public Law 280 reservation residents (8.8%) say that community service and protection is the primary priority for tribal police. Sixteen, or 28%, non-Public Law 280 reservation residents say tribal police concentrate on the relatively unpopular police activities of arrest, traffic, patrolling, and responding to calls. Twenty-eight of 87 Public Law 280 reservation residents (32.2%) say tribal police focus on the most serious law-and-order issues of drug offenses, alcohol abuse, and domestic violence. Among Public Law 280 reservation residents, 21 (24.1%) say the primary focus of tribal police is community policing, service, and protection. Five Public Law 280 reservation residents (5.7%) say Public Law 280 tribal police concentrate on arrests, patrolling, traffic, or response to calls. Ten Public Law 280 reservation residents (11.5%) say they could not answer the question, or there are no Public Law 280 tribal police priorities.

Except for a small Public Law 280 criminal justice sample, law enforcement and non-Public Law 280 reservation residents perceive that tribal police focus mostly on the three most serious law-and-order issues of drug offenses, alcohol abuse, and domestic violence. Most reservation residents have a different perception of tribal police in Public Law 280 and non-Public Law 280 jurisdictions where tribal police focus less directly on drug offenses, alcohol abuse and domestic violence. In particular, Public Law 280 reservation residents say that Public Law 280 tribal police concentrate more often on community policing, service, and protection than any other group. Reservation residents have more diverse perceptions of tribal police priorities, including community policing, than law enforcement personnel and non-Public Law 280 criminal justice personnel who perceive tribal police priorities as addressing directly the most serious reservation law-and-order issues. Criminal justice personnel and law enforcement personnel report little awareness of community policing by tribal police reported by Public Law 280 reservation residents. Most tribal police in Public Law 280 jurisdictions do not enforce tribal criminal law. Sometimes Public Law 280 tribal police are cross-deputized to make arrests under state/county law. Most Public Law 280 tribal police functions relate to civil enforcement, or sometimes natural-resource protection.

Fifty-one respondents reported about the focus of federal-BIA police in non-Public Law 280 jurisdictions, and 34 respondents (66.7%) say that federal-BIA police focus on one or more of the three most serious reservation law-and-order issues — drug offenses, alcohol abuse, and domestic violence. Non-Public Law 280 law enforcement personnel (N=6) and non-Public Law 280 criminal justice personnel (N=11) say federal-BIA police focus on the most serious law-and-order problems 100% of the time, but the number of respondents is low, and, therefore, unreliable. Seventeen of 40 non-Public Law 280 reservation residents (42.5%) say that federal-BIA police focus on drug offenses, alcohol abuse, or domestic violence. Nine non-Public Law 280 reservation residents (22.5%) say federal-BIA police focus on traffic, responding to calls, patrolling, and arrests. All the latter activities are often regarded as reactive policing and are generally not popular among reservation residents. Seven non-Public Law 280 respondents (17.5%) say they cannot answer the question. Only 1 non-Public Law 280 reservation resident

respondent (2.5%) says that federal-BIA police focus on community policing. The data are limited, but suggest that reservation residents have very different perspectives about federal-BIA police focus than criminal justice personnel and law enforcement personnel. Non-Public Law 280 reservation residents see federal-BIA police underfocused on the most serious law-and-order problems, and not engaged in community based policing.

Respondents in Public Law 280 jurisdictions were asked to describe the focus of county and/or state police on their reservations, and 209 provided comments. Seventy-four Public Law 280 respondents (35.4%) say that county police focus on drug offenses, alcohol abuse, or domestic violence — the three most serious law-and-order problems on reservations. Eleven Public Law 280 law enforcement personnel (52.4%) self-report that county police focus on the most serious law-and-order problems, while 23 criminal justice personnel (54.8%) say the same. Forty Public Law 280 reservation residents (27.4%), however, report that county police focus on the serious law-and-order issues of drug offenses, alcohol abuse, or domestic violence. Forty-nine Public Law 280 reservation residents (33.6%) say that county police focus on arrests, patrolling, responding to calls, or traffic. Twenty-six Public Law 280 reservation residents (17.8%) report that county police do not have a clear or consistent focus, or they are not cooperating with the tribal government or reservation community. More than 50% of Public Law 280 reservation residents say that county police use reactive policing methods, do not have good focus, or are not cooperative. Eleven respondents (7.5%) say county police engage in and focus on community policing, relations, and safety. Most Public Law 280 reservation-resident respondents do not believe that county police are properly focused in their work on Indian reservations.

Some comments by Public Law 280 reservation residents who do not say that county police are properly focused include:

Running people in and collecting money.

I know they have a Drug Task Force for off the reservation. But they know that that is what happens, and they know that this is the biggest problem. Well, I can't speak for them, but it almost seems like they feel that, "Well, that is their problem." That is the way they are. They are all on drugs, and so it's going to happen. And so, they just don't seem to worry about it like I feel they should.

I think they try to ignore the reservation as much as possible, and they pay more attention to the casino and whatever crime occurs there. ... When crimes do occur, they immediately have somebody there.

I think, for the most part, just from my perspective, they simply focus on coming out and making arrests. I don't think that there is a good effort, like I said, to be more proactive and community oriented, and curtailing some things.

I don't think they are being proactive and educating the community. I think that they are perpetually keeping probation violators in jail. I think they have a system ... it's like a cycle. They start with these young kids, and it just escalates. It continues. Then they are adults, and they are in the system.

Nothing (no police focus) ... here on the reservation? Nothing. ... Right. Warrant... somebody that is wanted by them. They will jump on that. They are usually quick about that. But I mean, they don't actually come out here and look for their wanted people either.

I don't know. All I could tell you is what I see. I see them driving around the highway really fast. They break the speed laws more than anybody. ... So, what do they concentrate on? I see them apprehending people, because I come to work, and I have to pass the substation, so I see people coming in and out. So, why are they apprehending them? I don't know.

They really don't. I don't see them having a focus. I see them reacting to people that break the law versus trying to educate, trying to see what they could do to prevent. I don't see that at all ... I don't see them having priorities or goals. I look at them reacting.

Basically, it's just crime. They are not involved in any community activities; they are not in any after-school project with kids.

Of not enforcing the law ... just driving through real fast and not doing a lot of anything ... just letting everything go ...

I think, number one, it's whether or not an Indian did the crime, seems to be the focus. Without looking at other possibilities ... I think they automatically assume ...

I think really they are reactive, and pretty much everything, most of the activity, that I see them do on the reservation is responding to calls for service. Rarely will you see them actually patrolling on the reservation. A lot of times, they arrest members for warrants, and a lot of that is drug and alcohol related .... So it's reactive in terms of responding to calls.

They are usually here if they are called. I don't think they really patrol. The sheriff has to because there are county roads and stuff. I don't really see them actually on patrol.

They focus on the complaint. They only come when they are called. This isn't a patrol area for them, and it never has been.



## Do Police Have the Right Focus?

Reservation residents were asked whether tribal police, federal-BIA police, or state/county police are focusing on the right priorities. Respondents were asked to describe police priorities or focus, and a follow-up question asked the respondent whether they thought the police focus was the right focus, or was the police focus the right priority. Many answered the question in yes or no terms. The answers provide data and some insight into whether reservation residents believe that the police are focusing on the right issues. The quantitative data analysis in the first portion of the chapter discusses crime frequency and police crime priority, and shows an overall pattern that police gave too little priority to high-frequency crimes — domestic violence, DUI and drug offenses — and too much attention to low priority, violent crimes, such as homicide, robbery, and rape. The police-focus question and most serious law and order problem questions emphasize the most serious issues, such as drug offenses, alcohol abuse, and domestic violence. According to reservation residents, do police focus on the right issues in the right way? Reservation residents comment on whether they believe the right focus and priorities are taken up by tribal police departments and non-tribal police departments — county police in Public Law 280 jurisdictions and federal-BIA police in non-Public Law 280 jurisdictions.

Public Law 280 reservation residents (N=24) commented on whether tribal police have the right focus. One tribal police officer in the sample is removed to remove bias, so we will analyze the smaller sample of N=23. Sixteen Public Law 280 reservation residents (69.6%) affirmed that Public Law 280 tribal police were focusing on the right issues. Positive comments included references to strengthening tribal sovereignty, community service, protection and safety, and overwork. Seven respondents say that tribal police do not have the proper focus and comment on the need for more attention to drug offenses, juvenile drug abuse, domestic violence, property theft, and enforcement of existing laws.

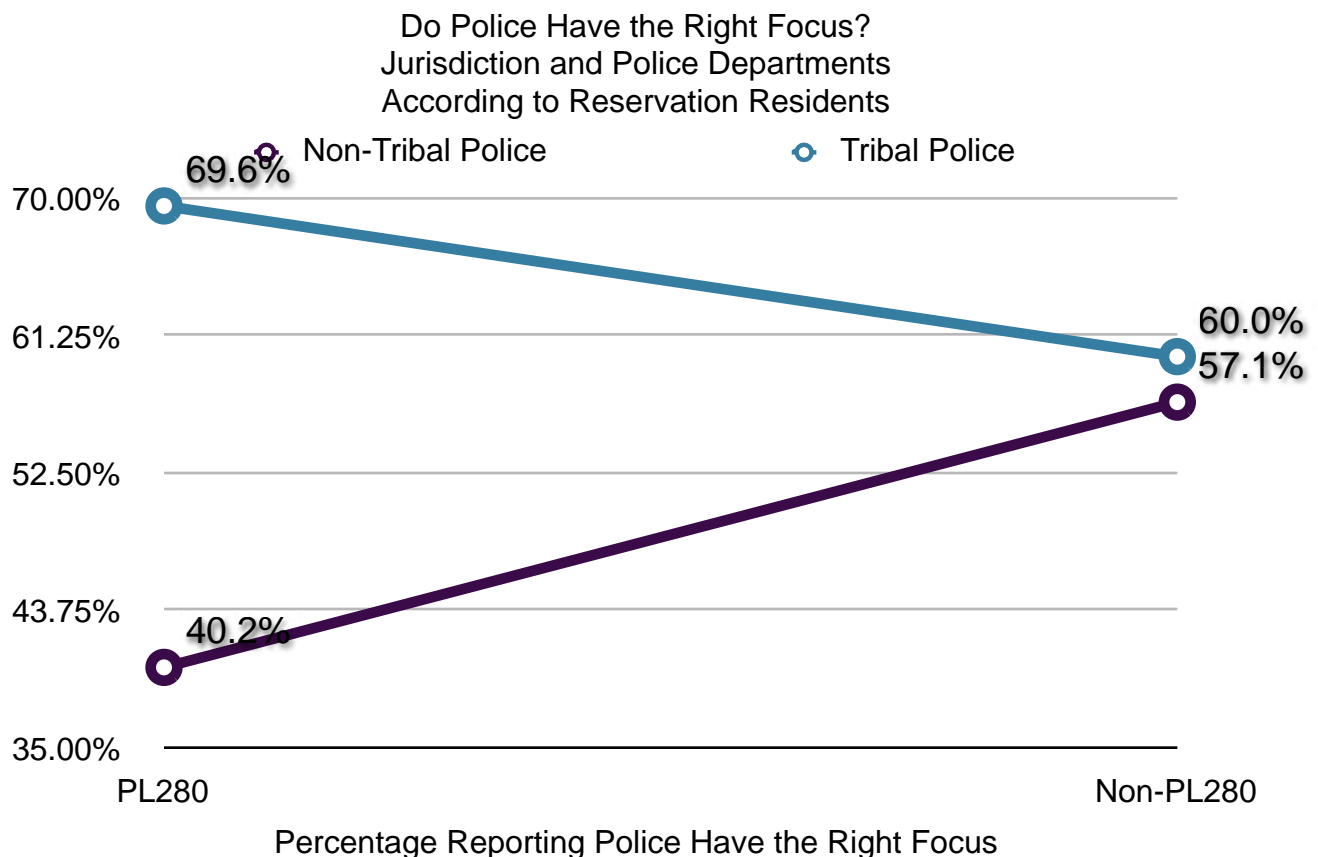
Eighty-two Public Law 280 reservation residents commented on whether they viewed county police focus as effective or proper. Thirty-three respondents (40.2%) say that county police are focusing on the right issues, while 46 Public Law 280 reservation-resident respondents (56.1%) say that county police are not focused on the right issues. Comments that county police do not have the right focus include the need for more attention to child abuse, drug offenses, alcohol abuse, crime prevention, more community policing, protecting and serving the community, working with tribal government, tribal police, and community; and too much emphasis on arrests, control, DUIs, and traffic.

Thirty-five non-Public Law 280 reservation residents gave comments and 21 (60%) say that non-Public Law 280 tribal police have the right focus, while 34.3% say that Public Law 280 tribal police are not well focused. Comments by the respondents who believe that Public Law 280 tribal police are not well focused suggest the need for more attention to: drug offenses, gangs, white-collar crimes, teaching the next generation, crime prevention, ensuring justice,

community relations and service, and root causes of drug abuse and alcohol abuse that lead to domestic violence and related crimes.

Twenty-one non-Public Law 280 reservation residents commented on whether federal-BIA police are properly focused, and 12 (57.1%) were affirmative, while 38.1% say federal-BIA police priorities are not well focused. Respondents say federal-BIA police need to focus more on drug offenses, alcohol abuse, young people and youth programs, justice and equity, serve and protect, rehabilitation services, community policing, white-collar crimes, and getting at the root causes of crimes.

Do reservation residents believe that police are properly focused across jurisdictions and for different types of police forces? Reservation residents provide comments on state/county, federal-BIA, Public Law 280 tribal police, and non-Public Law 280 tribal police, which can be grouped into two kinds of police departments — tribal police and non-tribal police departments. We can investigate whether reservation residents believe the patterns of police focus are caused by differences in police departments — tribal and non-tribal police — or by jurisdiction, Public Law 280 or non-Public Law 280 jurisdictions.



As shown in, Figure 10.12, our data sample yields a significant result for a relation between police departments, jurisdiction, and agreement with whether police have the right focus or not (G square = 35.4, df =4,  $p < .0001$ ). In our sample, non-Public 280 reservation residents

report tribal and non-tribal police forces have the right focus about the same, but in Public Law 280 jurisdictions, reservation residents say tribal police have the right focus significantly more often than non-tribal or state/county police. Public Law 280 reservation residents say that Public Law 280 tribal police meet community policing expectations significantly more often than state/county police. Most Public Law 280 reservation residents do not believe that county police meet community expectations for focus and service. Public Law 280 tribal police are highly valued by Public Law 280 reservation residents, and nearly 70% say that tribal police meet their expectations for focus and service. Reservation residents say that county police are the most disconnected police department from reservation community policing concerns and needs.

There is a significant difference between how well tribal and non-tribal police focus on the most appropriate issues according to reservation residents ( $G \text{ square} = 6.34$ ,  $df = 1$ ,  $p = .01$ ). Tribal police are significantly better at matching reservation-resident policing expectations than non-tribal police. In non-Public Law 280 jurisdictions, reservation residents say federal-BIA police and non-Public Law 280 tribal police about equally match community-policing expectations. Reservation residents agree the federal-BIA police and tribal police in Public Law 280 jurisdictions meet community-policing expectations at about same rate. Most non-Public Law 280 reservations residents believe that federal-BIA and tribal police have appropriate policing focus in non-Public Law 280 jurisdictions.

Jurisdiction main effects, differences between Public Law 280 and non-Public Law 280 jurisdictions, are not significant ( $G \text{ square} = 2.38$ ,  $df = 1$ ,  $p = .12$ , NS). Reservation residents say police have similar levels of focus and meet community-policing expectations in both jurisdictions is about the same on average. Reservation residents in Public Law 280 jurisdictions say that Public Law 280 tribal police meet community-policing expectations very well, while state/county police meet community-policing expectations the least among police departments. In non-Public Law 280 jurisdictions, federal-BIA and tribal police meet community-service and focus expectations at about the same level, according to reservation residents.

### What Priorities Should Police Have?

Reservation residents were asked to speculate about what priorities state/county, federal-BIA, or tribal police should have. This open-ended question provides information about what reservation residents believe police priorities and actions should be within reservation communities. Respondents were asked to answer from their own experiences, and most provided ideas or short lists of crimes or issues that they felt their local police force should be emphasizing in the delivery of police services. The many responses were coded into what appear to be two major groups what we might call “community policing,” and the three most serious law-and-order problems — drug offenses, alcohol abuse, domestic violence, and related crimes and issues. If a respondent mentioned one of the three most serious law-and-order problems, then the response was coded as a “most serious law and order problem.” If a respondent did not mention one of the most serious law-and-order problems and related information about preferences for community policing, then the response was coded as “community policing.”

Whenever a respondent gave both a community-policing answer and a serious law and order issue, then the answer is coded as a serious law and order issue. Sometimes a respondent gave both community policing and most serious law-and-order problems information, but all such responses were coded as most serious law-and-order problems. The community policing codes do not include any direct references to drug offenses, alcohol abuse, or domestic violence, and, therefore, are independent of the most serious law and order codings. Community policing issues include a variety of community building ideas, such as cooperation with tribal government, agreements, better communication with community, community education, favoring rehabilitation programs, cooperation with tribal police and tribal government, community safety and protection, learning about and understanding reservation community and culture, community service, peacemaking, and related ideas. Any response that did not fit into the community policing or most serious law-and-order issues coding was coded as “other.” Other codes include issues like arrest law breakers, more police resources, respond to calls, need for training and equipment, better police equity, better investigations, better patrolling, child abuse issues, and others.

Reservation residents were asked to provide their views about what would be the best priorities for local police. Many reservation residents responded to the question twice, giving their views about their local tribal police department, if they had one, and then commenting on state/county police in Public Law 280 jurisdictions or federal-BIA police in non-Public Law 280 jurisdictions. Some respondents have more than one coding. In total, 297 comments on what police priorities should be were recorded for reservation residents. Reservation residents say that police should make community policing methods a central priority 148 times (49.8%). Nearly half of reservation residents say police in Indian country should adopt community policing priorities. One hundred thirteen reservation residents (38.0%) say police should concentrate on attending to the three major law-and-order issues — drug offenses, alcohol abuse, domestic violence, and related crimes and issues. Thirty-one respondents (10.4%) mentioned other issues, and 5 (1.7%) declined to answer the question. As a group reservation residents want police to adopt more community-policing methods and styles, while also concentrating on the three major law-and-order issues of drug offenses, alcohol abuse, domestic violence, and related crimes and issues.

Some comments about community policing include:

I would say better communication and building better working relationships with tribes, because if you don’t have that, and you just come in on an issue, depending on the issue and depending on the people involved, sometimes there is more tendency for conflict than there is (an agreeable) resolve.

I would have to say a little more because I am in the community-service business. Come out, and talk to our kids. Get to know them and their families. ... Yes, it would be nice to know the county guys.

I think they should be getting to know their community better and trying to identify what the problems are and how they can help with the problems. And let the community work out a better relationship with them that we are here to help, and serve and provide a service. Then get more officers on duty.

It's community policing. It's a community-friendly type of policing. They are much in favor of, like, extending a friendly hand to the community, as opposed to coming in with the iron-fist type of (action).

I don't know what they really should focus on, but I know that they need to be educated on the community and be able to work with the community when they are here. And not come in and think, well, we are law enforcement, we are rough and tough, and we will take care of you. The best mentality to have is, "We want to be part of your community. What can we do?" I think they have to be caring, too, because that is one of the biggest problems. They don't care.

I think if an outside agency wants to have a good rapport and good relationship with a tribe within the jurisdiction, they need to concentrate more on that tribe. They need to have public awareness. Attend a tribal meeting, let tribal members issue some concerns and answer those concerns. Don't be the guy who comes in and just handcuffs an individual and takes them out. Let the tribe understand the reason why. Members are not stupid by any means. A lot of them don't understand why you are coming in here and invading our space and thrashing everything in the surrounding area.

I think community policing is a big step in relationships, and I think that would rank up there pretty high.

One priority we try and keep is just general patrol. The general patrol, and the community-oriented policing approach, where the officers get out, and they get to know the community ... and by utilizing the community-oriented policing, little by little, you get the community to know that you are there to help them. There is probably some deep-rooted feelings in our community against the law enforcement because of the history.

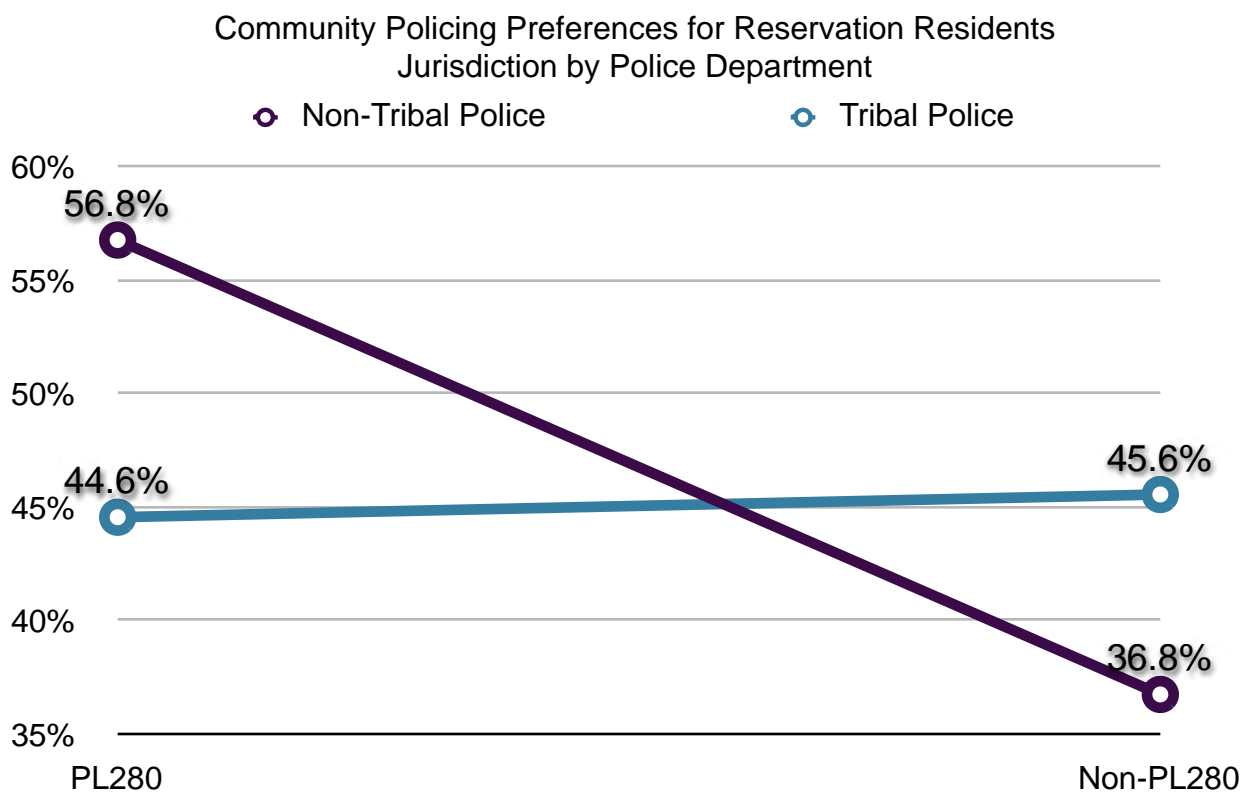
I would say developing a better working relationship, communication, maybe more community policing. Try to build trust so that the people do feel like they can call the police.

I think, and unfortunately I don't know if they are capable of doing this, but I think that the first priority is community presence. They need to be not just cops with badges and a gun telling people what to do, but they also need to be part of the community.

I think community relations and giving more autonomy to the tribal police. I think the best thing about Public Law 280 would be to get rid of it, and I am not sure that is going to happen.

I think if they focus on human relations and try to form more of a partnership. If they would empower the people, that is how you get a partnership going. ... But there has been absolutely no outreach from the police department to this community on things like that.

Are there different patterns of reservation-resident vision for best police practices according to jurisdiction and police department? Reservation residents in Public Law 280 and non-Public Law 280 jurisdictions gave comments about the police practices they preferred for Public Law 280 state/county police, non-Public Law 280 federal-BIA police, and Public Law 280 and non-Public Law 280 tribal police. With a 2X2X2 log-linear analysis, the data in our sample lend themselves to investigating the effects of community-policing preferences, yes or not, jurisdiction and police department either tribal police, or non-tribal police departments, federal-BIA and state/county police.



Percentage of Reservation Residents Reporting Community Policing Preferences  
Figure 10.13

We start with an investigation of the pattern of reservation-resident preference for community policing across tribal police departments and jurisdictions. As shown on Figure

10.13, a statistical analysis yields a significant result for an interaction effect among policing preferences, jurisdiction and police department, indicating a relation among all three factors. ( $G$  square = 30.22,  $df = 4$ ,  $p < .0001$ ). Our sample suggests reservation residents in Public Law 280 jurisdictions believe state/county police should give greater attention to community-policing methods, while non-Public Law 280 federal-BIA police should give less attention to community policing. Tribal police, and federal-BIA police are encouraged to focus on community policing, but reservation residents suggest Public Law 280 police need more focus on community policing than the other police departments. The differences in reservation residents' preferences for community policing are nonsignificant for Public Law 280 and non-Public Law 280 jurisdictions ( $G$  square = 2,  $df = 1$ ,  $p = .16$ , NS). Reservation residents in Public Law 280 and non-Public Law 280 jurisdictions have similar preferences for community policing. Differences in reservation resident preferences for community policing are not significantly different for tribal or non-tribal police ( $G$  square = .12,  $df = 1$ ,  $p = .73$ , NS). Reservation residents prefer similar levels of community policing for both tribal and non-tribal police departments. Reservation residents have similar community policing preferences for both tribal and non-tribal police, and across both Public Law 280 and non-Public Law 280 jurisdictions.

Do jurisdiction and police department affect reservation-resident preferences for police attention to the most serious law-and-order problems: drug offenses, alcohol abuse, domestic abuse, and related crimes and issues? The pattern of the data is represented by Figure 10.14. A 2X2X2 log-linear analysis yields a statistically significant interaction effect, suggesting reservation-resident advice for police-department focus depends on specific combinations of jurisdiction and police departments ( $G$  square = 26.46,  $df = 4$ ,  $p < .0001$ ). In our sample of reservation residents, the respondents say both Public Law 280 tribal police and Public Law 280 state/county police focus about the same on the most serious law-and-order problems. Most reservation residents do not believe Public Law 280 police focus on the most serious law-and-order problems for the reservation communities. In non-Public Law 280 jurisdictions, however, most respondents in our sample of reservation residents say federal-BIA police give primary focus to the most serious law-and-order problems of drug offenses, alcohol abuse, and domestic violence. However, in non-Public Law 280 jurisdictions, most reservation residents suggest tribal police do not focus on the most serious law-and-order problems for their reservation communities. The trend of the data suggests that reservation residents believe non-Public Law 280 federal-BIA police concentrate more on the most serious law-and-order problems than tribal police and state/county police.

These data suggest police in non-Public Law 280 jurisdictions focus on the most serious law and order problem more often than Public Law 280 police departments ( $G$  square = 5.02,  $df = 1$ ,  $p = .025$ ). Reservation residents in both Public Law 280 and non-Public Law 280 jurisdictions agree police should focus attention on drug offenses, alcohol abuse, domestic violence, and related issues and crimes. According to our sample of reservation residents, Public Law 280 police departments are less focused on the most serious law-and-order problems on reservations than are non-Public Law 280 police departments. However, there are no significant difference between police departments; reservation residents agree both tribal and non-tribal

police focus about the same on the most serious law-and-order problems (G square = .74, df = 1, p = .39, NS).

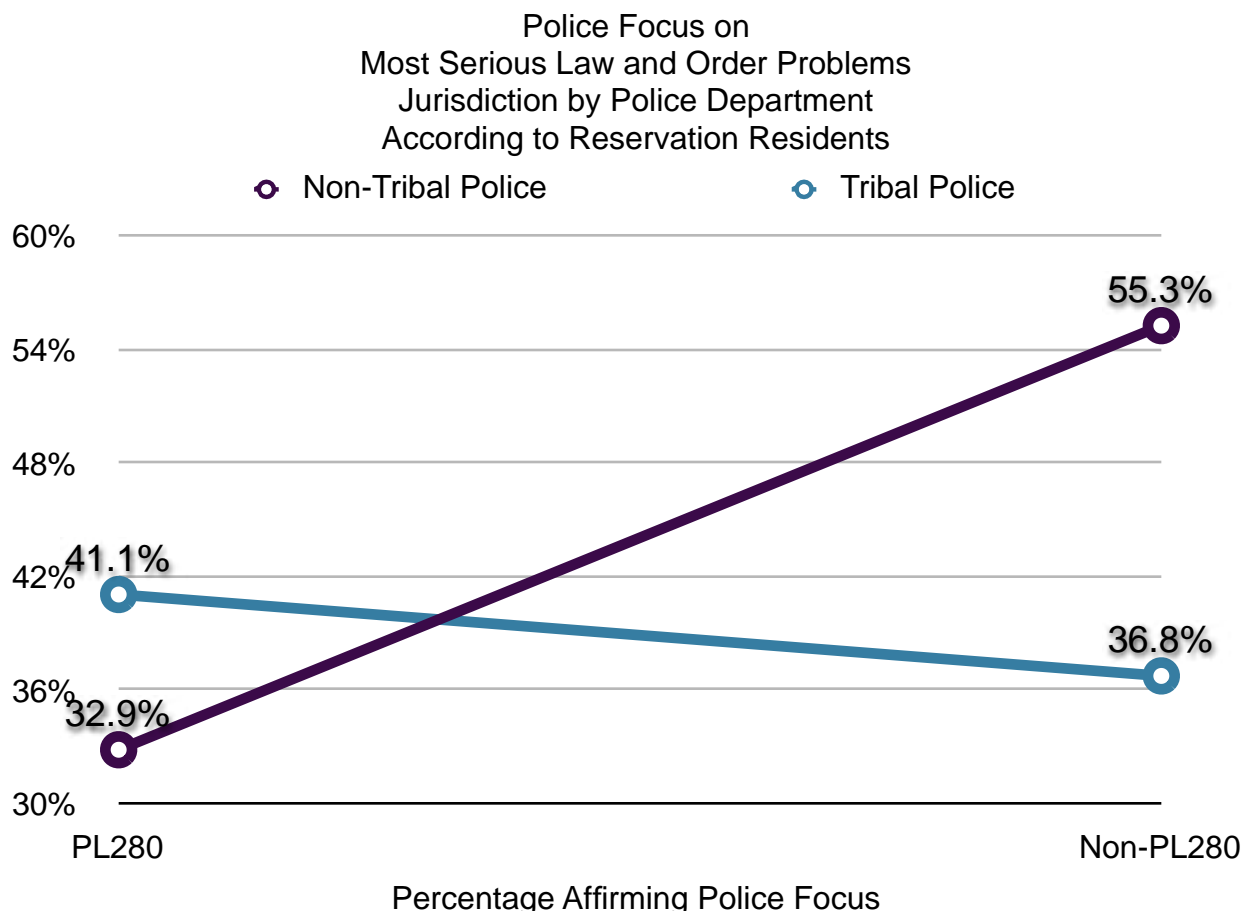


Figure 10.14

Except for federal BIA police, most reservation residents in our sample say police do not focus on the most serious law-and-order problems on the reservations. Federal-BIA police have the most focus on serious law-and-order problems. Public Law 280 police are less focused on serious law-and-order problems than non-Public Law 280 police.

### Crime Reporting

A series of qualitative questions was asked about whether tribal community members report crimes, whether they try to work out criminal issues within the community, whether they seek to negotiate court charges, to whom tribal members report crimes, why they don't report crimes, and whether crimes get prosecuted, if reported. The series of questions is aimed at gaining information regarding how tribal members negotiate with court and police about crime reporting, whether and where tribal members report crimes, and the extent to which crimes are reported or are underreported, and why.



## Locally Working Out Criminal Issues

Early in our trial interviewing sample, we ran into comments about tribal members avoiding the non-Indian police and court system, but working out possibly criminal issues within the community. These comments intrigued us, and so we added two questions to the survey, one addressing crime reporting, and the other focusing on efforts to avoid court appearances or hard sentencing once a tribal member was scheduled to enter into the court system. Many respondents indicate tribal councils, elders, and families played major roles in working to avoid non-tribal police and court systems. We asked: Do tribal members have a way of working out potential criminal cases through tribal authority before they get reported to the county or state law enforcement? One hundred forty-six respondents, mostly Public Law 280 reservation residents (N=128), but also some Public Law 280 law enforcement personnel, and a few others, answered the question. Fifty-six respondents (38.4%) said they were not aware that tribal members used tribal resources to locally work out possible ways to resolve criminal issues. Seventeen respondents (11.6%) said they could not answer the question, while 73 respondents (50%) affirmed that tribal members often try to work out possible criminal issues on the reservation before they are reported to police. Among the affirmative commentators, 67 elaborated with information about how tribal members negotiate within the community to try to avoid reporting to non-tribal police. Four, often overlapping, primary patterns are suggested by respondent comments: traditional methods of mediation, use of tribal council, families, and tribal police. The latter comments together composed the four most frequent ways in which communities tried to manage potential criminal cases, and accounted for 82.1% (N=55) of all comments. Other respondents noted tribal members in possible criminal-arrest jeopardy availed themselves of community program services, especially juvenile programs, tribal courts, or did not report any non-serious crimes.

Traditional methods of mediation included consulting elders, using sentencing circles, cultural courts and traditional hearings, healing circles, talking circles, peacemaker approaches, and restitution rather than arrest and punishment. Tribal councils worked with possible offenders in a variety of ways: enforcing trespass codes, withholding per capita to ensure social behavior, restricting tribal member access to tribal functions, arbitrating non-serious issues, using banishment, and invoking strong family connections to provide protection. Reservation families can play a major role in protecting family members from criminal detection by preferring to work out possibly criminal issues such as domestic violence within the family. Community members and elders often are asked to intervene and give counsel, and family patronage networks related to tribal leadership can provide protection. One method for reporting less serious potential criminal actions is to give notice to tribal police who may opt for the following: not calling county police, giving warnings, providing restraining orders, downgrading felonies to misdemeanors, demonstrating willingness to mediate a situation rather than to arrest a tribal member, and making arrests sparingly. Community members have a variety of informal mechanisms to avoid entry into the county criminal system generally for less serious criminal issues and civil cases.

## Where Do Tribal Members Report Crimes?

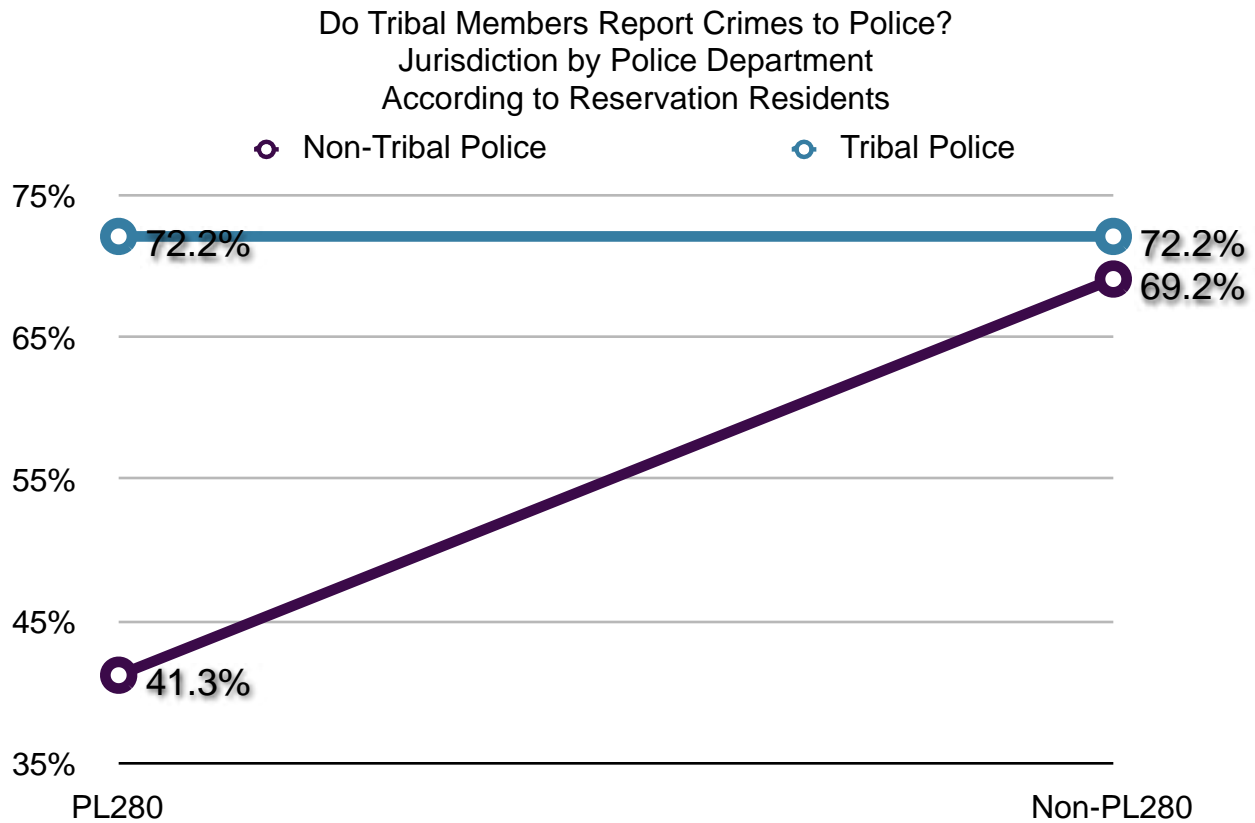
Reservation residents were asked whether tribal members report crimes to their local police departments, either tribal police, or state/county or federal-BIA police depending on jurisdiction. Respondents commented on reports to tribal police, and then Public Law 280 reservation residents commented on reporting to Public Law 280 state or county police, and non-Public Law 280 reservation residents commented on tribal member patterns of reporting to federal-BIA police. The question asked was: When crimes are committed, do tribal members report them to the county police (tribal police, or federal-BIA police)?

One hundred thirty-eight Public Law 280 reservation residents commented on whether tribal members reported to county police, and 57 (41.3%) reported affirmatively. Fifty-seven Public Law 280 reservation residents (41.3%) said no, tribal members do not report crimes to county police, while 22 (15.9%) said that tribal members sometimes report crimes to county police. Two respondents could not answer the question. Some reasons given why tribal members do not report crimes to county police are unwillingness to turn in family members, distrust of county police, report only serious crimes to the county, prefer to report crimes to tribal police, fear of retaliation, and the county police are unresponsive.

Ninety Public Law 280 reservation residents commented on patterns of tribal member crime reporting to Public Law 280 tribal police, and 65 (72.2%) said that tribal members report crimes to tribal police. Eleven Public Law 280 reservation residents (12.2%) said that tribal members do not report crimes to Public Law 280 tribal police, and 11 respondents (12.2%) said that tribal members sometimes report crimes to Public Law 280 tribal police. Three respondents said they cannot answer the question. Fear of retaliation from within the community is a major reason why some tribal members do not report crimes to tribal police.

Thirty-nine non-Public Law 280 reservation residents provided information on whether tribal members report crimes to federal-BIA police, and 27 (69.2%) said tribal members report crimes to federal-BIA police. Nine non-Public Law 280 (23%) reservation residents said tribal members do not report crimes to tribal police, and 5 (12.8%) said tribal members sometime report to non-Public Law 280 tribal police. Some reasons for reluctance to report crimes are fear of retaliation and inability to get prosecutions because of limited witness cooperation with tribal authorities.

Fifty-four non-Public Law 280 reservation residents responded whether tribal members report crimes to non-Public Law 280 tribal police, and 39 (72.2%) were affirmative. Nine non-Public Law 280 reservation residents (16.7%) said tribal members do not report crimes to non-Public Law 280 tribal police, and 4 (7.4%) said tribal members report crimes to non-Public Law 280 police sometimes. Reasons for not reporting crimes to non-Public Law 280 tribal police are fear of retaliation, distrust of tribal police, tribal police use excessive force, and absence of responsiveness to previous calls.



Percentage Affirming Tribal Members Report Crimes  
Figure 10.15

The interview responses for tribal member crime reporting lend themselves to a 2X2X2 log-linear analysis of jurisdiction by police department by crime reporting. Police departments are tribal and non-tribal in two types: Public Law 280 state/county police, and non-Public Law 280 federal-BIA police. Jurisdiction has two types: Public Law 280 and non-Public Law 280. Crime reporting is whether a reservation resident believes community members report crimes or not. As represented in Figure 10.15, according to our sample of reservation residents, tribal members in Public Law 280 and non-Public Law 280 jurisdictions report crimes to police in significantly different patterns ( $G \text{ square} = 39.32$ ,  $df = 4$ ,  $p < .0001$ ). In Public Law 280 jurisdictions, about the same proportion of reservation residents in our sample say tribal members report crimes similarly to both tribal and federal-BIA police departments. However, reservation residents in Public Law 280 jurisdictions say tribal members report crimes much more often to tribal police than to state/county police. Tribal members report crimes about equally to tribal police and federal-BIA police, but significantly fewer are willing to report crimes to Public Law 280 state or county police.

In our sample, reservation residents say tribal members are more willing to report crimes to tribal police than to non-tribal police ( $G \text{ square} = 20.44$ ,  $df = 1$ ,  $p < .0001$ ). Furthermore, tribal members are more willing to report crimes to police in non-Public Law 280 jurisdictions than in

Public Law 280 jurisdictions ( $G \text{ square} = 8.52, df = 1, p = .0035$ ). According to our sample, reservation residents say tribal members are more willing to report crimes to tribal police than to non-tribal police, and are more willing to report crimes to police in non-Public Law 280 jurisdictions than in Public Law 280 jurisdictions. Tribal members are less willing to report crimes to state/county police in Public Law 280 jurisdictions than to tribal police or federal-BIA police.

### Where Do Tribal Members Report Homicides?

Reservation residents were asked: When homicides occur, do tribal members report to tribal police (state/county police or federal-BIA police)? In Public Law 280 jurisdictions, reservation residents commented on both tribal police and state/county police. In non-Public Law 280 jurisdictions, reservation residents commented on whether tribal members reported homicides to tribal and federal-BIA police. In the non-Public Law 280 jurisdictions, homicide is a “major crime,” and for all practical purposes within exclusive federal jurisdiction. Although non-Public Law 280 tribes have jurisdiction over homicides committed by Indians, the sentencing limitations in the Indian Civil Rights Act make tribal prosecution less appropriate. In the Public Law 280 jurisdictions, homicide is a state-law offense, although Public Law 280 tribes do have concurrent jurisdiction over homicides committed by Indians, subject to the sentencing limits of the Indian Civil Rights Act.

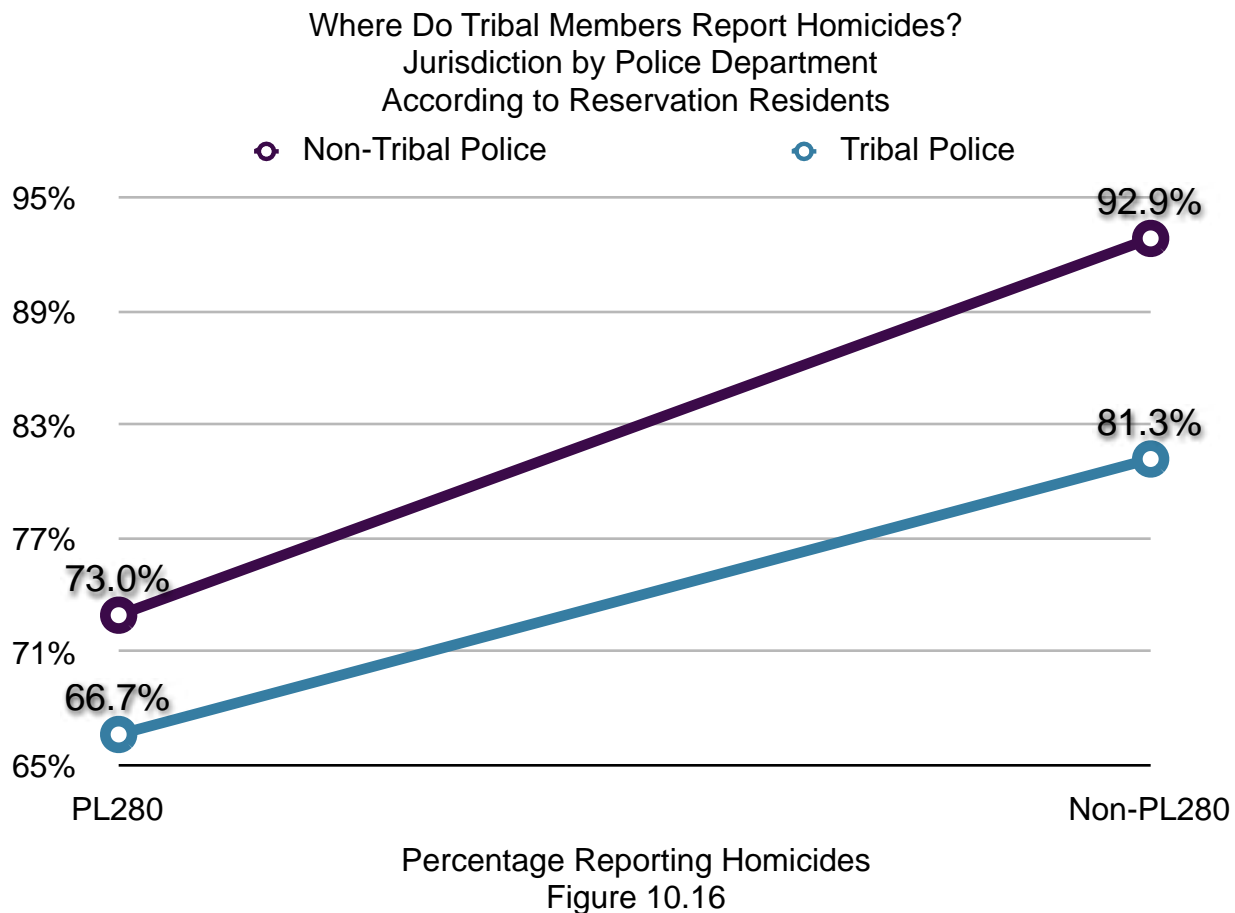
Sixty-nine Public Law 280 reservation residents commented on whether tribal members report homicides to Public Law 280 tribal police, and 46 respondents (66.7%) affirmed that tribal members report homicides to tribal police. Two respondents said tribal members report homicides to tribal police sometimes, and 15 respondents said that tribal police do not report homicides to tribal police. A primary reason that reservation residents did not report to tribal police is that they report homicides directly to county police. While tribal members often report homicides to tribal police, the tribal police often, in turn, provide information to county police about homicides cases.

One hundred forty-eight Public Law 280 reservation residents commented on whether tribal members report homicides to county police, and 108 respondents (73%) affirmed that tribal members report homicides to county police. Twenty-three Public Law 280 reservation residents (15.5%) could not answer whether tribal members report homicides to county police, suggesting a degree of uncertainty. Seventeen Public Law 280 reservation residents (11.5%) said that tribal members do not report homicides to county police since tribal members report homicides to tribal police or tend not to make reports for fear of retaliation or lack of trust in state or county police.

Forty-eight non-Public Law 280 reservation residents commented on whether tribal members report homicides to tribal police, and 39 respondents (81.25%) answered affirmatively. Many reports to tribal police are relayed to federal-BIA or state/county authorities. Two

respondents said tribal members do not report homicides to tribal police, and 7 could not answer the question.

Forty-two non-Public Law 280 reservation residents responded to the question and 39 (92.9%) said that tribal members report homicides to federal-BIA police. Three respondents could not answer the question, and 2 said that tribal members do not report homicides to federal-BIA police.



Do tribal members have different patterns for reporting homicides to tribal and non-tribal police departments and within Public Law 280 and non-Public Law 280 jurisdictions? We can analyze the question with a 2X2X2 log-linear analysis comparing willingness to make homicide reports, or not, with two levels of jurisdiction, Public Law 280 and non-Public Law 280, and police departments — tribal police and non-tribal police, the latter consisting of state/county and federal-BIA police. See Figure 10.16. Our sample yields a statistically significant interaction between jurisdiction, homicide reporting, and police department, suggesting a relation between the three factors ( $G^2 = 40.72$ ,  $df = 4$ ,  $p < .0001$ ). For our sample reservation residents, tribal members report homicides more often to federal-BIA police, and less often to tribal police and state/county police. Homicides must by law be reported to non-tribal police, so there is a bias toward reporting homicides, but our sample suggests tribal members report homicides

significantly less often to Public Law 280 state/county police than to federal-BIA police. Some tribal members will report homicides to tribal police or tribal officials, and the homicides are then reported to non-tribal police. There is significantly more uncertainty about reporting homicides in Public Law 280 jurisdictions than in non-Public Law 280 jurisdictions ( $G \text{ square} = 23.9, df = 1, p < .0001$ ). In our sample, reservation residents say tribal members report homicides less often to Public Law 280 police than to non-Public Law 280 police departments. Reservation residents indicate that tribal members in Public Law 280 jurisdictions are more uncertain about where to report homicides, more prone not to report homicides, or to report homicides to one police department in preference over the other. When reporting to Public Law 280 police departments, 29 respondents (13.4%,  $N=217$ ) said they could not answer where Public Law 280 tribal members report homicides. Eleven respondents (5%) said that Public Law 280 tribal members will not report homicides to tribal police, but only to state or county police, while 12 (5.5%) respondents said Public Law 280 tribal members will report homicides only to tribal police, and not to state or county police. Eleven respondents (5%) say that Public Law 280 tribal members do not report homicides or report them only sometimes.

Differences between tribal members reporting to tribal police or non-tribal police departments are not statistically significant ( $G \text{ square} = 3.64, df = 1, p = .0564, NS$ ). Although there is a very strong trend, reservation residents indicate tribal members do not prefer tribal police over non-tribal police departments when reporting homicides.

According to our sample, reservation residents say tribal members report homicides to federal-BIA police more often than to state/county police or tribal police. Tribal members in Public Law 280 jurisdictions report homicides to police less often than non-Public Law 280 jurisdictions. Tribal members report homicides to tribal and non-tribal police at about the same rate, although there is a strong trend toward reporting more homicides to non-tribal police.

#### Where Do Tribal Members Report Domestic Violence?

Reservation residents provided comments on whether tribal members reported domestic violence to tribal police or non-tribal police in both Public Law 280 and non-Public Law 280 jurisdictions. The question is open ended, but most respondents answered with a yes, no, or sometimes, often adding additional comments to explain their viewpoints. Ninety-two Public Law 280 reservation residents commented on whether tribal members reported incidents of domestic violence to Public Law 280 tribal police departments. Sixty-five Public Law 280 reservation residents (70.6%) say tribal members report incidents of domestic violence to Public Law 280 tribal police. Seventeen Public Law 280 reservation-resident respondents (18.5%) say tribal members do not report domestic violence crimes to tribal police, and 8 (8.7%) say tribal members sometimes report domestic violence incidents to tribal police. Two respondents declined to answer the question. Most Public Law 280 reservation-resident respondents say that tribal members report incidents of domestic violence to tribal police, if they have a tribal police department.

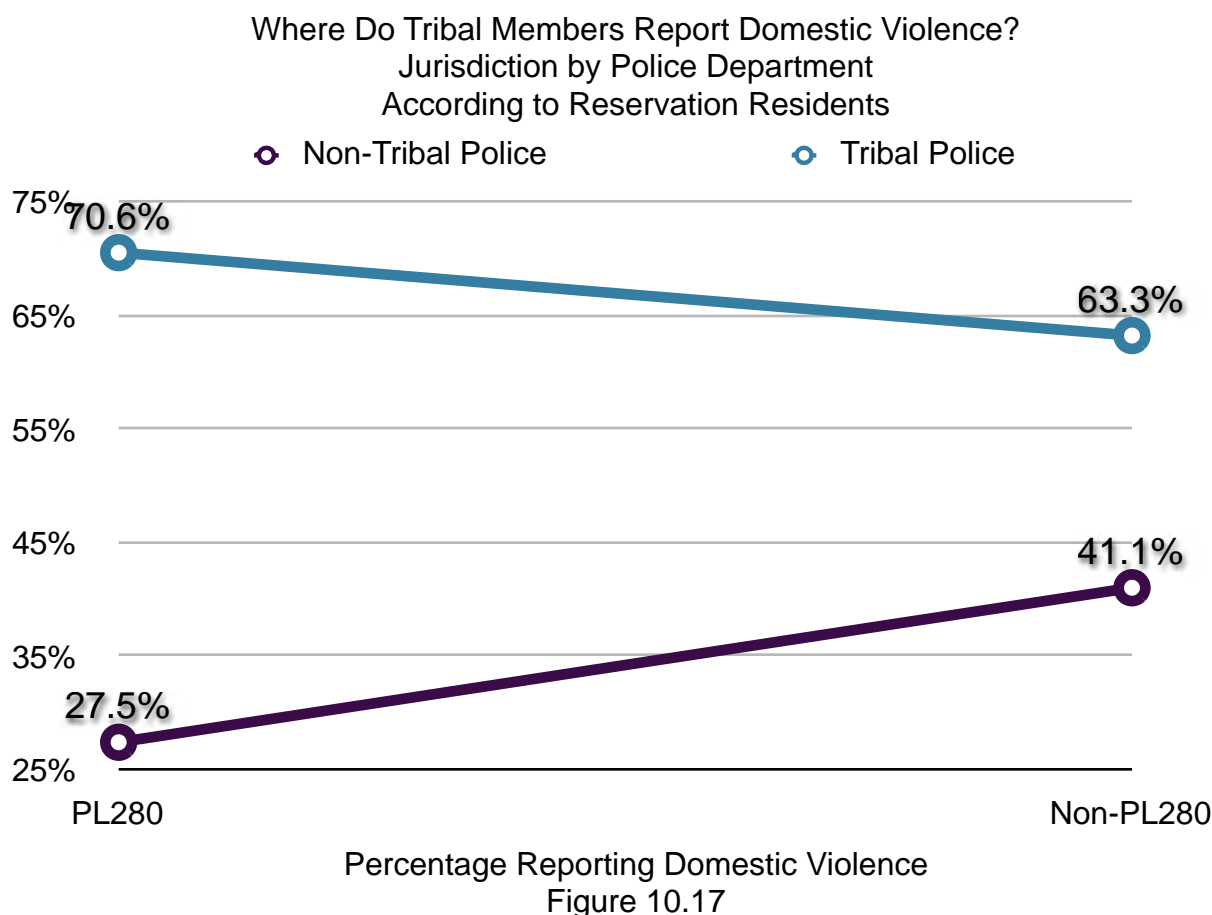
One hundred thirty-eight Public Law 280 reservation residents commented on whether tribal members report domestic violence incidents to Public Law 280 state/county police, and 38 (27.5%) answered affirmatively. Seventy-two Public Law 280 reservation residents (52.2%) say that tribal members do not report domestic violence issues to state or county police. Twenty-three respondents (16.7%) say tribal members report domestic violence incidents to state/county police only sometimes, while 5 respondents could not answer the question. Most Public Law 280 reservation residents, slightly more than 50%, say that tribal members are reluctant to report domestic violence incidents to Public Law 280 state or county police.

Forty-nine non-Public Law 280 reservation residents answered the question, and 31 (63.3%) say tribal members will report domestic violence incidents to non-Public Law 280 tribal police. Five non-Public Law 280 respondents (10.2%) say that tribal members will not report domestic violence to non-Public Law 280 tribal police, and 9 respondents (18.4%) say tribal members sometimes will report domestic violence incidents to tribal police. Four respondents could not answer the question. Most non-Public Law 280 reservation residents say that tribal members report domestic violence issues to tribal police.

Thirty-four non-Public Law 280 reservation residents commented on whether tribal members report domestic violence to non-Public Law 280 federal-BIA police, and 14 of them (41.1%) affirm tribal members report domestic violence to federal-BIA police. Nine non-Public Law 280 reservation residents (26.5%) say tribal members do not report domestic violence to federal-BIA police, while 9 (26.5%) say tribal members report domestic violence to federal-BIA police sometimes. Most non-Public Law 280 reservation residents say that tribal members are reluctant to report domestic violence incidents to federal-BIA police.

If we put the two groups of reservation residents together from Public Law 280 and non-Public Law 280 jurisdictions, a pattern is evident. Most reservation residents say that tribal members are willing to report domestic violence incidents to tribal police, but are reluctant to report domestic violence incidents to non-Public Law 280 federal-BIA police and Public Law 280 county police.

We next investigate jurisdiction and police department effects on the willingness of tribal members to report to domestic violence incidents to police. According to reservation residents, does the willingness of tribal members to report domestic violence to police vary by Public Law 280 or non-Public Law 280 jurisdiction, or by tribal or non-tribal police department? The data lend themselves to a 2x2x2 log-linear analysis for jurisdiction, police department, and domestic violence crime reporting.



As shown in Figure 10.17, our sample of reservation residents yields a significant result for an interaction effect among jurisdiction, police department and reporting domestic violence. The interaction effect of jurisdiction and police department is statistically significant ( $G \text{ square} = 57.6$ ,  $df = 4$ ,  $p < .0001$ ). The patterns for tribal members reporting domestic violence depend on specific combinations of jurisdiction and police department. According to non-Public Law 280 reservation residents, tribal -community members report domestic violence more often to non-Public Law 280 tribal police than to non-Public Law 280 federal-BIA police. In Public Law 280 jurisdictions, reservation residents say tribal members report domestic violence more often to Public Law 280 tribal police than they report to Public Law 280 state or county police. Furthermore, tribal members, according to reservation residents, report domestic violence to Public Law 280 tribal police significantly more often than they report to non-Public Law 280 federal-BIA police.

Differences between tribal and non-tribal police for tribal members' willingness to report domestic violence incidents are statistically significant ( $G \text{ square} = 45.58$ ,  $df = 1$ ,  $p < .0001$ ). Reservation residents say tribal members report domestic violence to tribal police more often than to non-tribal police — federal-BIA and state/county police. Tribal members are more reluctant to report domestic violence incidents to federal-BIA police and state or county police. Out of 172 reservation residents who commented on tribal members reporting domestic violence



to non-tribal police, 81 (47.1%) said tribal members do not report domestic violence to state/county or federal-BIA police. Reasons for not reporting domestic violence to non-tribal police include: prefer reporting to tribal police, do not want non-tribal police involved, report to reservation authorities and programs, fear retaliation, and some made no report to anyone. For reservation residents commenting on domestic violence reporting to non-tribal police, 32 (18.6%) say tribal members report domestic violence to non-tribal police sometimes. Some reasons for reporting domestic violence sometimes include report to education and service programs, some hide domestic violence but other community members report, more community education generates some reports, and police are not responsive to domestic violence calls. Tribal members are significantly less likely to report domestic violence incidents to non-tribal police than to tribal police according to reservation residents.

Jurisdiction main effects are not statistically significant ( $G \text{ square} = 2.18$ ,  $df = 1$ ,  $p = .14$ , NS). Reservation residents say tribal members report domestic violence incidents to police at similar rates in both Public Law 280 and non-Public Law 280 jurisdictions.

Tribal members report domestic violence incidents to Public Law 280 tribal police and non-Public Law 280 tribal police at similar rates, and report domestic violence incidents to Public Law 280 county and non-Public Law 280 federal-BIA police at similar rates, but at significantly lower rates than to both Public Law 280 and non-Public Law 280 tribal police. According to reservation residents, tribal members report domestic violence to tribal police significantly more often than to non-tribal police.

#### Do Public Law 280 Tribal Members Report Crimes to the Tribe Before the County?

The question of whether tribal members report crimes to tribal police before reporting to county police was directed to reservation residents in Public Law 280 jurisdictions. Eighty-nine Public Law 280 reservation residents answered, and 69 (77.5%) say that tribal members generally report crimes to tribal police or authorities before reporting them to county police. Thirteen Public Law 280 reservation-resident respondents (14.1%) say they do not prefer to report to tribal police before county police, and 8 respondents could not answer the question. More than three-fourths of Public Law 280 reservation residents say tribal members prefer to report crimes to tribal police or authorities before reporting to state or county police. Public Law 280 tribal members prefer reporting crimes to reservation police and authorities before reporting to county police.

#### Do Public Law 280 Tribal Members Report Differently on Minor and Major Crimes?

Sixty-eight Public Law 280 reservation residents answered the question of whether tribal member crime reporting patterns are different for minor and serious crimes. Thirty-three Public Law 280 reservation-resident respondents (49.5%) say Public Law 280 tribal members report minor and major crimes about the same. Seven respondents could not answer the question. Twenty-eight Public Law 280 reservation residents (41.2%) say tribal members show differing

patterns for reporting minor and serious crimes. Seventeen respondents (25%), who answered affirmatively, say serious and minor crimes are reported differently by Public Law 280 tribal members, with minor crimes reported to tribal police and serious crimes reported to county police. Other respondents say serious crimes are reported quickly, drug and alcohol related crimes are less often reported, and tribal members are reluctant to report crimes committed by other tribal members.

### Do Crimes Go Unreported?

One hundred thirty-five respondents answered the question: Do any crimes go unreported in the reservation communities? Most of the respondents are law enforcement personnel and criminal justice personnel, with only 21 reservation residents answering the question. These data are heavily biased toward non-reservation residents. The configuration of respondents doesn't enable the most useful comparisons between groups and jurisdiction, so we give overall results. One hundred eleven respondents (82.2%) say some crimes go unreported within reservation communities. Seventeen respondents (12.6%) say most crimes are reported, and 7 respondents could not answer the question. Most respondents, primarily law enforcement and criminal justice personnel, say some crimes go unreported on Indian reservations.

### What are the Most Frequently Unreported Crimes?

One hundred four respondents answered the open-ended question about the most frequently unreported crimes. Most of the sample is composed of criminal justice personnel and law enforcement personnel, since only 13 reservation residents reported. Most respondents list a crime, or several crimes, they believe most frequently go unreported. To gain a sense of all the crimes that are unreported, we counted all crimes mentioned by the respondents. The respondents identified unreported crimes 200 times in total. The crimes fall into several recognizable patterns. The three most serious law-and-order problems — drug offenses, alcohol abuse, and domestic violence — are a cluster of possibly unreported crimes more often than any other unreported crime groupings. Respondents mention one of the most serious law and order crimes 90 times, or 47%, of all crimes mentioned. Domestic violence is the most often cited unreported crime (29.5%). The three most serious law and order crimes are also the most unreported group of crimes. As seen above, the three most serious law-and-order issues are also under-served by police. The three most serious law-and-order issues on reservations — drug offenses, alcohol abuse, and domestic violence — are underreported by tribal members and under-served by police.

A second most frequent cluster of unreported crimes are sexual abuse and assault crimes, totaling 32 (16%) and including rape, sexual assault and abuse, and child sexual assault and abuse. The next most frequently mentioned unreported crime grouping (13%) is physical violence, which includes assaults, fights, violence, personal revenge, battery, and assaults on women. Property crimes are mentioned 22 times (11%) and include theft, breaking and entering,

vandalism, graffiti, arson, poaching fish, and burglary. A fifth cluster of most frequently unreported crimes (8%) focuses on abuse and neglect, and includes: child abuse, elderly abuse, and abuse.

By far the three most serious law-and-order problems — drug offenses, alcohol abuse, and domestic violence — are the most frequently underreported crimes. The three most serious law-and-order problems make up nearly half of the most frequently unreported crimes. Domestic violence is by far the single, most unreported crime, according to our respondent sample. Police under-serve the three most serious law-and-order issues and tribal members tend not to report incidences of the three most serious law-and-order problems to police or authorities.

### Why Are Crimes Unreported?

Ninety-seven respondents answered the question asking why crimes go unreported. Only 20 reservation residents gave comments, while 55 criminal justice personnel and 22 law enforcement personnel responded. The largest respondent group is Public Law 280 criminal justice personnel (n=39). In addition, 11 Public Law 280 law enforcement personnel and 13 Public Law 280 reservation residents are included in the sample. With 64.9% of the sample from Public Law 280 jurisdictions, the responses are somewhat biased toward Public Law 280 situations. In addition, the answers about why crimes go unreported are biased toward points of view of criminal justice personnel and law enforcement personnel, since only 20.6% of the sample represents reservation residents.

The respondents were asked to provide their views on the main reasons tribal members do not report crimes. Most respondents provided a list of reasons for why tribal members might not report crimes to police or authorities. The lists of reasons were coded for each separate reason given by the respondents. The codes were counted and organized along inductively emergent patterns in the data. The 97 respondents provided a total of 217 reasons why tribal members do not report crimes. The 217 responses are grouped into three main categories and six sub-themes. See Figure 10.18 for the entire coding and distribution of data.

According to our 97-member response group, tribal members are inhibited from reporting crimes because of three main reasons: constraints from non-reservation institutions (n=69), root causes (n=56), and community and normative constraints (n=92). Constraints from non-reservation institutions inhibiting tribal members from reporting crimes are broken into two subgroups: fear, distrust, and non-participation in non-reservation institutions (n=36 or 16.6%); and police and court actions (n=33 or 15.2%). The two groups of reasons for tribal members not reporting crimes created by constraints from non-reservation institutions constitute 31.8% of the total. Almost a third of the reasons respondents give for tribal member reluctance to report crimes are created by fear, distrust and non-agreement with the actions, rules, and values of non-reservation police and court institutions.

Some comments about how fear, distrust and non-participation in non-reservation institutions inhibit crime reporting by tribal members include:

I suspect some of it is a combination of two things. Again, that inherent distrust of institutions around them. And then the difficult thing to understand about people who are victims of domestic violence is, you would think that a person who is a victim of domestic violence would say, "This is horrible. I don't want anything else to do with him or her." But typically, that is not the reaction. ... They just don't want to accept the fact that they have been a victim of domestic violence. You combine that with the inherent distrust, at least my perception of the inherent distrust, of the institutions surrounding them. I suspect that is the biggest reason. A lot of it's probably mostly fear.

[T]here might be some cultural problems, such as not understanding the American law. And what I mean by culture is that maybe a reservation or a tribe maybe not understanding that there have been laws developed to prevent that from happening, or to punish things like sex offenses.

Because nobody wants to testify. The problems we had in criminal was that people do not want to come forward and be the one to testify against another person in fear of retaliation against them or their family.

Well, for a variety of reasons. Intimidation by the perpetrator. Distrust of the system. Fear of the system. Fear of court. Just all the basic reasons.

I think a lot of times, it is not necessarily because the victim is Native American, I just think they may be afraid to get police involvement too. And a lot of them, there are a number of them up in (the nearby reservation) that don't have phones as well, too. So, it makes it difficult to get it reported in that sense, too. ... Maybe a little bit more fear of the county. I haven't heard a lot of clients complain about individual officers ...

The negative outlook on the system and how it works.

The mistrust again. If this report is going to take my kid away. ... And there is probably a certain (amount) of fear.

Well outsider intrusion, for me to prosecute something for a community that I know nothing about, distrust of outsiders, the idea that we can fix it ...

Well, it's law enforcement, and I think that there is a cultural issue here that you want to take care of their problems. You know, from the little I know of

reservations, their reaction is very similar to what you see in a lot of ethnic, first-generation neighborhoods, you know, Indochinese, Japanese, Chinese, they're

insular at a point in history of why not, why not to call in the (law enforcement). ... Some of those tribes didn't have (formal judicial processes), and they were just in the process of trying to formulate an organization in which they can do that kind of stuff. So, a lot of it, I think, was informal ... and you see that is exactly something that is gonna be very distrustful to the population at large in law enforcement because, of course, we believe in procedural due processes, as opposed to standard due processing. That would be a real problem for us.

- Reasons for Unreported Crimes**
- Non-Reservation Institutions Inhibiting Crime Reports by Tribal Members**
1. Fear, Distrust, and Non-participation in Non-Reservation Institutions
    - a. Distrust and fear of non-reservation police, courts, and institutions (n=25)
    - b. Tribal members will not serve as witnesses in court (6)
    - c. Loss of control (2)
    - d. Prefer non-involvement by non-reservation community (2)
    - e. Fear outsider intrusions (1)
  2. Police and Court Actions
    - a. Lack of police or court action (16)
    - b. Lack of prosecution (6)
    - c. Jail will make matters worse (3)
    - d. Police do not handle cases well (3)
    - e. Lack of police protection for informants (2)
    - f. Police do not serve community needs (1)
    - g. Community does not like police methods and priorities (1)
    - h. Prevent police involvement (1)
- Root Causes Inhibiting Crime Reports by Tribal Members**
1. Fear of retaliation (40)
  2. Alcohol [can not stop] (7)
  3. Drugs [can not stop] (3)
  4. Fear of loss of child--in child-neglect cases (2)
  5. Denial of domestic violence (1)
  6. Poverty (1)
  7. Social change and growing pains (1)
  8. Child victims--no voice (1)
- Community and Normative Restraints Inhibiting Crime Reports**
1. Family Ties
    - a. Implicates spouse, friend, family--who they want to protect (26)
    - b. Family and relations--economically and socially dependent (15)
    - c. Shame and family embarrassment (11)
    - d. Political and family connections--fix situation (4)
  2. Community Management of Crime Issues
    - a. Handle matters internally (22)
    - b. Elders respect and decision-making (3)
    - c. Revenge [take care of issue oneself] (3)
  3. Culture and Norms
    - a. Community norm (3)
    - b. Gang culture (2)
    - c. Code of silence (1)
    - d. Child neglect tolerated (1)
    - e. Female submissiveness in domestic violence (1)

Figure 10.18

Again, this is sort of gut-level impression, but my impression is that the experience of the people from (the nearby reservation) is that whatever is going to happen in

court, they are not going to like. Whether it's as a defendant or whether it's as a parent of a victim, for example, it's going to get out of their control, it's going to wind up getting handled by people who they can't communicate with, and that whatever happens isn't going to be good. Their kids are going to get taken away from them, or they are going to be required to do stuff with their kids or for their kids that they are not going to like. People are going to be prying their noses into business that they don't think is any business of other people.

Respondents say tribal members do not report crimes because the police are not responsive to calls, and the courts often do not prosecute cases. Some tribal members do not believe that jail will solve some issues, and the police are not serving the needs of the reservation community, and therefore tribal members are reluctant to report crimes to police. Some comments about how police and court actions affect willingness of tribal members to report crimes include:

Lack of consequence. Nothing happens, other than you get persecuted by your family or whoever you reported against, if you do the report. You get retaliation.

Again, it's going to vary from tribe to tribe. But I would say partly because of the past lack of response, or lack of anything occurring. Especially with domestic violence, a lot of tribes don't have a domestic violence law on their books. A lot of domestic violence we get may be between non-Indian and an Indian that they are married to. Maybe Hispanic married to (an Indian), where there is nothing in place, there is no state law. The state can't charge them. The tribe can't charge them. We can't charge them unless it's a serious injury. So, there is nothing in place. So, a lot of times, even if they do report it, nothing will happen. That plays a huge role in why they just don't bother reporting it. They need domestic violence laws.

Well, the police officer that I talked to said that their caseloads were too heavy, and that they didn't have time to investigate these crimes, that they had their priorities in other avenues that I told you. To tell you the truth, our police department over here is full of non-Indians. They don't know our people. And our people do not want to associate with them. And I was a police officer here for eight years. And when I was a police officer, we knew everybody. We had an all-Indian police force, everybody is from here, we knew the personalities of our people, we knew who ... the bad people were from the good people. We had a better view of crimes on the reservation. It's not like that anymore, because we have mostly non-Indians who, of course, they don't know anything about us, and they don't know the personalities of our people. So, I think that has a lot to do with them. And then, our people don't want to talk to them.

Because I don't think they really want to get the state system involved. The county sheriff comes to the door, and I think they just like to keep the cops out of their life.

The Native Americans that I have talked to seem to have strong feelings that law enforcement really is not there to answer their needs too often. They make the determination on what is important, not based on what they think is important, you know not based on what the Native Americans think is important, what they (law enforcement) think is important at that time. I mean, if you're in (the county), then they have their own unique ideas on what law enforcement priorities are.

A second group of reasons tribal members do not report crimes is a collection labeled "root causes" and constitutes 25.8% of total reasons given by the sample. Fear of retaliation is the primary issue in this group and is the most frequently mentioned single reason (18.4%) that tribal members do not report crimes to police. Many tribal members will not report crimes because they fear retaliation from the perpetrator, and many do not believe they will receive sufficient police protection. Other root causes include drug and alcohol addictions that inhibit reporting to police because the tribal members cannot stop.

A third group of reasons that respondents say inhibits tribal members from reporting crimes is "community and normative constraints." Family ties, preferences to manage crimes internally within the community, and reservation norms and values account for 42.4% of the reasons why tribal members are unwilling to report crimes. Community relations are the strongest deterrent for tribal members against tribal members reporting crimes. Respondents say (25.8%) family relations play a major role in influencing tribal members whether to report crimes. Tribal members are reluctant to report crimes when the perpetrator is a spouse, family member, or friend. Respondents say (12%) that many tribal members prefer to protect spouses, family members, and friends from police and possible criminal arrest and prosecution. Many tribal members are dependent social and economically on family members and spouses. Arrest, jailing, or conviction of an employed and productive spouse or family member can bring significant financial hardship to the family. Respondents say (7%) that tribal members are reluctant to report crimes that might take away family breadwinners. Domestic-abuse crimes, sexual abuse, and other crimes often embarrass the family of the perpetrator, and respondents say (5.1%) that some families will not report crimes out of a sense of shame the publicity will generate within the reservation community. Some individuals with large or well connected families sometimes negotiate with tribal leaders to prevent reporting of some crimes. Respondents say (2%) that some individuals get easier treatment and can avoid arrest and prosecution for a crime because they have influential political connections. Some comments about how family obligations, dependency, and honor play a role in inhibiting tribal members from reporting crimes include:

There are a lot of different reasons. Some of it's embarrassment. They don't want their family known as either dealing with drugs or putting up with an abuser.

The embarrassment type of crimes.

I think because of the relationships that are still very close-knit in Indian country that aren't necessarily so much so outside of it. Some of the issues we talked about earlier with the family members and the large base of family that you may have here. Some of these crimes may be perpetuated by family members, or at least distant family members, and I think that is a big part of it, and I think that the domestic violence is for the same reasons as outside. Nobody wants to get their spouse in trouble or their boyfriend, and, I think, oftentimes the abusers in those cases make promises and gifts, and all of that comes into play the same as it does for any other community, so the victims of those cases very often are, like, I am going to give them another chance. But unfortunately, they continue to do that oftentimes for many years.

We are all related to each other. Well, of all the people you are going to arrest, why my nephew first? That is one of the very first things that came up.

Well, I think the reservation is, like, real political, and, you know, things, I think, things happen on the reservation depending on your political connectedness. ... Both victims and defendants ... well, if you are aligned with the person that is in a power position on the reservation, I think that you will be treated better than one who is, you know, Joe that got voted out last month.

A lot of it is economic. Basically, for example, a lot of it goes unreported because they are not going to have a paycheck. And that is just the reality. I would say that is pretty much the biggest unreported is domestic violence. Even though a lot of it does happen, even if it gets reported, you get a lot of recantations. It's like it really didn't happen, I just wanted him out of the house because he was drunk ...

Just the usual reasons the victims don't want to do it. I do think that one aspect, though, of (the reservation) that might have some applicability is a lot of people are interrelated. It's like there is only a couple of families there, and most of them ... they don't want to report a family member.

I think it starts with, "We were both drinking, and we got into a fight, and I'm mad at you because you broke my nose. But I was drinking with you, and you're really my friend (or you are my cousin or you're married to my cousin). So, while I'm mad at you, and I may want to report you, A) I have to fess up to the fact that we were drinking, which neither one of us probably were supposed to be



doing, but, B) you're married to my cousin, or you're my friend, and even though you broke my nose, I believe that you did that probably because you were drunk, and so I'm really probably not going to call the police and get them involved in it," because there's a huge amount of recanting that goes on here. Same thing with domestic violence. I think that a lot of that stuff is, "I'm really mad at you now, but I have to live with you, or we're going to be seeing each other every day in the grocery store." I think that that really has an impact on that.

One side of my family is hillbillies, and they have the traditional feuding, where it goes through generations of "this family hates this family." And I see the same thing here. It's very similar that this family hates this family and it's kind of like Romeo and Juliet. You don't date anybody from this family because they wronged our great-great-grandfather. Because if you hurt one in the family, you've hurt all in the family. And so that kind of goes there, too. I think that there's a lot of revenge things that go on here. And I think that's one of the reasons that things don't get reported, too. It's kind of like, man, I slashed your tires and today you came and broke my windshield. Well, OK, you had it coming because you slashed my tires. Well, OK, well now, you broke my windshield, now I got another grudge and so my brother's going to maybe, you know, break your headlight. That kind of, I call it sniping. It's real low-level kinds of stuff. Or it might be, "If I have one more beer, I'm going to have to go over and punch Joe in the nose because I know that he insulted my sister last week." And that would go on even if the drinking wasn't going on because I think that that's just part of living in a small community.

According to all respondents, tribal community members do not report some crimes because they have informal, tribal government, and traditional ways of managing some crimes and conflicts. Respondents (12.9%) say tribal members prefer to handle some issues internally, and do not report some crimes to police or legal authorities. Some comments about internal management of some crimes include:

I would never? I have no knowledge of ever tribal or non-tribal person not approaching the law or assisting the law, I mean, you read articles about, you know, family members not turning in family members. Eventually, as I found, tribal and non-tribal, they get a little bit annoyed with lawbreakers, and they deal with issues that are of a criminal nature, if they are of a minor nature ... people kinda handle themselves and handle issues maybe a little bit differently. They don't always have to go through law enforcement or through the courts. And I know tribal membership handles, that is another thing I learned, tribal membership and responsibility of the tribes is based on their culture, and they had a long time on the land prior to us settling here. They handle things a little bit differently than we do, and they can shun somebody, and we wouldn't even think

of doing something like that, wouldn't think that would be effective, but they have other methods of handling petty issues, minor issues.

There is a certain sense that we would like to keep it within the tribe, we would like to deal with it, take care of our problems with our people, so, I think there is a certain sense of that. The mistrust again, if I report this, you are going to take my kid away, or you're going to do something like this. And there's probably certain fear. If I report this, somebody's going to come back on me. Again, it's not isolated to the reservation. We run into this problem in a lot of communities where people don't report crimes because they are afraid of retaliation. But it's probably one of the factors on the reservations.

I have seen a lot of fear as a result because, you know, if things need to be kept in-house, and if they're not, there is a retaliation. I have seen that quite often. It happens at (a nearby reservation) all the time. I think that it is not going to be any different here. There is that element of fear. They don't want people coming onto the reservation, nosing around — particularly law enforcement. So, it stays here, deal with it, if there needs to be retaliation, then so be it. But I think there is a lot of stuff that goes on there.

I think it's a desire to try to resolve things in the community instead of getting the state system involved. I think, well, as a public defender, I'm under the conclusion that jail time doesn't help the typical defendant. More often, it just damages their employment or relations, all sorts of things like that. And I think they're aware of that. So, referring a case means that it gets shipped over here and they go to jail, or do things that are not going to necessarily be helpful to what the problem was, and fixing it. So, I think there is a desire to help fix the problems that they can in the community, there.

I believe there is a feeling of, "We can handle our own problems. If they become too big and insurmountable, then we will call in law enforcement."

Respondents (3.7%) also say tribal communities have a culture and norms that inhibit tribal members from reporting crimes.

Respondents, mostly criminal justice personnel and law enforcement personnel, indicate that community norms, family ties and obligations, and preference for managing some crimes internally all inhibit tribal members from reporting crimes. Forty-two percent of the reasons given for not reporting crimes are embedded in community relations, families, and culture. Tribal members want to protect family and community members from outside police and many prefer to solve criminal and civil issues internally through tribal family and community ways.

Fear of retaliation is the most often mentioned single reason tribal members do not report crimes. Community understandings and relations play a major role in the fear-of-retaliation experience by many tribal members. There is little protection for people who report crimes, and strong cultural and family influences, and, at times, coercion, not to report crimes. Fear of, distrust of, and non-participation in non-reservation legal and policing institutions account for 31.8% of reasons tribal members do not report crimes, particularly in Public Law 280 jurisdictions. The fear and distrust of non-reservation institutions may also be a product of tribal members preferring different legal and policing institutions, and/or not having consensual access to the construction and organization of police and court institutions they are exposed to in both reservation and non-reservation settings. Culture and perceptions may play a significant role in the ways tribal members understand, and engage with, the police and court institutions that surround them. Tribal members do not report crimes for several interrelated reasons, all of which are deeply embedded in tribal community, family, and cultural relations.

### Would Unreported Crimes Be Prosecuted?

Fifty-seven criminal justice personnel from both Public Law 280 and non-Public Law 280 jurisdictions answered the following question: If tribal members reported currently unreported crimes, would the crimes be prosecuted? Forty-nine criminal justice personnel (86%) say that most unreported crimes would be prosecuted, if resources, witnesses, and evidence were available. Three criminal justice personnel say the unreported crimes would be prosecuted sometimes, and 2 respondents say that the unreported crimes would not necessarily be prosecuted. Three criminal justice personnel say they cannot answer the question. Most criminal justice personnel believe that unreported crimes would be prosecuted if they were reported.

### Working Out Potential Criminal Cases Before County Prosecution

Fifty Public Law 280 reservation residents were asked: Do community members have a way of working out potential criminal cases with tribal authorities before they enter the county or state criminal justice system? Twenty-one Public Law 280 reservation residents (42%) say tribal members do not negotiate with tribal authorities to work out potential criminal cases before they are reported to the county or state court system. Six respondents (12%) say they are not able to answer the question. Twenty-three respondents (46%) say tribal members sometimes work out possible criminal cases before they are reported to county or state justice authorities. Some ways in which tribal members work with tribal authorities to work out potential criminal cases before they reach the state or county court system include tribal government intervention and recommendations; assignment to alcohol, drug, or domestic violence treatment centers; assignment to juvenile programs; restitution to the community; sentencing circles; drug courts; Indian Child Welfare Act programs; tribal prosecutor works out alternative to prosecution; negotiate alternatives with county court; turn state's evidence on drug bust; assignment to a

probation work program; and give warning for DUI and domestic violence cases. Sometimes state or county officials are involved and approve the alternative recommendations from the tribal government or tribal officials. Most serious criminal issues are passed on to the state or county courts in Public Law 280 jurisdictions, but lesser crimes sometimes are renegotiated in a variety of ways to avoid sending tribal members into the state or county court system.

### Do Prosecutions Get Carried Through?

Two hundred forty-one respondents commented on the question: When crimes get reported, do prosecution charges get carried through? Seventy-five respondents (31.1%) say prosecutions do not get carried through when crimes get reported. Some reasons why prosecutions do not get carried through include lack of witness cooperation, lack of money, lack of staff, large backlog of cases, court staff has limited experience, lack of legal codes, district attorney's discretion, lack of crime reports and evidence, plea bargains, cases with non-Indians in tribal courts, and tribal members' preference for traditional dispute resolution. Thirty-one respondents (12.9%) say reported crimes get carried through to prosecution sometimes. Some comments for why prosecutions are carried through sometimes include district attorney's discretion, families and favoritism, about half are prosecuted and others not, depends on the case, need evidence and witnesses, serious crimes are prosecuted while lesser crimes are not, and poorer tribal members easier to prosecute. One hundred nineteen respondents (49.4%) say that reported crimes are prosecuted. Some respondents made comments including cases are prosecuted if backup investigation is complete, most cases are prosecuted but federal prosecutors do not like small cases, Indian defendants tend to be prosecuted, and some cases are plea bargained. Nearly half of all respondents say most reported cases are prosecuted. Nearly a third of all respondents say prosecutions are not carried out on many cases.

### Summary and Conclusions

According to our sample, the pattern of police priority and crime frequencies indicates that police are giving too much attention to the low-volume, violent crimes of homicide, and rape, while giving too little attention to the high-frequency crimes of domestic violence, and DUIs. This pattern is explained in part by a combination of jurisdiction and group effects. Respondents in Public Law 280 jurisdictions report police give less attention to domestic violence cases than non-Public Law 280 reservation residents say. Most of the effect for too little police attention to domestic violence cases occurs in Public Law 280 jurisdictions by Public Law 280 police, while non-Public Law 280 police say police attention to domestic violence is too little, but significantly closer to balance between crime frequency and police priority. Respondents say under-attention by police to domestic violence in Public Law 280 jurisdictions is a primary reason domestic violence is under-served in Indian country. The high frequency crime of DUI is explained by differences in group perceptions. Criminal justice personnel and law enforcement personnel say DUIs are given too little attention, while reservation residents say DUIs are under-served by police, but are more in balance between priority and frequency. Reservation residents say DUIs are less under-served than law enforcement personnel and

criminal justice personnel. The relatively strong rankings of police under-service to DUIs from law enforcement personnel and criminal personnel is a primary reason DUIs are ranked as getting too little attention from police. The third high frequency crime, drug offenses, shows all respondent groups and jurisdictions reporting too little police attention. There are no significant differences in respondent rankings between groups and jurisdictions, and so neither group effects nor jurisdiction effects help explain police under-service to drug offenses. An explanation for police under-service to drug offenses needs to investigate explanations other than jurisdiction or differences in perceptions among law enforcement personnel, criminal justice personnel, and reservation residents.

The over-service of police for the low frequency but violent crime of homicide is explained by jurisdiction effects. Public Law 280 respondents say Public Law 280 police give too much attention to homicides, significantly more than non-Public Law 280 respondents say non-Public Law 280 police give to homicides. Non-Public Law 280 respondents believe that police are giving too much attention to homicides, but Public Law 280 respondents say Public Law 280 police are giving significantly more attention to homicides. While non-Public Law 280 police over-service to homicides contributes to the overall pattern of homicide over-service, Public Law 280 police over-service to homicides is significantly greater, and is a primary reason that homicides are over-served in the overall pattern. The pattern of over-service for the low-frequency, but violent, crime of rape is explained by group differences. Criminal justice personnel and law enforcement personnel say rape is over-served by police more often than reservation residents say. Reservation residents believe police give too much attention to rape cases, but criminal justice personnel and law enforcement personnel say significantly more often that rape cases are disproportionately given more attention than their frequency indicates. The main reason rape cases are over-served is criminal justice personnel and law enforcement personnel report police give too much attention to rape cases.

Much of the pattern of police under-service to high-frequency crimes and over-service to low frequency, but violent, crimes can be accounted for by a combination of jurisdiction and group effects. Relative to non-Public Law 280 police, respondents say Public Law 280 police give too little attention to domestic violence cases, and give too much attention to the low frequency and violent crime of homicide. Differences in the perceptions of respondent groups help account for police under-service to high frequency DUI crimes, and over-service of rape cases. Reservation residents say law enforcement personnel and criminal justice personnel perceive police attention to DUIs is too low, and attention to rape is too high. Reservation residents say law enforcement personnel and criminal justice personnel give too much attention to rape crimes, and give too little attention to DUIs. Respondents say drug offenses are under-served, but neither jurisdiction nor group effects help account for police under-service to drug offenses.

According to our respondent sample, the most serious law-and-order issues are drug offenses, alcohol abuse, domestic violence, and related issues and crimes. All respondent groups in both Public Law 280 and non-Public Law 280 jurisdictions agree about the most serious law-

and-order issues in Indian country. Most reservation respondents report non-Public Law 280 tribal police and Public Law 280 tribal police are focused on the most serious law-and-order issues. Most non-Public Law 280 reservation residents say federal-BIA police are not focused on the most serious law-and-order problems, and are not engaged in community based policing. Only about one-third of Public Law 280 reservation-resident respondents say Public Law 280 state and county police are focused on the most serious law-and-order problems. Most Public Law 280 reservation residents say county and state police are not well focused on the most serious reservation law-and-order issues, and are generally reactive about policing and not cooperative with tribal members. Non-Public Law 280 police are better than Public Law 280 police at focusing on the most serious law-and-order problems on reservations. Reservation residents have significant preferences for community-based policing that are most strongly expressed in Public Law 280 jurisdictions about state/county policing methods. Reservation-resident respondents say that tribal police departments are significantly better at meeting the law-and-order expectations of tribal members than are non-tribal police departments — federal-BIA and state/county police. Public Law 280 tribal police are significantly better at meeting reservation policing expectations than Public Law 280 county police, while non-Public Law 280 federal-BIA and tribal police meet tribal member policing expectations about the same.

Reservation residents identify two major police priorities for police departments working with reservation communities: community policing, and attending to the most serious law-and-order problems. Police should emphasize community policing methods and concentrate on solving the most serious law-and-order problems on reservations — drug offenses, alcohol abuse, domestic violence, and related issues and crimes. All respondent groups in both jurisdictions agree police should adopt community policing methods and concentrate on solving or ameliorating drug offenses, alcohol abuse, domestic violence, and related issues and crimes.

About half of reservation-resident respondents say tribal members often seek to avoid non-tribal police and possible criminal prosecution by working through several often overlapping community-based informal methods: traditional mediation, entering social service programs, soliciting help and protection from tribal leaders, and working out issues within families.

According to our sample, tribal members in Public Law 280 jurisdictions report homicides and general crimes less frequently to police than non-Public Law 280 police tribal members report homicides and general crimes. Domestic violence, however, is reported to police at about the same rate in Public Law 280 and non-Public Law 280 jurisdictions. Public Law 280 tribal members prefer to report domestic violence and general crimes to tribal police rather than state/county police, while tribal members report domestic violence and general crimes about the same to both non-Public Law 280 tribal police and federal-BIA police. Homicides, however, are reported by tribal members at about the same rate to tribal and non-tribal police. Most reporting respondents say tribal members report minor and serious crimes similarly, but 41.2% say serious crimes are more apt to be reported than less serious crimes. For general and domestic violence crime reporting, our sample of reservation residents say tribal members are least likely to report to PL 280 state/county police than to other police departments.

Reporting homicides is a different story. Tribal members are most likely to report homicides to federal-BIA police in non-PL 280 jurisdictions, and least likely to report homicides to PL 280 tribal police. Tribal members are more likely to report homicides to federal-BIA police than to state/county police.

Most respondents say significant crimes go unreported on Indian reservations. The most frequently unreported crimes are the most serious law-and-order problems — drug offenses, alcohol abuse, domestic violence, and related issues and crimes. The single, most unreported crime is domestic violence; about one-third of total responses mentioned domestic violence situations as underreported. Physical and sexual abuse crimes are underreported, but at much lower rates than the most serious law-and-order problems. There are several major groups of reasons for under-reporting crimes to authorities:

- (1) Fear, distrust, and reluctance to participate in non-Indian legal and police institutions;
- (2) Root causes — primarily fear of retaliation for reporting crimes and lack of protection for reporting individuals — but also addictions, social change, and other general circumstances;
- (3) Community and normative constraints, such as family dependencies and obligations; use of internal cultural methods of mediation; political connections; and cultural norms and rules.

Community norms, preferences for community mediation, family obligations and dependencies, as well as fear of retaliation from other community members, and fear and distrust of non-Indian police and court institutions all contribute to inhibit tribal members from reporting crimes to non-Indian police.

Criminal justice personnel say that if unreported crimes were reported, the crimes would be prosecuted. About one-third of respondents, however, say that when crimes are reported, prosecutions are not followed through. Almost half of Public Law 280 reservation respondents say tribal members seek alternative ways within their reservation communities to account for crimes before their cases are reported for prosecution to county courts.

Public Law 280 jurisdiction helps account for a variety of crime and crime-reporting issues. The general pattern of police over-service to low-frequency and violent crimes, and under-service to high-frequency crimes is attributable in part to police priorities in Public Law 280 reservations. Public Law 280 police give too little attention to domestic violence, and too much attention to homicides. According to reservation residents, Public Law 280 county police are not focused on the most serious law-and-order problems facing Indian communities, and are reactive and not cooperative. Public Law 280 tribal police are significantly better at meeting reservation policing expectations than Public Law 280 state or county police, while non-Public Law 280 federal-BIA and tribal police meet tribal member policing expectations about the same.

Tribal members prefer to report domestic violence and general crime incidents to tribal police rather than non-tribal police. Tribal members in Public Law 280 jurisdictions report general crimes and homicides to state/county police less often than non-Public Law 280 reservation residents report to federal-BIA police.



## CHAPTER 11

### Funding

Public Law 280 made counties in the mandatory states responsible for law enforcement on reservations without providing any special funding for that purpose. For that reason, the statute could be described as an early form of an unfunded federal mandate.<sup>1</sup> Because the trust land on reservations is exempt from county property taxes, and the Indians who live on reservations are exempt from state taxes on the money they earn and purchases they make on the reservation,<sup>2</sup> counties are at a fiscal disadvantage in providing law enforcement to tribal communities. Although federal “impact aid” is available to state and local school systems responsible for providing education to reservation Indians,<sup>3</sup> no comparable source of funds is available for county law enforcement to defray Indian country costs. Given the long-standing conflicts between states and tribes,<sup>4</sup> it would be reasonable to hypothesize that the availability and quality of state law enforcement and criminal justice on reservations would suffer because of this fiscal state of affairs, notwithstanding the constitutional obligation of states to provide equal services to all citizens, regardless of race or ethnicity.<sup>5</sup> Whether that outcome occurs may depend, however, on a variety of other circumstances affecting funding of Indian country criminal jurisdiction.

The most important additional variable is potential federal involvement by means other than a formal “impact aid” program. Because concurrent tribal criminal jurisdiction was preserved under Public Law 280,<sup>6</sup> it’s possible that federal support for tribal law enforcement and criminal justice could alleviate the counties’ fiscal burden and overcome the hypothesized adverse consequences. Certainly, during the decades following passage of Public Law 280, federal support for tribal justice systems grew substantially, first

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| <sup>1</sup> An unfunded federal mandate is a piece of federal legislation that imposes requirements upon state, local, or tribal governments without providing adequate federal funding, in a manner that may displace other essential State, local, and tribal governmental priorities. In 1995, Congress passed legislation designed to curb the enactment of such laws without sufficient prior consideration of their impact on other governments. Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, 109 Stat. 48 (Mar. 22, 1995).

| <sup>2</sup> See Nell Newton et al., Cohen’s Handbook of Federal Indian Law § 8.03 (LexisNexis, 2005 ed.) [hereafter Cohen’s Handbook].

| <sup>3</sup> Cohen’s Handbook at § 22.03[3][a][i].

| <sup>4</sup> See, e.g., Thomas Biolsi, *Deadliest Enemies: Law and the Making of Race Relations On and Off Rosebud Reservation* (University of California Press, 2001); Clifford E. Trafzer and Joel R. Hyer, eds., “Exterminate Them”: Written Accounts of the Murder, Rape, and Enslavement of Native Americans during the California Gold Rush, 1848-1868 (University of Michigan Press, 1999).

| <sup>5</sup> For discussion of legal issues surrounding the provision of equal state and local services to Indians on reservations, see Cohen’s Handbook § 14.02.

| <sup>6</sup> See Chapter 1, *supra*, at 3.

through the Department of the Interior, then later through the Department of Justice.<sup>7</sup> For counties and tribes to experience that benefit, however, federal support for tribal law enforcement and criminal justice would have to flow to Public Law 280, as well as non-Public Law 280, tribes. Before this study, there was reason to believe that, at least through the Department of the Interior, federal support for tribal criminal justice systems on Public Law 280 reservations was not forthcoming. In particular, our 1996 report for the Advisory Council on California Indian Policy showed that Indian nations in California, one of the mandatory Public Law 280 states, were getting none of the \$14,102,000 the BIA allocated for Indian judicial services in 1995, and less than 1% of the \$80,440,000 the Bureau allocated for tribal law enforcement.<sup>8</sup> Whether that pattern applies to all the Public Law 280 tribes, and whether it also holds for Department of Justice funds, are open questions.

Another variable that may affect the sufficiency of funding for law enforcement and criminal justice in Public Law 280 states is the availability of new tribal financial support through economic development, such as gaming. Either through contracts with county agencies or through the establishment of tribal policing agencies, tribes may be using their newfound resources to achieve levels of public safety that the community demands. As indicated in Chapter 3 of this Report, 91% of the Public Law 280 tribes in our study, and 67% of the non-Public Law 280 and straddler tribes had significant revenue from gaming, meaning that they had amounts to apply to tribal law enforcement and criminal justice if that were a tribal priority.

As we point out in Chapter 2 of this Report, nearly all the research to date on funding for policing in Indian country has focused on non-Public Law 280 tribes. These studies suggest that federal and tribal police agencies for the non-Public Law 280 tribes do not have a robust funding base, and work with budgets that may be 55-80% the level of off-reservation agencies' budgets.<sup>9</sup> The problem of underfunding from federal agencies extends broadly to the entire criminal justice system in Indian country.<sup>10</sup> Thus, although non-Public Law 280 tribes may receive more funding from the BIA, it's unclear that their funding situation is superior to that of the Public Law 280 tribes.

This chapter explores funding issues affecting Public Law 280 tribes in two distinct ways. First, it examines funding data for Indian country law enforcement and criminal justice programs supported by the United States Department of the Interior and

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| <sup>7</sup> See Cohen's Handbook § 22.07[1].

| <sup>8</sup> Carole Goldberg & Duane Champagne, "A Second Century of Dishonor: Federal Inequities and California Tribes" (Report prepared for the Advisory Council on California Indian Policy, 1996), available at <http://www.aisc.ucla.edu/ca/Tribes.htm> (last visited August 18, 2007).

| <sup>9</sup> See United States Commission on Civil Rights, *A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country* 67-83 (2003).

| <sup>10</sup> *Id.* at 77-78.

the United States Department of Justice. Our goal here is to determine whether Public Law 280 tribes are receiving funding at levels comparable to non-Public Law 280 tribes. Because tribes vary considerably in population, and because most of the largest tribes are not covered by Public Law 280, we assess these funding data taking the Indian population of each reservation into account, as well as considering the percentage of tribes under each jurisdictional arrangement receiving any funding at all.

Second, the Report analyzes qualitative data obtained from interview questions that asked about the adequacy of funding for state, tribal, and, where applicable, federal law enforcement and criminal justice. It is possible, of course, that funding is not the primary source of any challenges that may confront Indian country law enforcement and criminal justice. Some commentators, notably Wakeling et al.,<sup>11</sup> have suggested that additional funding, alone, is not the best way to improve policing in Indian country. Rather, enhanced accountability of law enforcement to the affected tribal community is the route to better services. We have taken their findings as an invitation to explore what reservation residents, law enforcement officers, and criminal justice personnel perceive to be the source of any concerns regarding the availability and quality of Indian country law enforcement and criminal justice. Do people in these three categories regard funding as adequate? If not, what kinds of resources would be most instrumental in improving Indian country police and justice systems? If they think funding is not the source of inadequate services, what do they pinpoint as the real reason for service inadequacy?

### BIA Funding Equity

The Department of the Interior provides financial support for tribal policing and criminal justice through a variety of means. Some law enforcement services are provided directly by the Bureau of Indian Affairs (BIA) through its Law Enforcement Services division. Some funding for tribal police and courts reaches the tribes through block grants under the Tribal Self-Governance program. Under these grants, the Indian nations themselves determine the allocation of funding to such programs. Finally, the BIA supplies funding to tribal police agencies and courts through Indian Self-Determination Act contracts (also known as 93-638 contracts).<sup>12</sup>

We were able to obtain funding data only for funds supplied to tribal police agencies directly, and then only for fiscal year 1998.<sup>13</sup> Although most of these tribal agencies had general policing responsibility, a few were devoted exclusively to enforcing laws relating to natural resources.

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<sup>11</sup> Stewart Wakeling, Miriam Jorgensen, S. Michaelson, & Manley Begay, *Policing on American Indian Reservations* (National Institute of Justice, 2001).

<sup>12</sup> See Cohen's Handbook § 22.07[1]; Wakeling et al., *supra* note 11, at 7-8 .

<sup>13</sup> These data were made available to us through the Justice Research and Statistics Association.

We have attempted to assess the allocation of these funds as between agencies for Public Law 280 and non-Public Law 280 tribes, both by population and by number of tribes. For purposes of this analysis, we have treated as non-Public Law 280 tribes the tribes that have retroceded fully from Public Law 280 and those that were excluded initially from the statute's application.<sup>14</sup> In presenting the category of Public Law 280 tribes, we have separated out affected tribes in the six mandatory Public Law 280 states (Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin) from the tribes covered by Public Law 280 in the four states that have fully or partially opted into Public Law 280 (Florida, Idaho, Montana, and Washington). We have also separated out the four tribes that we call "straddlers" because they have territory in a mandatory Public Law 280 state, as well as territory in non-Public Law 280 state. Finally, we have treated as a distinct group the 24 tribes that are subject to state jurisdiction under statutes that expressly incorporate Public Law 280 or establish a regime akin to Public Law 280.<sup>15</sup>

Because we are concerned with tribal law enforcement and criminal justice programs that almost invariably serve a territorial and population base, we confine the analysis to tribes with reservations that have one or more inhabitants, according to the 2000 Census. Thus, for example, we have separately presented and broken out tribes in Oklahoma that are listed in the 2000 Census as having "Oklahoma Tribal Statistical Areas" or OTSA's (all except Osage). Furthermore, for Alaska, we include only the Metlakatla Indian Community, which is the only reservation-based tribe in Alaska.

The numbers and percentages in the tables below do not add up to 100% because we have presented a number of disaggregated categories, such as the non-straddler tribes and the various types of Public Law 280 tribes. The two figures that add up to 100% are the first and last — "Non-PL 280" and "Total PL 280 and Like" figures.

The BIA funding data for fiscal 1998, displayed in Table 1 below, show that the affected tribes in mandatory Public Law 280 states (not including excluded and retroceded tribes) received a disproportionately small amount of BIA funding. While they constitute 9% of the total reservation Indian population, they receive only 3.8% of

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<sup>14</sup> See Chapter 1, *supra*, at 8.

<sup>15</sup> Fourteen of these tribes were subjected to state jurisdiction through land settlement or restoration acts enacted after Public Law 280. For example, the federal statute restoring federal recognition to the Ysleta del Sur Pueblo states, "The State shall exercise civil and criminal jurisdiction within the boundaries of the reservation as if such State had assumed such jurisdiction with the consent of the tribe under [Public Law 280]." 25 U.S.C. § 1300g-4(f). In contrast, the Rhode Island Indian Land Claims Settlement Act states, "the settlement lands shall be subject to the civil and criminal laws and jurisdiction of the State," without mentioning Public Law 280. 25 U.S.C. § 1708. Finally, Congress adopted several statutes in the decade preceding enactment of Public Law 280 that conferred jurisdiction on particular states over specific tribes or over all the tribes in that state. See, e.g., Act of May 31, 1946, 60 Stat. 229 (state criminal jurisdiction over Spirit Lake Reservation in North Dakota); 25 U.S.C. § 232 (state criminal jurisdiction over reservations in New York). Unlike Public Law 280, these pre-Public Law 280 statutes maintained concurrent federal Indian country criminal jurisdiction over the designated reservations.

the funding. The lack of parity is even greater when one separates out the straddler tribes that encompass territory that is not affected by Public Law 280. The non-straddler Public Law 280 tribes in mandatory states constitute 8.2% of the reservation-based Indian population, but received only 1.6% of the BIA law enforcement funds. The difference per capita is striking: \$101.13 for the non-Public Law 280 tribes, as compared with \$40.95 for all the mandatory Public Law 280 tribes, and \$19.40 for the mandatory Public Law 280 tribes that are non-straddlers. One might hypothesize that the explanation for this gap lies in the smaller number of tribal police departments in the mandatory Public Law 280 states. Interestingly, however, of the 116 reservation-based police agencies listed in the 1997-1999 Annual Law Enforcement Program Report Surveys produced by the BIA,<sup>16</sup> 14, or 12%, are from Public Law 280 tribes in mandatory states, and 10, or 8.6%, from the non-straddler mandatory Public Law 280 tribes. Of the 165 tribes with at least one full-time, sworn officer reported in the BJS's recent census of tribal police agencies,<sup>17</sup> 25, or 15%, are mandatory Public Law 280 tribes, and 22, or 13%, are from non-straddler mandatory Public Law 280 tribes.

Table 1 probably understates the disproportionately low per capita funding figures for the mandatory Public Law 280 tribes because the dollars reflected in that Table do not include funds effectively made available to tribes that receive direct BIA services. Those funds are heavily weighted toward non-Public Law 280 tribes. For example, of the 116 tribal law enforcement agencies mentioned above, 39 operated through direct BIA services. Of those, 31 were from non-Public Law 280 tribes, 1 was from a mandatory Public Law 280 tribe, 1 was from an optional Public Law 280 tribe, and 6 were from Public Law 280-like tribes, most of which had concurrent federal jurisdiction. None of the funding for direct BIA law enforcement services to these tribes is reflected in Table 1.

The per capita funding situation is far more balanced for the Public Law 280 tribes from optional states, which account for 10% of the reservation-based Indian population and receive 9% of the BIA funding to tribal law enforcement agencies. Their per capita figure is \$86.93, compared with \$101.13 for the non-Public Law 280 tribes. This difference could reflect the fact that optional Public Law 280 states are far less likely to have assumed full jurisdiction over reservation crimes. Florida has done so, and Washington has done so for some of the tribes within that state. For the remaining tribes in Washington, the tribes in Idaho, and the Salish-Kootenai Tribe in Montana, state jurisdiction exists for only some offenses.<sup>18</sup> Under those circumstances, the Department

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| <sup>16</sup> This figure excludes Oklahoma tribes with Oklahoma Tribal Statistical Areas rather than reservations for purposes of the 2000 Census (all but Osage), and all the Alaska tribes and Native villages, excepting the Metlakatla Indian Community.

| <sup>17</sup> Steven W. Perry, *Census of Tribal Justice Agencies in Indian Country, 2002* (Bureau of Justice Statistics, 2005). Ninety-two percent of the 341 federally recognized tribes in the lower 48 states participated in this survey.

| <sup>18</sup> See Chapter 1, *supra*, at 10-11.

of the Interior may have been more willing to fund tribal law enforcement, and the tribes themselves may have been better positioned to establish tribal police departments. Significantly, 26 of the 116 reservation-based police agencies listed in the 1997-1999 Annual Law Enforcement Program Report Surveys produced by the BIA were from Public Law 280 tribes in optional states, amounting to 22.4% of the total.

**Table 1**

**Percentage and Per Capita BIA Law Enforcement Funding for Fiscal 1998:  
PL 280 vs. non-PL 280**

**Reservation-based Indian Population, 2000 Census**

Non-PL 280:	424,731 (77.6%)
OK OTSA:	324,427
Mandatory PL 280:	48,965 (9%)
Mandatory Non-Straddler PL 280:	44,451 (8.2%)
Optional PL 280:	54,831 (10%)
Like PL 280:	18,714 (3.4%)
Total PL 280 and Like:	122,510 (22.4%)
Total minus OK OTSA:	547,241 (100%)

**BIA Funding to Tribal Law Enforcement Agencies, Fiscal 1998**

	<b>Percentage</b>	<b>Per Capita</b>
Non-PL 280:	\$42,955,823 (82%)	\$101.13
OK Tribes with OTSAs:	1,097,475	
Mandatory PL 280:	2,004,993 (3.8%)	40.95
Mandatory Non-Straddler PL 280:	862,264 (1.6%)	19.40
Optional PL 280:	4,766,391 (9%)	86.93
Like PL 280:	2,596,639 (5%)	138.75
Total PL 280 and Like:	9,368,023 (18%)	76.47
Total BIA LE Funding minus OK OTSA:	\$52,323,846 (100%)	

According to Table 1, the tribes with state jurisdiction under regimes like Public Law 280 receive disproportionately larger allocations of BIA law enforcement funds in relation to their reservation-based Indian population. The difference is not great, however, as these tribes represent 3.4% of the population and receive 5% of the funding. The funding for these tribes, as a group, may more closely resemble funding for the non-

Public Law 280 tribes because at least some of these “like” tribes (see above) are still subject to concurrent federal jurisdiction.

Apart from funding according to population size, we can also measure funding equity by looking at the percentage of tribes from the Public Law 280 and non-Public Law 280 categories receiving no BIA law enforcement funding at all. Table 2 presents these data.

<b>Table 2</b>	
<b>Tribes Receiving No BIA Law Enforcement Funding, Fiscal 1998</b>	
Non-280 <sup>19</sup> :	47%
Mandatory Public Law 280, including “straddlers” <sup>20</sup> :	91.8%
Optional Public Law 280:	82.8%
Like Public Law 280:	79%
Oklahoma (except Osage):	73%

As Table 2 reveals, Public Law 280 tribes in the mandatory states are nearly twice as likely to be without BIA law enforcement funding altogether as are non-Public Law 280 tribes. Public Law 280 tribes in optional states do not fare much better, with 82.8% not receiving funding. As noted above, the Public Law 280 tribes are also far less likely to be receiving direct BIA law enforcement services in lieu of tribal funding. It’s true, as noted in Chapter 1, that many of the Public Law 280 tribes in mandatory states are small, with total reservation populations under 100. The percentage with total reservation population in that range is far lower than 91.8%. Only 39% of the 122 Public Law 280 tribes in the mandatory states that we have counted<sup>21</sup> have populations that small.

### DOJ Funding Equity

For more than a decade, the Department of Justice has been providing funding to Indian nations for a variety of policing and criminal justice programs. These include COPS grants for additional law enforcement officers and equipment, designed to encourage community-based policing; the Tribal Courts Assistance Program, which funds tribal court development and enhancement; the Tribal Healing to Wellness Court

| <sup>19</sup> Oklahoma tribes with OTSA’s (all except Osage) are excluded and reported separately.

| <sup>20</sup> Includes only those with reservations and reservation populations greater than 0. Three of the 10 tribes that received funding were “straddler” tribes.

| <sup>21</sup> We have only counted tribes with reservations, and those reservations must have at least one inhabitant noted in the 2000 Census.

program, fostering culturally appropriate alternatives for individuals who are arrested for drug and alcohol-related offenses; and various other programs directed at tribal youth violence, violence against Native women, and Native victims of crime. These grants are generally made on a competitive basis, and the grant criteria often require that the grantee demonstrate an ability to sustain the program beyond the DOJ funding period.

The Department of Justice provided us with funding data for tribes for the period 1995-2002. As with the BIA data, we first performed an analysis comparing funding with reservation-based Indian population for Public Law 280 versus non-Public Law 280 tribes, excluding non-reservation based tribes, and tribes with resident populations of

**Table 3**

**DOJ Funding by Percentage and Per Capita 1995-2002  
PL 280 vs. non-PL 280**

**Reservation-based Indian Population, 2000 Census**

Non-PL 280:	424,731 (77.6%)
OK OTSA:	324,427
Mandatory PL 280:	48,965 (9%)
Mandatory Non-Straddler PL 280:	44,451 (8.2%)
Optional PL 280:	54,831 (10%)
Like PL 280:	18,714 (3.4%)
Total PL 280 and like:	122,510 (22.4%)
Total minus OK OTSA:	547,241 (100%)

**DOJ Law Enforcement and Criminal Justice Funding to Tribes, 1995-2002**

	Percentage	Per Capita
Non-PL 280: \$248,058,899 (79.3%)		\$584.03
OK Tribes with OTSAs:	12,448,061	
Mandatory PL 280: 26,103,400 (8.4%)	533.10	
Mandatory Non-Straddler PL 280: 23,575,690 (7.6%)	530.37	
Optional PL 280: 29,893,495 (9.6%)	545.19	
Like PL 280:	8,449,415 (2.7%)	451.50
Total PL 280 and like: 64,330,010 (20.7%)	525.10	
Total BIA LE Funding minus OK OTSA:	\$312,505,209 (100%)	



zero. We also separated the tribes that straddle mandatory Public Law 280 states and non-Public Law 280 states, as there was a possibility that they were being treated differently, for funding purposes, than tribes whose territory is exclusively within mandatory Public Law 280 states. Our analysis was complicated by the fact that some of the DOJ funding went to intertribal organizations that served more than one tribe. We attempted to allocate the intertribal funding to the appropriate category (non-Public Law 280, mandatory Public Law 280, etc.). Figures for the Oklahoma Tribal Statistical Areas (OTSA) are also broken out separately.

As Table 3 reveals, the pattern of per capita DOJ funding is different from the BIA law enforcement funding pattern. There is much greater per capita parity between Public Law 280 and non-Public Law 280 tribes regarding DOJ funding than with BIA law enforcement funding. The other interesting difference between the BIA and DOJ per capita patterns is that, for purposes of BIA law enforcement funding, the “like Public Law 280” tribes do better than the Public Law 280 tribes, while the “like Public Law 280” tribes fare somewhat worse for DOJ funding.

One possible explanation for the difference between BIA and DOJ is that DOJ funding programs include programs designed to develop and build tribal law enforcement and criminal justice systems, whereas the BIA funding only focuses on existing systems. If that is true, then tribes which were denied funds in the past because of their Public Law 280 status would continue to be disadvantaged under the BIA system because they lack the institutions that would qualify for funding. Since BIA funding is ongoing operating money, and DOJ funds tend to be targeted and limited in time, the lack of BIA funding is especially detrimental to Public Law 280 tribes attempting to operate effective policing and criminal justice institutions.

The pattern of greater parity for DOJ funding is not so clear when we examine the percentage of tribes in each category that received no funding at all. As Table 4 presents, of the 102 reservation-based non-Public Law 280 tribes, 23 received no individual tribal funding, but 13 of those received funding through intertribal grants, mainly to intertribal organizations that covered the non-funded tribes from Nevada and New Mexico. Thus, only 10 tribes, or 9.8%, of the non-Public Law 280 tribes, received no DOJ funding from 1995 to 2002.

For the Public Law 280 and like tribes, the situation is quite different. Of the 122 mandatory Public Law 280 tribes (including straddlers) that have reservation populations greater than 0, 78 received no individual funding, and 18 of those received funds through intertribal organizations, mostly those based in California. Thus, 60 tribes of 122, or 49.1%, received no DOJ funding at all during the period we examined. The 38 optional Public Law 280 tribes fare somewhat better, but also not nearly as well as the non-Public Law 280 tribes. Twelve of 38 optional Public Law 280 tribes received no individual DOJ funding, but 3 of those received support from intertribal grants. Thus, 23.6% of optional

Public Law 280 tribes with no individual or intertribal funding received no funding. The explanation for this difference is probably the same as for the difference in BIA law enforcement funding.<sup>22</sup> Finally, the situation for the “like Public Law 280” tribes is intermediate between the mandatory and optional Public Law 280 tribes, with 37.5% receiving DOJ funding. The “like Public Law 280” tribes fare somewhat better for DOJ than for BIA funding, according to this measure.

**Table 4**

**Tribes Receiving No DOJ Funding, 1995-2002**

Non-280 <sup>23</sup> :	9.8%
Mandatory Public Law 280, including “straddlers” <sup>24</sup> :	49.1%
Optional Public Law 280:	23.6%
Like Public Law 280:	37.5%
Oklahoma (except Osage)	37.8%

As with the BIA law enforcement funding, it’s possible that the higher percentage of Public Law 280 tribes receiving no DOJ funding reflects the smaller size of reservation populations.<sup>25</sup> Nearly 40% of the mandatory Public Law 280 tribes have total reservation populations smaller than 100. If we exclude all such tribes from the number receiving no DOJ funds, only 10% of the mandatory Public Law 280 tribes received no funding, a figure very close to the 9.8% figure for non-Public Law 280 tribes. However, such a calculation must also take into account the 7 non-Public Law 280 tribes with total reservation populations lower than 100. If those are excluded from the non-Public Law 280 group receiving no DOJ funding, the percentage drops to 2.9% of non-Public Law 280 tribes receiving no DOJ funding. Furthermore, given the availability of intertribal funding through DOJ, the small size of reservation populations may not fully justify denial of funding support altogether.

In sum, both per capita and by percentage of tribes receiving funds, Public Law 280 and like tribes, especially mandatory Public Law 280 tribes located exclusively within mandatory states, received dramatically less BIA law enforcement funding in 1998 than non-Public Law 280 tribes. For DOJ tribal funding from 1995 to 2002, there is substantially greater per capita parity between Public Law 280 and non-Public Law 280 tribes. When, however, we turn to the percentage of tribes receiving no DOJ funding at

<sup>22</sup> See *supra*, this chapter.

<sup>23</sup> Oklahoma tribes with OTSA’s (all except Osage) are excluded and reported separately.

<sup>24</sup> This figure includes only tribes with reservation, and reservation populations greater than zero. Three of the 10 tribes that received funding were “straddlers”.

<sup>25</sup> See pp. 342-346, *supra*.

all, the Public Law 280 and like tribes again fare significantly worse than the non-Public Law 280 tribes.

We have tried to hypothesize factors other than Public Law 280 versus non-Public Law 280 that may explain these disparities, especially reservation size. Further research and controls would be necessary to determine more conclusively whether Public Law 280 is the determining causal factor. However, the documentation of these disparities suggests that further inquiry is called for.

### Impact of Funding on Quality of County, Tribal, and Federal Law Enforcement Services

We asked reservation residents, as well as law enforcement and criminal justice personnel: In what ways does any lack of funding affect the law enforcement services provided to this community? For the Public Law 280 jurisdictions, our focus was on county law enforcement services, and, if the tribe had a police department, tribal services. For the non-Public Law 280 jurisdictions, we focused on tribal and federal law enforcement services.

#### Funding and the Quality of County Law Enforcement

Are funding levels affecting the quality of law enforcement services afforded by counties in Public Law 280 jurisdictions? One hypothesis is that the absence of a funding mechanism to support states' Public Law 280 jurisdiction would lead to inadequate services. This underfunding might be mitigated by tribal financial support, if the tribe has revenue from gaming or another successful form of economic development. A second, alternative hypothesis is that the lack of tribal control over county law enforcement would lead to county decisions that adversely affect the quality of law enforcement, regardless of funding levels.

For the Public Law 280 tribes, we had 135 responses from the reservation residents (including tribal officials; tribal police and court personnel; elders; and general citizens involved with law enforcement issues in the community), 24 from county law enforcement personnel, and 3 responses from criminal justice personnel. Because of the small number of criminal justice personnel responses, we added them together with the law enforcement personnel. The reservation residents' and law enforcement/criminal justice personnel's responses were divided as shown in Figure 11.1.

Reservation residents responded that underfunding is not a problem, or is not a problem because of tribal contributions, only slightly less frequently than county law enforcement and criminal justice personnel, 28.9% versus 33.3%. Interestingly, nearly 20% of all respondents in every group commented that funding would be a problem if the tribe were not contributing dollars to supplement the county budget, either through a

contract with the county or provision of supplemental law enforcement services through the tribe. Apparently, many tribes with gaming or other economic-development revenue are choosing to augment county law enforcement budgets to obtain the services they think are appropriate.

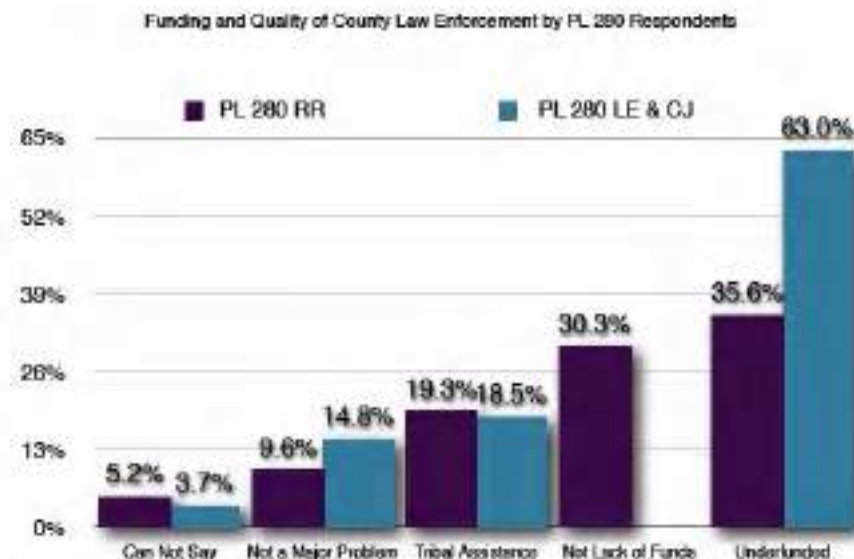


Figure 11.1

The biggest differences between the responses of reservation residents and the responses of law enforcement and criminal justice personnel relate to the relationship between funding and quality of services. Law enforcement and criminal justice personnel (63%) are more likely than reservation residents (35.6%) to attribute inadequate services to lack of funding. This difference is statistically significant (chi square = 5.94, df = 1,  $p = .015$ ; Cramer's  $V = .21$ ). In some cases (3 responses, or 11.1%), they underscore that the funding problems are equivalent on and off the reservation. Indeed, law enforcement and criminal justice personnel are almost twice as likely as reservation residents to opine that county law enforcement is underfunded. The area of underfunding that they mention most often is police staffing. As 1 county law enforcement officer stated:

If we had more funding, we'd have more personnel. More personnel would give us the ability to do routine patrols on the rez. It would give us the ability to do more thorough and extensive investigations, to do follow-up investigations, to go out there, and to actually make contact with the person that threw the rock through somebody's window, etc., etc. We'd be able to put more time and more energy into those things. We'd have more time to spend on the reservation interacting with the kids out there and things like

that. ... Money equates to people, and I think the answer to so many of the needs we have in law enforcement is a police presence. And, without a police presence, we can't be effective. Without money, we can't have a police presence.

Some of the county respondents who complained about underfunding pointed to the absence of a reservation tax base as the source of the problem. As one county law enforcement officer opined:

We had tried to secure some federal money from the government, and we've tried to get some money from the states, which we had been unsuccessful in doing. And I have a problem retaining help because of the pay scale. ... And I can't get the pay scale up because the county basically has to give the same type of services to everybody in the county that has half the tax structure of the normal county. ... And what happens is that law enforcement kind of suffers on that end of it.

Reservation residents who responded that county law enforcement is underfunded also identified the insufficient numbers of officers as their major concern; however, unlike the county law enforcement and criminal justice personnel, they also stressed that the police need more funds for proper training to deal with distinctive issues and concerns of Indian country. As one reservation resident noted:

[The effects of underfunding of county law enforcement show up in] not enough officers, and not enough education, either through their original POST training or their continuing education. You probably know the law enforcement academy is two or three months, and I think they only spend a few days of that on the actual law. And I doubt if they spend any time on Indian law or PL 280 at all. I don't know when they get that sort of training.

When reservation residents are asked about funding issues, they are far more likely to venture that insufficient funds are *not* the reason for inadequate services. While 35.6% of reservation residents believe that lack of funding is a problem, nearly the same percentage believes that inadequate services from county law enforcement have other causes. The most common alternative explanations that reservation residents offer for inadequate services are a lack of priority given to reservation law enforcement; insensitivity, misunderstanding, and lack of communication; and an absence of cooperative efforts between the county and the tribe. These respondents believe that the county has sufficient funding, but is not using it for the benefit of tribal communities. In contrast, none of the law enforcement and criminal justice personnel attributed inadequate services to such problems.

The view that funding is not a problem because of tribal support for county law enforcement budgets is exemplified in the following responses, the first two from reservation residents, the third from a county law enforcement officer:

To offset our tribal contribution, if we do not have the revenues, what would they do? If we do not have a casino, if we do not have it, they're still obligated to provide [law enforcement services]. But the levels would be far, far less than what we currently have, and we would not have the level of protection that we currently have, or the level of visibility. We'd be back down to two officers, and maybe back down to one officer. So, the need was established. The need is there. ... The community wants a strong, active, proactive law enforcement presence in our community. We want that. The community's established that. The government has been told that. ... So, because of that, and because of the levels that are provided by the state, and because we only get a small Bureau grant — unlike other reservations that get large Bureau funding because of federal status, and so on and so forth — we get a small Bureau grant.  
(Reservation Resident)

[Interviewer] “If the tribe were not funding the county law enforcement, do you think there would be a huge problem?” [Respondent] “Yes, I don't think they'd be there.”

... [I]f the money goes away from the tribe, I still have a law enforcement function and responsibility out there. It won't be enhanced, so in other words, our response times will be much greater than what they are today. Our availability to be able to follow up on calls would ... basically disappear. The [impact on] service to that area would be significant. And because then the other patrol division would end up having to field calls out there, the rest of the county would also have some sort of a loss of service, as well, because obviously we're just spread way too thin. ... [T]he fact is ... if the funding were to dry up from the [tribal] community fund, would it impact the law enforcement services there?  
Absolutely. (County Law Enforcement Officer)

Unlike the county law enforcement and criminal justice personnel, reservation-resident respondents sometimes complained that the county expected the tribe to pay for its own law policing. Six reservation-resident respondents (4.4%) and no county respondents expressed this view. Below are some representative statements:

Every now and then, about once a month, we get a little report from the sheriff's department about what they're doing, what their cadets that are graduating from the academy, and yet they want now, the move is to, especially with casinos now ... what they're looking towards now, is for the tribes to earmark some monies for the county, under the heading for the sheriff's department to maybe have more monies to come out and patrol, do their work, and which I'm totally against, I says, for one thing, thanks to the Indians, I said, there is that possibility that's going to happen, however, I said, I'm against it anyway. I said, because ... I see you graduating cadets from the academy, as do sheriffs, now are you saying, now you want us to fund you to pay for that? I can understand that, if you need it, if you want to be sheriff, be sheriff, but don't depend or kind of rely on the tribe to fund your programs for you. That's not our problem, I said, because, without casinos, what would you do? Public Law 280 would still be here, so you'd have to manage some way, and then I say you are now depending on the tribes to fund your programs to have better law enforcement. We are not ATM cards, that's what they look at us now, ATM cards now.

And everybody's feeling the crunch of funding this year, everywhere. So probably the county is, too, so, they're pulling back on how much they patrol the reservation. And they're probably thinking, "Well, the tribe makes all this money from the casino; let them do their own stuff." And that's always the perception.

The greatest divergence of views among reservation residents on the one hand, and county law enforcement and criminal justice personnel on the other, relates to the connection, if any, between funding and adequacy of police services. This disparity of views is exemplified in the following statements from reservation residents, asserting that something other than funding is the source of problems. Such statements have no counterparts among the county law enforcement and criminal justice personnel's responses. What the reservation residents emphasize most is that the county does not treat the reservation as a priority in allocating its funds. Reservation residents also complain that lack of education and lack of willingness to enter into cooperative agreements with the tribe are contributing to inadequate services. The following statements from reservation residents are representative:

I think they're receiving the funding, and they spend it where they see needed, and it isn't necessarily a priority for the reservation here, or reservations all up and down the county, within the county.

I'm aware that, in effect, the county gets all kinds of funding from all kinds of areas. This is like a huge, you know, section of the county ... and every county department gets state funding for services here, and no one comes here and does any of those services.

(County law enforcement officers) look at protection of personal property off reservation. We're always a second tier to them in my eyes, maybe even a third tier.

I think that they just have a limited number of funds and the tribe isn't a high priority.

We give them a lot of dollars to provide a service out here, and they still don't provide it. I don't think it's a lack of money. I think it's a lack of education.

(Lack of funding) is their biggest excuse for not coming to patrol out here, or not answering a call out here, is because they don't have enough officers. And we hear that all the time. ... Why can't they just agree to the law enforcement agreement?

Not surprisingly, there were many fewer responses regarding county law enforcement funding from the non-Public Law 280 jurisdictions, where counties do not carry out policing functions. The reservation residents, law enforcement and criminal justice personnel from those jurisdictions were asked to comment on county law enforcement funding if they had gone through the retrocession process, and compare the funding situation before and after retrocession. Of the 6 reservation-resident respondents who commented on this issue, 4, or 66.6%, expressed the view that inadequate funding for county law enforcement had been a problem before retrocession. One respondent thought that funding had not been a problem before retrocession, and the other thought that the problem was lack of priority given to public safety on the reservation. Typical of the majority view is the following statement from 1 reservation resident: "[T]hey only had one patrol officer out here for a while [before retrocession], and I think that was due directly to funding ..." A tribal leader from a tribe which had retroceded after developing a casino and other successful enterprises pointed out, "Prior to retrocession, I had trouble funding law enforcement ... after retrocession, that doesn't seem to be a problem."

The interview data from Public Law 280 jurisdictions suggest that county law enforcement officers and criminal justice personnel are far more likely than reservation residents to view funding as the major source of inadequate county law enforcement services. The position of reservation residents is more in accord with Wakeling et al.'s claim that lack of alignment of priorities is at least as serious a problem as underfunding.



## Funding and the Quality of Federal Law Enforcement

Federal funding for reservation law enforcement in non-Public Law 280 jurisdictions does not present the same difficulties as county law enforcement under Public Law 280 because the federal government is not dependent on a local tax base to secure the necessary resources. However, having an adequate resource base does not necessarily mean that the federal government will allocate sufficient amounts to achieve law enforcement of adequate quality. Indeed, Patrick Ragsdale, Director of the Bureau of Indian Affairs, testified before Congress in May 2007 that less than half of BIA funded law enforcement are staffed at the national average of 2.6 officers per 100,000 for non-metropolitan communities.<sup>26</sup> Thus, we sought to determine how respondents viewed the relationship between funding and the quality of federal law enforcement services.

For the non-Public Law 280 tribes, we had 32 responses regarding federal law enforcement funding from the reservation residents, including tribal officials, tribal court personnel, elders, and general citizens involved with law enforcement issues in the community); 8 from federal, state, and tribal law enforcement personnel; and no responses from federal criminal justice personnel. The reservation residents' responses were divided as follows:

### Non-PL 280 Reservation Residents:

Cannot say	6.3%	(2)
Lack of funding is not a major problem	9.4%	(3)
Lack of funding would be a problem but for tribal \$	0%	(0)
Inadequacy of federal law enforcement due to something other than lack of funds	6.3%	(2)
Federal law enforcement is underfunded	78.1%	(25)

The federal and tribal law enforcement responded as follows:

### Non-PL 280 Law Enforcement Personnel:

Cannot say	0%	(0)
Lack of funding is not a major problem	0%	(0)
Lack of funding would be a problem but for tribal \$	0%	(0)
Inadequacy of federal law enforcement due to something other than lack of funds	0%	(0)
Federal law enforcement is underfunded	100	(8)

<sup>26</sup> Statement of W. Patrick Ragsdale, Director, Bureau of Indian Affairs, Department of the Interior, Before the Committee on Indian Affairs, United States Senate, Oversight Hearing on Indian Country Law Enforcement (May 17, 2007), available at <http://indian.senate.gov/public/files/Ragsdale051707.pdf> (last visited August 18, 2007).

Compared with the Public Law 280 jurisdictions, there is far greater convergence of opinion among the reservation residents and law enforcement personnel from non-Public Law 280 jurisdictions regarding the role of funding in the quality of reservation law enforcement. The differences between reservation residents and federal law enforcement regarding the underfunding of federal law enforcement is not statistically significant, indicating relative agreement about federal law enforcement funding needs, (Fisher's Exact Probability Test,  $p < .18$ , NS). Most strikingly, only 6.3% of the reservation residents in the non-Public Law 280 jurisdictions stated that problems other than lack of funding were the reason for inadequate law enforcement services, compared with 30.3% of the reservation residents in the Public Law 280 jurisdictions. This result is statistically significant (chi square = 6.66,  $df = 1$ ,  $p < .001$ ; Cramer's  $V = .22$ ). More than three-fourths of the reservation residents, and all the federal law enforcement officers, responded that lack of funding was affecting the quality of law enforcement services on non-Public Law 280 reservations.

The other interesting difference between the Public Law 280 and non-Public Law 280 jurisdictions relates to the type of funding problems that reservation residents and law enforcement officials identify. In the Public Law 280 jurisdictions, the nearly universal opinion is that funding is needed for more police officers. In contrast, in the non-Public Law 280 jurisdictions, when respondents are asked about funding issues, they often mention facilities (police buildings and jails), as well as the need for additional police. For example, of the 25 reservation residents from non-Public Law 280 jurisdictions who viewed underfunding as a problem, 10 (40%) mentioned the need for additional officers, 4 (16%) cited the need for additional facilities, and 2 (8%) indicated the need for both. The remainder did not specify the nature of the funding deficiency. Of the 7 federal law enforcement respondents from non-Public Law 280 jurisdictions, all of whom cited underfunding as a problem, 6 (86%) said that more funding was needed for police personnel, and 1 (14%) indicated the need for a new or better detention facility. In contrast, none of the reservation residents, county law enforcement personnel, or county criminal justice officials pointed to a lack of funds for county facilities as the source of inadequate services.

The most emphatic statement regarding federal policing came from one law enforcement respondent who asserted that BIA law enforcement gets "10 cents on the dollar of what any other law enforcement group [gets] to provide the same services per capita." This respondent noted that even after one particular tribe secured a 100% increase in its BIA law enforcement budget, "we're still half what it needs to be." This view was echoed by another law enforcement respondent, who said:

We need additional funding to provide adequate law enforcement services to the reservation. There's enough for us to squeak by and

get the minimum of what we need done, but still, that's with a lot of overtime paid to our employees just to accomplish our goals, our mission and all that. We need more funding ... and detention facility. There's a lot. There is a lot. ... We need more positions, just things like that. The big thing is funding. Why we got cut. With Homeland Security, I thought everyone was going to get a little boost, and we didn't.

This law enforcement respondent provided a clue to the difference between reservation resident views in Public Law 280 and non-Public Law 280 jurisdictions when he explained why he didn't think the tribe he served wanted to take over the policing function through a 638 contract:

I think they're happy with the way the BIA is running the law enforcement program. I opened a lot of doors, too, when I got here. ... I think they're happy over that. The communication gap I think has kind of closed. They like the performance that's going on right now with the BIA, what they're providing. If they're willing to contract it, I know the BIA would bend over backwards to help them do it.

In other words, even though the tribe does not directly control BIA law enforcement, BIA has more incentive to satisfy reservation needs than the county, if for no other reason than the prospect that the tribe could contract out of the BIA system.

### Funding and the Quality of Tribal Law Enforcement

As we pointed out in Chapter 1, only 21% of the mandatory Public Law 280 tribes outside of Alaska have tribal police departments, while 74% of the non-Public Law 280 tribes operate such agencies.<sup>27</sup> This fact is probably related to the data we saw earlier in this chapter indicating that the BIA provides funding to a far smaller percentage of Public Law 280 tribes than non-Public Law 280 tribes. Furthermore, the Public Law 280 tribes that do obtain BIA law enforcement funding receive a far smaller per capita allocation than the non-Public Law 280 tribes. The mandatory Public Law 280 tribes that do not straddle non-Public Law 280 states are particularly unlikely to receive BIA law enforcement funding support.

For every tribe in our sample that had a tribal police department (13 of 17 tribes, or 76%), we asked reservation residents, as well as law enforcement and criminal justice personnel, whether funding levels affected the quality of services provided by that department. For the Public Law 280 tribes, we had 27 responses from the reservation

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| <sup>27</sup> The optional Public Law 280 tribes, at 78% having tribal police departments, operate law enforcement agencies at a slightly higher rate than the non-Public Law 280 tribes.

residents, including tribal officials, tribal police and court personnel, elders, and general citizens involved with law enforcement issues in the community; 4 from county law enforcement personnel; and none from criminal justice personnel. The reservation residents' responses were divided as follows:

PL 280 Reservation Residents:

Cannot say	0%	(0)
Lack of funding is not a major problem	33.3%	(9)
Lack of funding would be a problem but for tribal \$	0%	(0)
Inadequacy of tribal law enforcement due to something other than lack of funds	0%	(0)
Tribal law enforcement is underfunded	66.7%	(18)

The county law enforcement personnel responded as follows:

PL 280 Law Enforcement Personnel:

Cannot say	0%	(0)
Lack of funding is not a major problem	0%	(0)
Lack of funding would be a problem but for tribal \$	20%	(1)
Inadequacy of tribal law enforcement due to something other than lack of funds	0%	(0)
Tribal law enforcement is underfunded	80%	(4)

For the reservation residents in Public Law 280 jurisdictions, the pattern of views about funding and the quality of *tribal* policing is noticeably different from the pattern of views regarding funding and the quality of *county* policing. It's true that approximately one-third of the reservation-resident respondents agree that funding is not a problem (or not a problem because of tribal support) for both the tribal and county police. That may not be surprising, considering the percentage of Public Law 280 tribes in our sample that have substantial gaming revenue. The difference in views relates to the causes for inadequate services by tribal or county police, respectively. Strikingly, however, the remaining two-thirds of reservation-resident respondents believe that problems of inadequate tribal and county law enforcement services have different explanations. Discussing the county police, reservation residents are almost evenly divided between those who believe that problems are attributable to lack of funding and those who believe that problems have other causes, especially lack of priority given to reservation public safety, lack of cooperation between county and tribal police, and lack of understanding of the tribal community. In contrast, responses related to tribal police invariably give lack of funding as the sole reason for inadequate services. The few non-tribal law enforcement officers who responded to questions about funding and the quality of tribal

policing agreed with the reservation residents that underfunding was the only problem. The differences between reservation residents and law enforcement are not significant (Fisher's Exact Probability Text,  $p = .49$ ).

The statements of reservation residents and law enforcement regarding funding for tribal police under Public Law 280 reveal the basis for satisfaction in those cases where funding is not a problem, and the types of funding concerns that exist for the substantial majority of tribes for which respondents identified funding as a problem. Of the 9 reservation residents and 1 tribal law enforcement officer who said that funding was not a major problem, several mentioned the benefits of COPS grants in satisfying staffing needs, others pointed to the benefits of tribal/county cooperation, and still others identified tribal gaming revenues as the reason for improvement. Illustrative statements are:

We've been very fortunate in obtaining grant funds through the COPS office. Without those funds, there would be a real severity of being able to do a lot of things, because their monies are earmarked for things that ... I select as priority equipment, which enables us to give service in certain areas. Like drug-identification equipment to help combat the drugs. (Reservation Resident)

[W]e fund them pretty well. They have right now one of those budgets that relies on mostly tribal support. Every budget — we approve the budgets, we tell them how much the tribal council is willing to give them out of our budget. It's a general fund that we give, dedicate to all the programs. Most of the programs run on the grants, but they need the tribal support, and the law enforcement right now has the most from our general fund, so that's why, I guess, the council's focusing on them right now. They just hired a couple of officers, so it can't be underfunded. (Reservation Resident)

I think some of the biggest benefits between the tribe's relationship with local law enforcement is the availability of having those extra funds. Extra vehicles. Just to use an example with tribal law enforcement, we have our own vehicles that we supply to our tribal law officers, and in most cases, our EMS and fire equipment that we use in this community is just as good, if not slightly better, than some of the bigger areas or bigger towns that also have the same equipment. (And a lot of this extra funding is through) casino funds. (Reservation Resident)

So, it's just a matter of, as long as the gaming keeps generating revenue, we're sitting OK. Otherwise, I don't know. (County Law Enforcement Personnel)

For those reservation residents and law enforcement officers who saw underfunding as a problem for tribal police in Public Law 280 jurisdictions, the major shortage they identified was funding for tribal police, although a few mentioned funding for a detention center as another distinct need. Both the number of police and the level of salary and equipment for police were named as concerns. Illustrative responses from reservation residents include the following:

(The current level of funding) doesn't allow us to put on a full time, 24-hour-a-day/7-day-a-week/365-days-a-year force. I think that once that happens, the respect and everything like that is going to build because sometimes a person, when they call 911, won't get a tribal officer. If a tribal officer isn't on patrol at that time, and then a state officer will respond. Sometimes the situation doesn't go good that way. And when that happens, the residents are less likely to call 911, because they have a bad experience. I called them last night, for instance. And rather than arresting the person that they should have, they took me to jail. So, I'm not going to call them now. Because maybe the situation isn't the way it should be, or what they think it's, and they're trying to explain it to them, and they get a little belligerent with them, and all of a sudden they end up in jail. And so then they say, "Well, I'm not going to call." And that story goes around and then other residents say "Hey, I ended up in jail, too, when I called the cops." And so, once we get a full-time force on that can respond to all these calls 24 hours a day/7 days a week, then I think the attitudes will start to change.

(The tribal police department has) vacancies, so that they have problems just covering the shifts, but also, for whatever reason, the rate of pay is significantly lower than neighboring jurisdictions and other law enforcement agencies throughout the state, so, with that situation, attracting and retaining capable people is, you know, challenging.

We had our jail facility inspected ... and the inspection report told us that we could not violate any prisoner's rights by putting him in a cell. Each one of our cells is too small to put one prisoner in there. So, we've been trying to get on the Department of Justice list to construct a new facility, so that, someday, we will be able to provide for the prisoners. But at the present time, we can't do anything but book a prisoner, then we have to release them. This gets awfully challenging at times because, when it comes to somebody who's totally inebriated, and he's brought in because of domestic violence — he just beat up his wife — and when we have to release him 15, 20 minutes after he's been booked, and he's still drunk, and will probably go home and beat up his wife again. Yet we cannot hold him. So, it's very critical at this point that we get a new facility.

The following statement by 1 law enforcement officer from a Public Law 280 state underscores the need for additional funds for police officers:

(Lack of funding) is probably the biggest thing that hurts (tribes). They get provided funding, but not enough. I mean, right now, the ratio of police officers per capita is four times less than that of the national average, and then we have twice the violent rate, crime rate. (Law Enforcement Personnel)

Several of the reservation residents from Public Law 280 tribes specifically mentioned the need for more funding from the BIA for tribal law enforcement in Public Law 280 jurisdictions. For example, one reservation resident indicated:

(Interviewer) “Do you think a lack of federal funding probably covers lack of services?” [Respondent] “I think it has something to do with it. I mean, it’s just a lack of general funding. States fund their operations a number of different means, which includes federal dollars. And our access to these federal dollars is somewhat restricted by the Interior Department’s budget, not the Department of Justice, which normally funds those activities.”

A law enforcement officer from a Public Law 280 tribe made an express comparison in stating:

(The non-Public Law 280 tribes are) in much better shape than PL 280 (tribes) would be. With the federal status, obviously, they have the opportunity for more grants and more federal dollars rolling in than from what I can see, the PL 280 tribes. They’re more on their own, doing things by the seat of their pants, and the best with what they have at the moment.

For the Public Law 280 tribes that have been able to establish tribal police departments, lack of funding is genuine problem. Reservation residents do not believe that tribal police fail to share their priorities, as many do regarding county police. When tribes do have their own funding sources, as from gaming or COPS grants, they readily allocate money to enhanced public safety.

For the non-Public Law 280 tribes, we had 51 responses regarding tribal law enforcement funding from the reservation residents, including tribal officials, tribal court personnel, elders, and general citizens involved with law enforcement issues in the community); 11 from federal, state, and tribal law enforcement personnel; and 2 responses from federal criminal justice personnel. The reservation residents’ responses were divided as follows:

Non-PL 280 Reservation Residents:

Cannot say	2%	(1)
Lack of funding is not a major problem	11.7%	(6)
Lack of funding would be a problem but for tribal \$	3.9%	(2)
Inadequacy of tribal law enforcement due to something other than lack of funds	5.9%	(3)
Tribal law enforcement is underfunded	76.5%	(39)

The federal and tribal law enforcement and criminal justice personnel responded as follows:

Non-PL 280 Law Enforcement and Criminal Justice Personnel:

Cannot say	0%	(0)
Lack of funding is not a major problem	23.1%	(3)
Lack of funding would be a problem but for tribal \$	0%	(0)
Inadequacy of tribal law enforcement due to something other than lack of funds	0%	(0)
Tribal law enforcement is underfunded	76.9%	(10)

As these data indicate, in the non-Public Law 280 jurisdictions, assessments of the relationship between funding and the quality of tribal policing are quite similar as between reservation residents on the one hand, and law enforcement and criminal justice personnel on the other. That similarity is found regarding assessments of tribal police in the Public Law 280 jurisdictions, as well. The major difference in the non-Public Law 280 pattern from the Public Law 280 jurisdictions is that a somewhat larger percentage of respondents in all categories for the non-Public Law 280 cases views funding as a problem for tribal police: slightly over three-fourths for the non-Public Law 280 tribe as compared with two-thirds for the Public Law 280 tribes. This difference may reflect the fact that Public Law 280 tribes are less likely to have any federal support at all for their tribal police, and, therefore, only Public Law 280 tribes that have strong independent sources of funding are likely to create tribal police departments.

Another noteworthy difference between the non-Public Law 280 tribes and the Public Law 280 tribes regarding tribal police is the fact that a small percentage of reservation residents in the non-Public Law 280 cases (5.9%) sees inadequate services as caused by something other than lack of funding, whereas none of the reservation residents in Public Law 280 cases gave such a response. Again, the greater prevalence of tribal policing in non-Public Law 280 states may account for this small difference.



Statements from the respondents explain why some of the reservation residents and law enforcement/criminal justice personnel do not view funding as a problem for tribal police.

As far as funding for the tribal police department, you just kind of got to go out to the casino ... and realize that they may have a better source of funding their police agencies than the county does.  
(Criminal Justice Personnel)

I don't think there is much of a lack of funding. And this community is very unique, in that the tribal board, or the counsel, if you will, and the membership at large understand the need for a good, strong, professional law enforcement operation. And they have funded that as such. But this is probably the best funded tribal law enforcement community probably in the United States. Or close to it. I mean, it's funded to a level to do the job. And it's very unique to have that. Even funded where the officers are paid at the same level as the surrounding communities and the officers there. (Law Enforcement Personnel)

Prior to retrocession (we) had trouble funding law enforcement. ... After retrocession, that doesn't seem to be a problem. ... Having a successful casino helped make that happen. (Reservation Resident)

For the few reservation residents who view something other than funding as the cause of inadequate tribal police services, the responses focused on things like "multiple jurisdictions and the blame game," "a lack of compassion for one's job," and eliciting more "help from the community." In contrast, the reservation residents in Public Law 280 jurisdictions more often identified the non-funding problems with county police as a lack of priority attached to reservation public safety.

The funding concerns regarding tribal police in the non-Public Law 280 jurisdictions have a somewhat different cast than the concerns in the Public Law 280 cases. As with the Public Law 280 cases, the most repeated issue is funding for police, including their training, equipment, and pay levels. There, however, is somewhat greater emphasis on the need for detention and other facilities, probably because tribal police have sole responsibility for intratribal misdemeanors in the non-Public Law 280 jurisdictions. Furthermore, the non-Public Law 280 respondents place greater importance on the funding *levels* provided by the BIA, rather than the absence of BIA funding altogether, doubtless because the non-Public Law 280 tribes are more likely to receive BIA law enforcement funding at some level. Representative statements regarding funding issues for tribal police in non-Public Law 280 jurisdictions are the following:

I do know that the salaries for beginning officers and officers with some various levels of experience are low in comparison with the competition, which would be the small communities and the counties in the area. And so, as a result there's a fair amount of turnover, just because people oftentimes go to (the tribe) and work there to get some experience and then they get a better offer, they leave, just because they can still stay in the area and even live (on the reservation) if they're tribal members, or live in (local off-reservation communities) and make more money. So, I think that resources, in terms of retention, recruiting and retaining officers is certainly an issue. (Reservation Resident)

I think if we had more funding for these officers like that, then we can have a drug task force, but it's nothing. We have some volunteers on it. We have the police on it, but it just is not going anywhere. It just kind of fell apart, totally. And they are trying to put it back together again. But funding would really help. Then you can actually concentrate. (Reservation Resident)

I think facilities are more of an issue than (operating budget) funding. ... The tribal police station is a former library. They park the cars across the highway in a half-ass parking lot. They don't have any place to detain anyone. The court system is a converted, kind of old building. I think if the one thing they could have to help legitimize both the court system and their police efforts would be a top-rate facility. And that takes money. (Reservation Resident)

I know that part of the problem is that doing the hours the supposed drug activity occurs, the (tribe's) police department doesn't have the resources to stay on top of it. It's definitely a funding issue. (Reservation Resident)

There's no problem that we have that a few officers and a little bit more money couldn't resolve. ... If we had enough officers that we could [conduct community policing practices], we would make a big dent in the problems that we have. (Law Enforcement Personnel)

Well, our budgets have been cut so deep. We're having problems right now, as far as keeping (tribal police), keeping personnel because, on this reservation, if you go off the reservation to another police department or even a sheriff's department, you're going to get twice as much as what you get here as starting wages ... and that's why we're having problems keeping our staff. ... Once they get their

training and they find an opportunity to work somewhere else, they take that opportunity. ... (Criminal Justice Personnel)

To summarize our findings regarding the relationship between funding and the quality of law enforcement, our most significant result — consistent with other results of this research — is that county law enforcement under Public Law 280 presents distinctive problems not experienced with tribal or federal law enforcement under the Public Law 280 or non-Public Law 280 conditions. Specifically, nearly one-third of reservation residents in the Public Law 280 jurisdictions believe that counties have the necessary funding to provide adequate law enforcement on the reservation but are unwilling or unable to do so. The county police and criminal justice personnel in these jurisdictions believe, instead, that funding is the sole cause of inadequate services. Yet in the non-Public Law 280 cases, reservation residents, police, and criminal justice personnel all agree that funding alone is the source of any inadequate federal or tribal policing services.

We also determined that — despite the difference in views between Public Law 280 reservation residents and their local police and criminal justice personnel — lack of BIA law enforcement funding for Public Law 280 tribes is a serious problem in the eyes of many respondents in all categories. Tribal funding for reservation law enforcement, either through contracts with counties or direct tribal services, is compensating for the shortage of county services on reservations where tribal economic development or short-term grants are making that possible. Apparently, reservation residents from Public Law 280 tribes would choose a higher level of investment in public safety if they could claim additional resources.

### Funding and the Quality of Criminal Justice

Our interview questions also explored the relationship between funding and the quality of criminal justice. Our hypotheses were similar to those regarding law enforcement: 1) that funding would be a more serious problem for Public Law 280 tribes because of the unavailability of BIA funds to compensate for small, county tax bases, and 2) that the absence of tribal control over county governments would lead to underinvestment in criminal justice programs for Indian country, as well as mismatches between county and tribal priorities.

Most of the questions we posed were directed at the criminal justice personnel in the Public Law 280 and non-Public Law 280 jurisdictions. We spoke with judges, prosecutors, public defenders, probation officers, and juvenile-justice personnel. Hence our results will focus on the nature of the funding problems, if any, that these criminal justice personnel identified for county, federal, and tribal courts, comparing the two types of jurisdictions. In addition, because our access to United States Attorneys was limited, we could not even make a full comparison between the criminal justice personnel under

these two conditions. In a few instances, we will be able to augment these data with responses from reservation residents and police.

## County and Federal Criminal Justice

For the Public Law 280 jurisdictions, we had 41 responses from criminal justice personnel to the question whether lack of funding affects the court and legal services provided to the reservation community, and 38 responses from criminal justice personnel to the question whether they have sufficient administrative resources to deal with reservation-based cases involving Indian defendants or victims. Finally, when we asked criminal justice personnel in the Public Law 280 jurisdictions to describe the resource needs for the county criminal justice system, we received 11 responses. The responses were divided as follows:

Question: Does the level of funding affect the quality of criminal justice provided to the reservation community?

### PL 280 Criminal Justice Personnel:

Cannot say	7.3% (3)
Lack of funding is not a major problem	14.6% (6)
Lack of funding would be a problem but for tribal \$	0% (0)
Inadequacy of county criminal justice due to something other than lack of funds	2.4% (1)
County criminal justice is underfunded	75.6% (31)

Question: Do you have sufficient administrative resources to deal with reservation-based cases involving Indian defendants or victims?

### PL 280 Criminal Justice Personnel:

Cannot say	2.6% (1)
Insufficient resources are not a major problem	36.8% (14)
Sufficient resources would be a problem but for tribal \$	13.2% (5)
Inadequacy of county criminal justice due to something other than insufficient resources	2.6% (1)
County criminal justice lacks sufficient resources	44.7% (17)

Question: What additional resources do you need to deal with reservation-based cases involving Indian defendants or victims?

PL 280 Criminal Justice Personnel:

General funding increases	45.5% (5)
Reservation-specific resources	45.5% (5)
Greater cooperation between tribe and county	9%
(1)	

For the non-Public Law 280 jurisdiction, we had only 3 responses from criminal justice personnel addressing the relationship between funding and quality of federal criminal justice, and none on the question of sufficient administrative resources or resource needs. When we asked whether lack of funding affected the court and legal services provided to the reservation community, the criminal justice personnel from the non-Public Law 280 jurisdictions responded as follows:

Non-PL 280 Criminal Justice Personnel:

Cannot say	0%	(0)
Lack of funding is not a major problem	75%	(3)
Lack of funding would be a problem but for tribal \$	0%	(0)
Inadequacy of federal criminal justice due to		
something other than lack of funds	0%	(0)
Federal criminal justice is underfunded	25%	(1)

Although the small number of respondents for the non-Public Law 280 condition makes statistical comparison unreliable, if not invalid, it's nonetheless interesting to see how great the funding concerns are for criminal justice personnel in the Public Law 280 jurisdictions compared with the non-Public Law 280 jurisdictions. The federal respondents took the position that, if prosecution or other services were needed for reservation-based cases, they would be provided. By comparison, criminal justice respondents expressed concern about funding levels for nearly all the different components of the county criminal justice system — juvenile and adult course caseloads, jail space, public defender services, probation services, victim services, travel funds, treatment programs, and prevention programs. Even though the question regarding sufficiency of administrative resources elicited less concern, nearly 60% of the criminal justice respondents indicated that resources were either insufficient or would be insufficient without tribal contributions.

Slightly more than one-half of the county funding problems that criminal justice personnel identified for Public Law 280 jurisdictions were countywide, while the remainder involved reservation-specific facilities or programs. By comparison, only one-

third of those who responded that administrative resources were insufficient focused on reservation-specific problems. Closer, however, to the funding responses, the answers to the question about resource needs yielded an even divide between those who desired general funding increases versus those who saw the need for more reservation-based, reservation-specific facilities. The following statements exemplify the view that funding problems for county criminal justice are shared across the county:

Of the cases that are going through the court system, they certainly could move through faster. We've got a backlog ... that can be attributed to lack of funding. We also have a severe shortage of jail space. This is attributable to a lack of funding. And it affects all residents on the county line.

We have more cases than we probably should per (public defender) attorney. We should probably have more staff. We should have more books on the subjects, just to do research on it. We should have an investigator, probably in our own department .... And because of the size of our county and the income base of our country, we just can't afford that as a county. So, there are funding issues.

So, for the juvenile court here, as well as for us, funding is certainly an issue in terms of how many resources we can send out there for supervision and investigations. So, for example, in this county, caseloads for probation officers have just gotten too big. And probation is unlike mental health or education or welfare, in that our funding source typically comes here from grants or from the county general fund. So, in a poor county such as (ours), general funds is pretty limited, and so caseloads continue to grow, typically, and the more the size of the caseload, it's just uncontrollable. We just take more cases and keep on laying it on the people that are doing the job, and, especially in years like this, we'll be happy to save the people that we have, given the overall state budget situation and the county budget situation. So, the time that can go into a typical case gets smaller and smaller.

...[T]he system is overburdened. There are not enough public defenders, even with the provision for the alternative public defender ... there's too many cases. But that's true statewide. They're not discriminating on the reservation by doing that; it's just a statewide problem.

The (state) has been trying to cut (criminal justice) expenditures over the last four years and has directly impacted both prosecution and parole in doing so. (The probation department) no longer wants to intensively monitor people who were put on probation for minor offenses, which would include many of the domestic situations, which is one of the most prevalent problems that we have on tribal lands. From that perspective, I don't believe people are being monitored sufficiently enough to make adequate changes in their life styles .... [S]o it's basically one of a very ineffective system that we're spending way too much money on.

Some criminal justice respondents from the Public Law 280 jurisdictions, however, stated that the county criminal justice system was not serving tribal communities well because it was failing to provide tribally specific services or services appropriate to the crime risks faced on reservations. These services included more proximate facilities (such as jails and courtrooms), tribally specific juvenile, probation, and public defender services. The following statements illustrate such views:

It's very difficult for (reservation) people to get to court because of transportation issues, distance of travel, and the fact that many of them don't have licenses. (And where tribal members have reservation license plates on their cars), there's no question that some cops will stop people if they have reservation plates and check for warrants.

Lack of funding is a problem for government, generally. And given lots of money for training and recruitment of staff and cops, and support for those folks, I'm sure we can do a better job. I mean, I would like to have two, three, or four Indian-specific probation officers. But I can't offer extra salary for extra duty kinds of things. And I can't. Right now we have a hiring freeze going on because of the lack of resources.

I'm getting back to actually having, maybe resident or deputy probation officers that live in the (reservation) area, that are familiar with the situations going on out there, that know the hot spots . ... Oftentimes, as it's with non-Indian communities an issue of delinquency matters, is not just a juvenile being the problem and the identified client, that type of thing — it extends beyond that into family dysfunction. Oftentimes, it will go into, kind of, generational issues regarding substance abuse, regarding criminality and so on, and to deal with those things effectively, I really think you need to, kind of, for our staff, it would be very helpful to be immersed in it

and really know what's going on in order be able to provide a more comprehensive, wrap-around kind of process in terms of dealing with those kids and families.

[R]ight now everything has to come here to (the off-reservation county seat), and that is at least almost an hour's drive. ... A consequence of the remoteness of the courts to the (reservation) is when it comes time to pick jurors, and there's a statutory presumption if you're traveling more than 75 miles, it's a hardship, and you're always asking jurors about hardship.

Most of my (probation) clients, I find, are able to sail through treatment, actually do real well in the structure of a treatment program, but when it comes to coming home and coming back to the rez, it's really hard to maintain a sober lifestyle. And so there really needs to be some sort of treatment, both half-way house type and more treatment modalities, available here on the reservation.

Where I think we really have big difficulties is on the juvenile side. I'm real concerned about that because, when you take Indian kids, and if there has to be a removal from home, I don't think that they particularly thrive well in a lot of the group-home situations that aren't geared to a Native population, and yet we have oftentimes not a lot of other options. It would really be marvelous to see some type of juvenile detention facility and juvenile group home facility on the rez. ... I had an 11-year-old who has stolen four cars. So you don't see that kind of thing real often. And he smashed three of them, so he's a danger to himself and a lot of others. ... And we've tried all kinds of interventions to modify the behavior without success. And he is so young that we had to put him in a secure detention facility just pending the outcome of his case. I mean, you hate to do that to young people. You hate to have to do that. And the only secure detention facility in this area is ... a long drive (from the rez).

What I think would really be moving in a positive direction would be that resources come closer to the reservation, or on the reservation, so, instead of having to rely on referrals outside, or in a community away from the actual reservation, if more resources could come on or near the geographical area that, for instance, I'm thinking juveniles, in this case, or even the adults, if they have more resources available there, either onsite or on the reservation or certainly in close proximity. Because, quite often, what you have is transportation issues, you have a lot of issues that come into play.



The responses from Public Law 280 and non-Public Law 280 jurisdictions indicate that criminal justice personnel from the former view underfunding as a more serious problem than do personnel from the latter. Furthermore, the Public Law 280 respondents did not only see the funding problem as one affecting county residents. Rather, somewhat less than half stated that reservation-specific services were needed — because of the location of county service centers, cultural differences between tribal members and the dominant social group; or specific crime risks associated with the reservations — but could not be provided because of a shortage of funds. Because there were so few responses to this question from reservation residents, we cannot determine from this question, as we could from the questions regarding law enforcement, whether reservation residents in either condition view a lack of attention to reservation priorities or other non-funding issues as an equal or greater problem.

### Tribal Criminal Justice

All five of the non-Public Law 280 jurisdictions we studied had tribal courts exercising general adult criminal jurisdiction, as did the one straddler tribe. Of the 11 Public Law 280 tribes, only three had tribal courts exercising some adult criminal jurisdiction. Another 6 had tribal courts exercising civil, regulatory, and/or juvenile jurisdiction, and 2 others had no tribal court at all.

Because tribal criminal authority is so rarely exercised by Public Law 280 tribes, we did not ask interviewees from those jurisdictions about tribal court funding issues. We did, however, receive 6 spontaneous statements from reservation residents about the need for additional funding for tribal courts in Public Law 280 states, mainly when we asked them an open-ended question, or when we asked them about tribal law enforcement. Examples of such statements are the following:

But it's like our tribal court funding. And that's the other piece of it: Because we're Public Law 280, the feds say, "Well, you don't get funding because the state provides these services to you."... We always fight, we need increases and tribal court funding. ... We've already heard 500 new cases so far this year in tribal court. And we still get \$67,000 a year to fund the whole operation (from BIA). The tribal court, we need a probation officer. We need somebody to track (cases).

(My parting thought is that) maybe (federal agencies) can find ways for tribes to find funds to fund their own probation department.

(Because of lack of funding) we don't have the tools to follow through. Most of the people, we just don't do probation. Because of

the limitations of our holding facility ... we can't jail people as a penalty.... If you impose a labor requirement on a case, there's no way to enforce it because they don't show up .... (and we can't threaten them with state prosecution because) the state won't take a (reservation-based) misdemeanor ... unless it's an exceptional case.

In the non-Public Law 280 jurisdictions, we asked for and received more responses regarding the relationship between funding, the quality of tribal criminal justice, and the adequacy of administrative resources to support tribal criminal justice systems. These responses were provided by criminal justice personnel (including federal and tribal officials), reservation residents, and (to a far lesser extent) law enforcement personnel. Grouping the criminal justice and law enforcement personnel together, we can present the responses as follows:

Question: Does the level of funding affect the quality of criminal justice provided to the reservation community?

Non-PL 280 Criminal Justice and Law Enforcement Personnel (21 responses):

Cannot say	4.8%	(1)
Lack of funding is not a major problem	9.6%	(2)
Lack of funding would be a problem but for tribal \$	0%	(0)
Inadequacy of tribal criminal justice due to something other than lack of funds	9.6%	(2)
Tribal criminal justice is underfunded	76%	(16)

Non-PL 280 Reservation Residents (6 responses):

Cannot say	0%	(0)
Lack of funding is not a major problem	0%	(0)
Lack of funding would be a problem but for tribal \$	0%	(0)
Inadequacy of tribal criminal justice due to something other than lack of funds	0%	(0)
Tribal criminal justice is underfunded	100%	(6)

Question: Do you have sufficient administrative resources to deal with reservation-based cases involving Indian defendants or victims?

Non-PL 280 Criminal Justice and Law Enforcement Personnel (17 responses):

Cannot say	0%	(0)
Insufficient resources are not a major problem	17.6%	(3)

Sufficient resources would be a problem but for tribal \$	0%	(0)
Inadequacy of tribal criminal justice due to		
something other than insufficient resources	0%	(0)
Tribal criminal justice lacks sufficient resources	82.4%	(14)

Non-PL 280 Reservation Residents (3 responses):

Cannot say	0%	(0)
Insufficient resources are not a major problem	33.3%	(1)
Sufficient resources would be a problem but for tribal \$	0%	(0)
Inadequacy of tribal criminal justice due to		
something other than insufficient resources	33.3%	(1)
Tribal criminal justice lacks sufficient resources	33.3%	(1)

The broad consensus of reservation residents, criminal justice personnel, and law enforcement officers in non-Public Law 280 jurisdictions is that tribal criminal justice is underfunded and lacks sufficient administrative resources. The only departure from this pattern occurs where we received only three responses from non-Public Law 280 reservation residents, and one respondent asserted that fundamental lack of understanding of the legal system is a more serious problem than lack of funding.

As in the Public Law 280 jurisdictions, the range of concerns is broad, reaching all aspects of the criminal justice system. Of particular salience for our study, several respondents mentioned that BIA 638 contract funds are insufficient, and that retrocession improved the financial position of the tribal justice system. Representative comments about the 638 contracts are the following:

I always believed that ... whenever the Bureau 638's a program to the tribe, any tribe, they've always set it up for failure. They never provide enough funding for anything .... Then the tribe, when they receive those programs, they might be certified as ready to receive those programs by the Bureau, but they're never ready. It's always the school of hard knocks, and then the court situation, it just snowballs. I don't know if it could ever get any better because there is a lack of funding, there's a lack of training, there's a lack of resources. The Bureau just says, "Well, you guys wanted 638 the court? Operate the court. Here, here's your money." And they don't give any of the tribes the tools they need to do the job. And it takes them years. And a lot of times throughout those years, they stumble. And that creates a prevailing attitude among tribal members that people are incompetent when they're just trying to do their job without any tools. So, I blame 638 a lot for our woes .... (Criminal Justice Personnel)

(The tribal criminal justice system needs) at least another probation officer. (And the reason we don't get it) would be mostly budgetary. There is no money. (Under our 638 arrangement, we get) the same formula yearly. ... I thought I would try (to ask for more) last year .... And they said, "No, you can't do that." (Criminal Justice Personnel)

An illustrative comment about the impact of retrocession on funding is the following:

There's a lot more funding available now that the tribe is not 280. ... We need lots more. The tribal court facility is woefully, terribly inadequate. ... There aren't enough chairs for people to sit down. There's no separate space for the jurors to be in. There's no protected way of bringing in inmates so that the jurors don't see them. ... And we need more judges, we need more courtrooms ... and the tribe's well aware of this and it's part of the plan .... (But since retrocession) there's a whole lot more money that the tribe is putting into the services. A lot more money than they used to. (Criminal Justice Personnel)

Because we received only 9 responses from interviewees in the non-Public Law 280 jurisdictions regarding specific resource needs for tribal criminal justice — 6 from criminal justice personnel and three from reservation residents — we do not present them in statistical form. Combined with the responses regarding funding and sufficiency of administrative resources, these responses demonstrate the broad range of funding concerns, with respondents stating needs for: a database of tribal laws and cases, more judges and judicial training, funding to support alternative sentencing (including community service, electronic monitoring, rehabilitation, and treatment programs), public defenders (and the investigators and expert witnesses to support them), more probation officers, more prosecutors, more administrative staff, and court management technology, as well as new court facilities, separate juvenile detention facilities, and transitional housing for juvenile offenders. The following responses suggest the nature and intensity of concerns about resources for tribal criminal justice in the non-Public Law 280 jurisdictions:

(Lack of funding is) the number one big thing that always stopped us from growing. We've currently got one judge that hears way more cases than what I think he can handle. ... We have a public defender, we have a prosecutor that have so many cases. I think with the proper funding, there would be more people there, more hands to do that work that needs to be done to make sure that justice is being

served to the people here. ... Without that funding, with the limits of funding that we have, it limits us in what we can do. (Reservation Resident)

And we have no transitional housing. So, both for kids coming out of jail and also coming out of treatment, there's no way to transition them back into the communities. So, we send them right back into the same homes, and they're right there committing the same crimes again within a week of serving either 90 days in jail or 90 days in treatment. (Reservation Resident)

## Conclusion

Several alternate hypotheses have framed our inquiry in this chapter. One was that law enforcement and criminal justice on reservations subject to Public Law 280 would have more serious funding problems than their counterparts for non-Public Law 280 reservations subject to federal and tribal jurisdiction. This hypothesis was tempered by our awareness that new opportunities for tribal funding through gaming, as well as persistent difficulties with adequate funding for federal law enforcement on reservations, might narrow that gap. Our alternative hypothesis was that because county law enforcement and criminal justice under Public Law 280 are unaccountable to tribal communities, reservation residents might find that problems other than funding were more important than funding levels in determining the availability and quality of those services. Our findings provided mixed support for the first hypothesis, and interesting confirmation for the second.

The quantitative data regarding federal funding levels for tribal law enforcement and criminal justice suggest that Public Law 280 tribes are not faring as well as those subject to federal and tribal jurisdiction. At least for the mandatory Public Law 280 tribes, federal funding from the Department of the Interior for tribal law enforcement and criminal justice has been dramatically lower than for the non-Public Law 280 tribes. While Department of Justice funding per capita is much more equitable as between Public Law 280 and non-Public Law 280 tribes, the percentage of Public Law 280 tribes receiving no funding at all is much higher. These figures support the first hypothesis.

However, when we turned to the qualitative data regarding county, federal, and tribal law enforcement and criminal justice, we found some interesting support for the second hypothesis. The dominant pattern from all the respondents regarding funding levels in Public Law 280 and non-Public Law 280 tribes is that funding levels are too low to support law enforcement and criminal justice of adequate quality in Indian country. The reservation residents from Public Law 280 tribes, however, were the most notable

exception to this pattern.<sup>28</sup> Nearly one-third of them expressed the view that funding was *not* the reason for inadequate law enforcement services. Rather, they pointed to problems that one might associate with lack of accountability, such as failure of county law enforcement to place a high enough priority on services to Indian country. In this assessment, the reservation residents in Public Law 280 jurisdictions differed significantly from the law enforcement and criminal justice personnel in those jurisdictions. Interestingly, in the non-Public Law 280 jurisdictions, reservation residents and law enforcement/criminal justice personnel were largely in accord that funding was the most serious source of inadequate services. We got some indication of why federal law enforcement may be perceived as more accountable to tribal communities. As one respondent indicated, the potential for tribal contracting of BIA law enforcement services pressures BIA police to be more responsive.

The particular types of funding problems identified in Public Law 280 and non-Public Law 280 jurisdictions also vary. Regarding law enforcement, in the Public Law 280 jurisdictions all respondents emphasize insufficient numbers of police, with the reservation residents expressing concern about lack of police training, as well. In contrast, the respondents under federal and law enforcement authority more often mentioned problems with physical facilities, such as police department buildings and jails. Regarding criminal justice, the criminal justice personnel who responded from Public Law 280 jurisdictions indicated that tribally specific facilities and programs are as serious a need as general increases in county funding. In contrast, the non-Public Law 280 criminal justice personnel respondents did not think federal Indian country resources were inadequate at all; and respecting tribal criminal justice, the problems, by definition, could not be separated between those that were tribally specific and those that were not.

Underfunding is clearly affecting the quality of law enforcement and criminal justice in Public Law 280 jurisdictions. For reservation residents in those jurisdictions, however, increased funding won't be sufficient to improve the level of services. Some of the problems are inherent in the jurisdictional structure, and lack of accountability of county law enforcement and criminal justice.

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| <sup>28</sup> Another exception was the response from criminal justice personnel in the federal system, who said that funding was adequate to address crimes in Indian country.

## CHAPTER 12

### Tribal-State Cooperative Law Enforcement Agreements Under Public Law 280

Given the broad-ranging complaints that reservation residents express about the availability, quality, and sensitivity of state/county law enforcement under Public Law 280, we have sought to determine whether tribal-state cooperative law enforcement agreements mitigate some or all of these concerns. Because we hypothesize that two of the underlying problems that animate these concerns are lack of accountability and inadequate resources,<sup>1</sup> we have focused on whether tribal-state cooperative law enforcement agreements address these two problem areas. Because the existing literature on such agreements touts them as remedies for legal uncertainty and gaps in law enforcement authority,<sup>2</sup> we have also focused on whether PL 280 respondents find them useful for that purpose. Our research encompasses the published literature on this subject, and publicly available examples of such agreements<sup>3</sup>, as well as results from analysis of the qualitative interviews that we undertook. This chapter also examines other types of arrangements, such as state legislation conferring peace officer status on tribal police, and federally provided special law enforcement commissions, designed to accomplish some of the same objectives as cooperative agreements. Although cooperative law enforcement agreements also exist in non-PL 280 jurisdictions, they often take a different form because of the different array of federal, tribal, and state criminal jurisdiction. Our focus in this chapter is exclusively on PL 280 jurisdictions.

#### Tribal-State Cooperative Law Enforcement Agreements Under Public Law 280: Two Distinct Types

The Bureau of Justice Statistics Census of Tribal Justice Agencies in Indian Country, 2002,<sup>4</sup> reveals that, of the 51 responding tribes subject to PL 280 jurisdiction in mandatory or optional states, 24, or nearly half, have cooperative agreements with neighboring non-tribal law enforcement authorities. When we speak of tribal-state cooperative law enforcement agreements, we are referring to two distinct types of contractual arrangements: 1) “deputization agreements,” where tribal police are deputized to act as county sheriffs; and 2) “law enforcement services agreements,” where tribal governments contract with county or city police departments to supply policing

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| <sup>1</sup> See Chapter 3, *supra*, at 38.

| <sup>2</sup> See Chapter 2, *supra*, at 26-27.

| <sup>3</sup> Many of these agreements have been compiled by the National Congress of American Indians at [http://www.ncai.org/Law\\_Enforcement\\_Agreements.100.0.html](http://www.ncai.org/Law_Enforcement_Agreements.100.0.html) (last visited August 18, 2007). We were able to secure 16 different tribal-state cooperative law enforcement agreements involving tribes in PL 280 jurisdictions.

| <sup>4</sup> Steven W. Perry, Census of Tribal Justice Agencies in Indian Country, 2002 (December 2005), available at <http://www.ojp.usdoj.gov/bjs/abstract/ctjaic02.htm> (last visited August 18, 2007).

services within reservation boundaries. A third variation, “cross-deputization agreements,” where cross-deputized tribal and county law enforcement officers are authorized to act as their county and tribal counterparts when enforcing law on the reservation, are very rare in PL 280 jurisdictions. That is so because it’s rare to find tribal criminal codes that would be available for county officers to enforce, and because states and counties in PL 280 jurisdictions generally do not need tribal law enforcement authority to enforce criminal law against Indians on reservations. The major exception is some traffic offenses that are deemed regulatory in nature, and, therefore, outside the state’s jurisdiction under PL 280 when violated by an Indian on the reservation.<sup>5</sup>

### Deputization Agreements

What we are calling deputization agreements are sometimes referred to as “memoranda of understanding” or “interagency agreements.” What all of these arrangements share is a provision allowing tribal officers to secure commissions as county sheriffs upon satisfaction of specified conditions. Deputization agreements enable tribal police to act as county officials in circumstances where tribes lack criminal jurisdiction as a matter of federal Indian law, such as the commission of an on-reservation crime by a non-Indian.<sup>6</sup> A similar but lesser form of cooperation, generally known as a “joint power agreement,” does not entail deputization, but each party is authorized to furnish law enforcement assistance to the other when such help is requested.<sup>7</sup>

Before granting a commission to a tribal officer, a county sheriff’s department usually requires several concessions. Generally, tribal officers applying for a law enforcement commission from the local sheriff’s department (usually the county) must meet the same qualifications required of state officers, usually including certification by the state’s Peace Officer Standards and Training (POST) program (or its equivalent as accepted by the POST program). In addition, under the law of at least one PL 280 state, Minnesota, the deputized tribal police officer must be employed by a qualified tribal police department, which means that the department has accepted liability for its officers on the same basis as state officers, maintains the same level of insurance required by state

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| <sup>5</sup> See, e.g., *State v. Stone*, 572 N.W.2d 725 (Minn. 1997). For an example of an agreement authorizing county officers to enforce the tribe’s civil regulatory laws against tribal members on the reservation, see Cooperative Law Enforcement Agreement between the Leech Lake Band of Ojibwe Indians and the Counties of Beltrami, Cass, Hubbard, Itasca and the City of Cass Lake, Minnesota (2000).

| <sup>6</sup> See *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978). The Minnesota Supreme Court has held that federal law generally, and Public Law 280 in particular, do not preclude states and counties from entering into deputization agreements authorizing tribal police to arrest non-Indians (as well as Indians) for violation of state law. *State v. Manypenny*, 682 N.W.2d 143 (2004).

| <sup>7</sup> See, e.g., Law Enforcement/Mutual Aid Agreement Between Oneida Nation and City of Green Bay (1996).



municipalities, has waived sovereign immunity for such claims, and has agreed to abide by state requirements regarding data practices of law enforcement agencies.<sup>8</sup>

Perhaps the most significant provisions of a deputization agreement are those bearing on each party's liability for the acts of its officers. With rare exception, deputization agreements provide that tribal police enforcing state law remain, for liability purposes, tribal employees.<sup>9</sup> In anticipation of legal claims against its officers, a tribe must, at a minimum, maintain a liability-insurance policy to cover claims against its officers acting within the scope of their duties. The counties of at least one state, Minnesota, attempt to put tribes on equal footing with the state's municipalities. Pursuant to deputization agreements with their surrounding counties and requirements of Minnesota law (see above), the Fond du Lac, White Earth, Mille Lacs, and Leech Lake Bands have, at one time or another, agreed to be subject to liability for the acts of their officers arising out of a law enforcement agency function to the same extent as a Minnesota municipality,<sup>10</sup> for which maximum liability is \$1 million per incident and \$300,000 to any one claimant.<sup>11</sup> Likewise, the Interagency Agreement between the City of Siletz and the Siletz Tribe (2000) provides that, for claims subject to Oregon's Tort Claims Act, the tribe's liability would be capped according to the terms of that Act — presently, \$500,000 per incident and \$250,000 to any one claimant.<sup>12</sup> However, not all states cap liability for claims against police officers; of those that do, not all extend the cap to claims against tribal officers.

Apart from seeing to its own liability, each contracting party typically requires the other to indemnify it for claims related to the conduct of the other's law enforcement

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<sup>8</sup> Minn. Stat. § 626.93.

<sup>9</sup> The lone exception we found is a mutual-assistance agreement between Oneida Nation of Wisconsin and the City of Green Bay, under which “[a]n officer responding to a request for assistance is deemed an employee of the requesting department.” It would be a mistake to conclude, however, that mutual-assistance agreements treat these situations the same. The Mille Lacs Tribe's mutual-assistance agreement with Mille Lacs County states that an officer responding to a request for assistance remains under the control of the responding party in all material respects — pay, tort liability, worker's compensation — and “shall otherwise be deemed to be performing the regular duties of the responding party.”

<sup>10</sup> Minn. Stat. § 466.

<sup>11</sup> The statute also prohibits the award of punitive damages. *See, e.g.*, Agreement between Carlton County and the Fond du Lac Tribe (2001); Agreement between Pine County and the Mille Lacs Band of Ojibwe Indians (1998).

<sup>12</sup> Or. Rev. Stat. § 30.270.

officers.<sup>13</sup> At least one agreement — between California’s Hoopa Valley Tribe and Humboldt County — required the County to reimburse the Tribe “for the costs of insurance coverage of personnel and equipment traceable to assisting [the County Sheriff’s Office] in compliance with the agreement.”<sup>14</sup> This type of cost sharing, however, is clearly an exception.

Another significant issue addressed by most deputization agreements is sovereign immunity. Tribal immunity tends to be a more significant point of negotiation because most states have passed tort claims acts outlining the circumstances in which political subdivisions and their employees may be sued.<sup>15</sup> It’s well-established that tribal immunity is a complete defense against suit, absent express congressional authorization or waiver by the tribe itself.<sup>16</sup> In the context of deputization agreements, tribal sovereign immunity is a potential barrier to two types of suits: (1) those by individuals for torts committed by tribal officers during exercising law enforcement authority, and (2) those by the county to enforce the tribe’s obligations under the deputization agreement. Some agreements, such as those between the White Earth Band and its surrounding counties,<sup>17</sup> require the tribe (besides maintaining liability insurance) to waive its sovereign immunity against the former but are silent as to the latter. On the other hand, some agreements waive immunity only with respect to contract disputes between the parties, not from tort claims by aggrieved citizens. For example, the Siletz Tribe waived its sovereign immunity “for the limited purpose of permitting the City [of Siletz] to sue for breach of any provision” of the deputization agreement.<sup>18</sup> Similarly, the Oneida Nation of Wisconsin waived its immunity for the limited purpose of allowing the City of Green Bay to enforce any arbitration judgment awarded under the deputization agreement.<sup>19</sup> There are, however, the rare agreements, such as the Deputization (2003) and Joint Powers (1995)

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<sup>13</sup> As one California legislative analysis indicated, “state or local liability based on actions of tribal officers is unlikely ‘based merely on a grant of state powers. However, liability might be based on specific actions by state or local agencies, such as holding a prisoner who was originally taken into custody by tribal officers or based on joint law enforcement activities with tribal officers which caused injury or a deprivation of civil rights.’” California Department of Justice Bill Analysis — Criminal Division, Nov. 22, 2000 at 11-12. Another possibility would be county liability “based on advice given by a state or local law enforcement agency to a tribal officer for the tribal officer’s actions.” *Id.* at 12 n.13.

<sup>14</sup> Joint Powers Agreement between the Hoopa Valley Tribe and the County of Humboldt (1995).

<sup>15</sup> *See, e.g.*, Cal. Gov. Code § 815.2; Minn. Stat. § 466.02; Or. Rev. Stat. § 30.265; Wis. Stat. § 893.80.

<sup>16</sup> *See* *Kiowa Tribe v. Manufacturing Techs.*, 523 U.S. 751, 754 (1998).

<sup>17</sup> *See, e.g.*, Agreement Relating to the Use of Law Enforcement Facilities and Personnel in Cooperation Between the White Earth Band of Chippewa Indians and Mahnommen County (2000) (subsequently voided by the County and renegotiated).

<sup>18</sup> Agreement between Confederated Tribes of Siletz Indians and City of Siletz (2000).

<sup>19</sup> Law Enforcement/Mutual Aid Agreement Between Oneida Nation and City of Green Bay (1996).

Agreements between the Hoopa Tribe and Humboldt County, in which the Tribe does not seem to waive immunity for any purpose.<sup>20</sup>

Even absent a waiver of tribal sovereign immunity, victims of torts committed by deputized, tribal law enforcement officers may still have recourse under the Federal Tort Claims Act (FTCA), under which the United States has waived its immunity from suit for injuries resulting from the negligent or wrongful act of a governmental employee acting within the scope of his office.<sup>21</sup> The 1990 amendments to the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA),<sup>22</sup> which had authorized tribes to administer programs or services that otherwise would have been administered for their benefit by the federal government, extended the FTCA to cover tribal members carrying out self-determination contracts under the ISDEAA.<sup>23</sup> Since some federal criminal jurisdiction remains even over Indian Country in mandatory Public Law 280 states, tribes affected by Public Law 280 are still able to contract with the BIA to perform some federal

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<sup>20</sup> Neither agreement was “intended nor shall it be so interpreted to be a waiver of sovereign immunity of the Hoopa Valley Tribe or [its] employees, officials and agents.”

Notably, in none of these cases does the deputization agreement identify the forum in which the Tribe consents to be sued, a lack of specificity that could breed litigation. The failure to secure a waiver of tribal sovereign immunity makes the county and its citizens’ ability to recover contract and/or tort damages from the tribe dependent on the tribe’s willingness to submit to suit — an iffy proposition at best. The Supreme Court’s decision in *C & L Enters. v. Citizen Band Potawatomi Indian Tribe*, 532, U.S. 411 (2001), gives one room to argue that a tribe’s agreement to mediate or arbitrate disputes constitutes a waiver of immunity. In that case, the Court found a waiver of tribal sovereign immunity in state court when the Tribe “expressly agreed to arbitrate disputes with C&L relating to the contract, to the governance of Oklahoma law, and to the enforcement of arbitral awards “in any court having jurisdiction thereof.” *C&L*, 532 U.S. at 414. However, the existence of sovereign immunity does not prevent a county from seeking forward-looking injunctive relief against the tribe by a suit against a tribal officer under the doctrine set out in *Ex Parte Young*, 209 U.S. 123 (1909). See *Big Horn County Elec. Coop. v. Adams*, 219 F.3d 944, 954 (9th Cir. 2000) (“[S]uits for prospective injunctive relief are permissible against tribal officers under the *Ex Parte Young* framework.”). See also *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 59 (1978) (citing *Ex Parte Young* to support holding that “as an officer of the Pueblo, petitioner Lucario Padilla is not protected by the tribe’s immunity from suit”); *Boisclair v. Superior Court*, 801 P.2d 305, 315-16 (Cal. 1990).

<sup>21</sup> 28 U.S.C. § 2679(b). The FTCA bars claims for most intentional torts, but recognizes an exception for those committed by “investigative or law enforcement officers of the United States,” which are defined as “any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.” 28 U.S.C. § 2680(h). Thus, tribal law enforcement officers who become BIA deputies with authority to enforce federal law would be covered by the FTCA — that is, the United States would be substituted for suits against those BIA commissioned tribal law enforcement officers who committed a tort within the scope of their duties. See, e.g., *Deputation Agreement between Cabazon Band and BIA* (2001).

<sup>22</sup> 88 Stat. 2203, codified at 25 U.S.C. § 450a.

<sup>23</sup> 104 Stat. 1915, 1959-60, codified at 25 U.S.C. § 450f.

law enforcement services.<sup>24</sup> Thus, under the amended ISDEAA, “any civil action or proceedings” against “any tribe, tribal organization, Indian contractor or tribal employee,” involving claims resulting from performance under a self-determination contract “shall be deemed to be an action against the United States” and “be afforded the full protection and coverage of the [FTCA].”<sup>25</sup> Unless a tribal law enforcement officer is acting as a federal law enforcement officer,<sup>26</sup> or pursuant to a self-determination contract with the federal government, s/he is outside the reach of the FTCA.<sup>27</sup>

In exchange for these concessions, tribes generally negotiate reciprocal liability insurance and, less frequently, sovereign immunity provisions.<sup>28</sup> A probable explanation for the general absence of immunity waivers by counties is that, as noted, such immunity has often already been waived through a state’s tort claims acts or similar legislation. Whether such a waiver would be good with respect to tribal court is questionable.<sup>29</sup>

Another type of provision that some tribes have negotiated requires county officers to complete courses designed to increase their cultural sensitivity. For example, the Hoopa Valley Tribe has required Humboldt County officers to complete a course in Hoopa tribal law and history (and, when practical, training in cultural and racial diversity).<sup>30</sup> Most deputization agreements, however, do not call for the county to familiarize itself with the culture of the people it agrees to police.

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<sup>24</sup> See, e.g., 18 U.S.C. §§ 1154-56, 1165 (federal law expressly applying to Indian country); 25 U.S.C. § 2804(a) (authorizing Secretary of the Interior to enter into law enforcement related contracts). See also *Hopland Band of Pomo Indians v. Norton*, 324 F. Supp. 2d 1067, 1076-77 (N.D. Cal. 2004) (rejecting government’s argument that federal law is inapplicable on reservations in PL 280 states and holding that ISDEAA contemplates law enforcement contracts with tribes).

<sup>25</sup> 25 U.S.C. § 450f, Notes. See also 25 U.S.C. § 2804(a), (f) (Indian Law Enforcement Reform Act) (providing that tribal personnel entering into law enforcement agreements with the Secretary of the Interior shall be considered federal employees for FTCA purposes).

<sup>26</sup> 28 U.S.C. § 2680.

<sup>27</sup> See U.S. General Accounting Office, *Federal Tort Claims Act: Issues Affecting Coverage for Tribal Self-Determination Contracts* (July 2000), available at <http://www.gao.gov/archive/2000/rc00169.pdf> (last visited Nov. 10, 2006); Sandra J. Schmieder, “The Failure of the Violence Against Women Act’s Full Faith and Credit Provision in Indian Country: An Argument for Amendment,” 74 U. Colo. L. Rev. 765, 787 (2003).

<sup>28</sup> See Joint Powers Agreement between Hoopa Valley Tribe and Humboldt County (1995).

<sup>29</sup> See *Nevada v. Hicks*, 533 U.S. 353 (2001).

<sup>30</sup> Deputization Agreement between the Hoopa Valley Tribe and Humboldt County (2003). In its 2004 Deputization Agreement between the Yurok Tribe and County of Humboldt, the County agreed that “absent budgetary constraints,” deputy sheriffs “shall complete a course of training in cultural and racial diversity, emphasizing Yurok culture,” substantially similar to the course already required under California Penal Code § 13519.4.

Apart from deputization provisions, deputization agreements routinely call for (i) the county to make its jails available for Indian and non-Indian suspects arrested by tribal officers;<sup>31</sup> (ii) the parties to make their officers available as witnesses when needed to assist the other party's prosecution; and (iii) the parties to share information and data useful for solving and preventing crime. Also present in some agreements are arrangements for a joint radio dispatch or 911 system, or for cooperation in responding to dispatches.<sup>32</sup> Rarely, however, do the agreements expressly grant a tribe access to the California Law Enforcement Telecommunications System (CLETS), or its equivalent, which provides all law enforcement user agencies with the capability of obtaining information directly from federal, state, and local computerized information files. The Yurok Tribe, for example, has a 2005 agreement with Humboldt County, California, which provides that, once tribal officers are deputized and complete CLETS training, the tribal police department "will be authorized to receive data from criminal information databases, CLETS, and other computerized information systems." The county agrees not to "unreasonably delay" tribal access to such information, and the agreement goes so far as to define "receive" to mean that tribal officers "are allowed to obtain the information from these databases under the same or similar circumstances" as the county sheriff deputies.

Though deputization agreements are reasonably common, they rarely address in what situations, if any, commissioned tribal officers may enforce state law off the reservation. Because these agreements are negotiated largely to address criminal activity in Indian country, the most relevant scenario would involve a person who commits a crime on the reservation and flees off the reservation: is the tribal officer authorized to pursue and arrest the suspect outside of Indian country for conduct committed inside? Many state laws provide that any deputized police officer acting in fresh and continued pursuit of a person suspected of committing a crime within the officer's primary territorial jurisdiction may pursue and arrest the suspected felon in any other jurisdiction in the state.<sup>33</sup>

Another situation would be one where the crime has been committed on the reservation but the potential witnesses are located outside that territory. One deputization

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| <sup>31</sup> See, e.g., 2005 Law Enforcement Agreement and Joint Program Plan between the Lac du Flambeau Band of Lake Superior Chippewa Indians and Vilas County.

| <sup>32</sup> See, e.g., Cooperative Law Enforcement Agreement between the Leech Lake Band of Ojibwe Indians and the Counties of Beltrami, Cass, Hubbard, Itasca and the City of Cass Lake, Minnesota (2000): "The Counties and City shall enable Band Law Enforcement Officers to participate in the radio dispatch system of the Counties as necessary to enable Band Officers to respond to emergencies and request for assistance on the Leech Lake Reservation."

| <sup>33</sup> See, e.g., Nebraska Attorney General Opinion No. 02009, "Authority of Tribal Police Officers Cross-Designated as Special Deputy State Sheriffs," March 26, 2002; Cal. Penal Code §§ 830.6(b), 832.6(a)(1) (indicating that properly deputized tribal officers attain state peace officer status, including the ability to enforce state law by pursuing and arresting non-Indians).

agreement that does address this issue involves the City of Siletz and the Siletz Tribe of Oregon (2000). In that agreement, the City authorized law enforcement officers of the Siletz Tribe to enforce city, county, and state law anywhere in the City of Siletz. The 2005 agreement between the Yurok Tribe and Humboldt County provides that the tribal police department “is authorized to conduct inquiries relative to civil or criminal investigations off the Yurok Reservation, within the territorial limits of Humboldt County, after receiving approval from the on-duty supervisor or watch commander, which approval will not be unreasonably delayed by the Humboldt County Sheriff.”

Another issue rarely addressed in deputization agreements is how the parties intend to fund the promised law enforcement services. The issue of funding is no small issue for the contracting parties, whose financial straits often prompt the negotiation of a deputization agreement. Because deputization agreements often entail increased patrolling and response duties, especially for tribes, it seems possible, if not likely, that such agreements may exacerbate, rather than lessen, the financial burdens on the contracting governments. For example, a tribe experiencing high crime rates and receiving low levels of patrolling and response from the county may seek a deputization agreement to increase the police presence on the reservation (as occurred at Hoopa). Generally, parties are expected to bear all costs necessary to carry out law enforcement duties under their deputization agreement, a point emphasized by the routine inclusion of a provision requiring county and tribal officers to be available for any trial or hearing in the other’s courts, but expressly denying that either party shall be entitled to any compensation for these appearances.<sup>34</sup> Occasionally, though, the parties compact to share resources. For example, agreements involving the Siletz Tribe/City of Siletz (2000) and the Oneida Nation of Wisconsin/City of Green Bay (1996)<sup>35</sup> promise the Tribes a portion of the fines and/or fees that they generate through enforcing state law.<sup>36</sup> Even less frequently, as in the mutual-aid agreement between the Oneida and Green Bay, the terms allow each party to bill the other for expenses related to rendering assistance.

Wisconsin cooperative law enforcement agreements, however, are rarely if ever negotiated without funding in mind. Since 1955, Wisconsin’s Department of Justice has administered some type of grant program that defrays the costs of tribal law enforcement efforts. Since 1988, the state’s DOJ has administered the current County-Tribal Law Enforcement (CTLE) grant program, under which any county that has at least one federally recognized Indian reservation within, or partially within, its boundaries may enter into an agreement with those tribes and submit a jointly developed cooperative agreement spelling out the law enforcement issues, the services to be performed, and the

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| <sup>34</sup> See, e.g., Agreement between Pine County and the Mille Lacs Band of Ojibwe Indians (1998).

| <sup>35</sup> The Oneida Nation of Wisconsin agreement is a mutual-aid agreement, the purpose of which is to have Tribe and City provide assistance upon the request of the other party, not a deputization agreement.

| <sup>36</sup> In the case of Siletz, the Tribe may only receive such payment for law enforcement activities on non-tribal lands within City limits.

amount needed to implement the program.<sup>37</sup> The Wisconsin DOJ then determines how much each eligible applicant is entitled to, using a formula incorporating three main criteria: (a) the population of the reservation area to be served by the program; (b) the complexity of the law enforcement problems that the program proposes to address; and (c) the range of services that the program proposes to provide.<sup>38</sup> The program is funded by a portion of the money paid to the state by tribes pursuant to gaming compacts.<sup>39</sup> We have not been able to identify any other state that has passed such a law providing financial incentives for tribal-state law enforcement agreements.

### Law Enforcement Services Agreements

Deputization agreements work for Indian nations that have established their own police departments. Most tribes, however, affected by Public Law 280 have no law enforcement agencies, largely because of historic lack of funding from the BIA (see Chapter 1). For those tribes that lack police departments but are fortunate enough to have substantial resources from gaming or other economic development, law enforcement services agreements have become a way of enhancing police services from county sheriffs. Examples include agreements between the Soboba Band of Mission Indians and Riverside County, California (2006),<sup>40</sup> Blue Lake Rancheria and Humboldt County, California,<sup>41</sup> the Confederated Tribes of Grand Ronde and Polk County, Oregon (1999), the Muckleshoot Tribe and King County, Washington (2000), and the Ho Chunk Nation and Jackson County, Wisconsin (2005).

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| <sup>37</sup> See Wis. Stat. § 165.90.

| <sup>38</sup> Wis. Stat. § 165.90(3m)(a)-(c). The Wisconsin DOJ also considers the level of unemployment on the reservation and the crime rate in the service area in determining how much to award each program. Discussion with Kelly Kennedy, Wisconsin DOJ. See also Wisconsin Joint Committee on Finance, Paper #120 (May 11, 2005) at 1, available at [www.legis.state.wi.us/lfb/2005-07budget/BudgetPapers/120.pdf](http://www.legis.state.wi.us/lfb/2005-07budget/BudgetPapers/120.pdf) (last visited August 18, 2007).

| <sup>39</sup> The CTLE program is distinct from two similar programs administered by Wisconsin's Office of Justice Assistance (OJA): (i) the county law enforcement services grant program, and (ii) the tribal law enforcement assistance grant program. The county grant program applies to a county that: (1) borders one or more federally recognized Indian reservations (compare DOJ-administered CTLE program, which funds law enforcement programs involving reservations wholly or partially within a county); (2) has not established a cooperative CTLE program under the DOJ's grant program with each such tribe or band; (3) demonstrates a need for grant-eligible law enforcement services; and (4) applies for a grant and submits a proposed plan showing how the funds will be used to support law enforcement services. Pursuant to its enabling legislation, the OJA cannot award a grant of more than \$50,000 to any county. The OJA's tribal law enforcement program requires interested tribes to demonstrate their need, as well as a proposed plan for spending the grant. Recently, there has been considerable discussion of merging the OJA and DOJ programs within one agency, but as of this writing the largely duplicative programs remain in force.

| <sup>40</sup> See Kenny Klein, "Reservation Patrols Beefed Up," Riverside Press-Enterprise, March 28, 2006.

| <sup>41</sup> Christine Bensen-Messinger, "Blue Lake to Fund Deputies," The Eureka Reporter, Sept. 1, 2005.

Law enforcement services agreements allow tribes to tailor services to their communities. Over and above base services that the county may acknowledge its obligation to provide, the agreement will typically commit the county to assigning a specific number of deputies to patrol the reservation and discharge other duties. For example, the 2000 Muckleshoot Indian Tribe Interlocal Agreement with King County, Washington provides that the duties of dedicated officers will include: “enhanced 911 response; providing crime prevention analysis and training to the tribal community, which may include block watch or community action programs; problem solving crime and disorder problems within the tribal community; interact with and mentor tribal youth; provide special emphasis to community concerns; and build partnerships with community members to prevent crime.” The agreement also allows the Tribe to participate in selection of dedicated officers by interviewing and recommending candidates, and establishes a mechanism for regular evaluation by the Tribal Council of the quality of services provided. Tribes may also use law enforcement services agreements to promote cultural awareness and sensitivity among county law enforcement officers. For example, pursuant to its 2005 services provision agreement with the Ho-Chunk Nation, Jackson County, Wisconsin, agreed to train its law enforcement officers in tribal tradition and culture, the role of clan mothers in the Nation’s dispute-resolution tradition, the Nation’s Children and Family Services Division, and the Indian Civil Rights Act.

Law enforcement services agreements typically address liability issues by recognizing that the county retains control over and responsibility for its officers and employees, and establishing that the county will indemnify the tribe for wrongful acts committed by such personnel. While the tribe may also agree to indemnify the county for wrongful acts of its officers or employees, the fact that there is no tribal police department greatly lessens the possibility of such indemnification becoming necessary. In the case of the 2000 Muckleshoot agreement, the parties agreed to a limited waiver of their sovereign immunity solely for purposes of enforcing the agreement, and then the tribe further limited its exposure to the amount of a \$2 million general liability insurance policy that it agreed to maintain.

#### Other Alternatives: Federal Law Enforcement Commissions and Statutory Peace Officer Status

Tribal-state cooperative law enforcement agreements, by definition, presuppose shared interests and mutual consent. However, relations between counties and tribes are not always that cordial and mutually respectful. For example, in the late 1990s the White Earth Band of Chippewa Indians entered into a deputization agreement with the three counties within its reservation boundaries. By late 2001, two of the counties withdrew from the agreement, claiming that the tribal police were spending more time on traffic enforcement, especially against non-Indian drivers, than on community policing of the parts of the reservation remote from the sheriffs’ departments. Eventually, with the help



of federal mediators, one of the counties reestablished an agreement.<sup>42</sup> The possibility of shifting state or county politics, however, can make cooperative agreements of any kind an unstable arrangement for an Indian nation.

However, Indian nations can achieve many of the goals of cooperative agreements by means that do not depend on favorable county politics. As discussed above,<sup>43</sup> tribes in PL 280 jurisdictions are eligible for special, federal law enforcement commissions because of the federal, Indian country criminal jurisdiction that remains even after Congress has authorized state jurisdiction under PL 280. Once tribal officers take on federally commissioned status, they may qualify for state peace officer status or have the powers of arrest of a state peace officer as a matter of state law.<sup>44</sup> These powers would arise without regard to any agreement with the state or a local county. In California, however, some county sheriffs have taken the position that these powers may only be exercised after the sheriff has issued a “letter of convenience.” While special federal law enforcement commissions may partially address the issue of lack of tribal police authority over non-Indians, they have some limitations. For example, they do not provide access to state law enforcement telecommunications systems.

A more direct way for tribal police to secure state peace officer status is for the state to enact a law conferring such status on tribal officers who have completed the state certification program. Kansas, which received criminal jurisdiction over reservations in that state under a pre-PL 280 federal statute, passed such a measure in 2004.<sup>45</sup> It allows tribal law enforcement officers to exercise the powers of peace officers anywhere within the exterior limits of the tribe’s reservation, so long as the tribe has obtained liability insurance coverage for damages assessed in state or federal court from acts of the tribal law enforcement agency in specified amounts,<sup>46</sup> the tribe’s policy carries an endorsement to provide coverage for mutual aid assistance, and the tribe has waived its sovereign immunity up to the amounts of the insurance coverage. Claims brought against the tribal law enforcement agency under this measure must be processed as if the tribe were the state pursuant to the Kansas Tort Claims Act. Peace officer status under the state statute

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| <sup>42</sup> U.S. Department of Justice, Community Relations Service, FY 2003 Annual Report, available at <http://www.usdoj.gov/crs/pubs/fy2003/annualreport2003.htm> (last visited August 18, 2007).

| <sup>43</sup> See pp. 382-383, *supra*.

| <sup>44</sup> See, e.g., Cal. Penal Code § 830.8. Under California law, federal officers may exercise the powers of arrest of a peace officer when they are enforcing federal law and, “When probable cause exists to believe that a public offense that involves immediate danger to persons or property has just occurred or is being committed.”

| <sup>45</sup> Kan. Stat. Ann. § 22-2401a. Minnesota has a law conferring peace officer status under specified conditions, but one of them is that the tribe involved must also have a cooperative agreement with the local county. See Minn. Stat. § 626.93.

| <sup>46</sup> \$500,000 for any one person and \$2,000,000 for any one occurrence for personal injury, and \$1,000,000 for any one occurrence for property damage.

is not intended to preclude deputization or other agreements between local governments and tribes. California tribes organized a campaign to secure passage of such a law in 2001,<sup>47</sup> but were unsuccessful, largely because of controversies over the amount of insurance that Indian nations would have to maintain and the waiver of sovereign immunity.

### Assessing Tribal-State Cooperative Law Enforcement Agreements: Accountability, Funding, and Jurisdiction

In Barker and Mullen's sample of tribal and BIA police departments, which did not differentiate between PL 280 and non-PL 280 jurisdictions, nearly 85% of respondents had cooperative agreements. These departments commonly reported benefits such as increased crime control, the ability to use the other's facilities and equipment, closure of jurisdictional cracks, mutual assistance, faster response times, and the ability to handle the others calls during staff shortages.<sup>48</sup> As our literature review in Chapter 2 suggests, however, these agreements may meet with difficulties because of lack of funding, statutes barring tribes from receiving shares of court fines, inadequate responses to reservation calls by the non-Indian agency, and fear or distrust from the non-Indian community. Perhaps an even larger problem with cross-deputization agreements is that they further encourage a crime-control, professional model of policing rather than an Indian police model. Finally, the existence and success of tribal-state cooperative law enforcement agreements depends upon a lack of antagonism between the tribal and non-tribal police, elected representatives, and constituents.<sup>49</sup>

Our own intensive analysis of 16 such agreements from PL 280 jurisdictions, including the related published literature, has focused on how these agreements affect the degree of accountability, and funding of law enforcement and criminal justice in PL 280 Indian country. Deputization and law enforcement services agreements are considered separately. Nonetheless, it's important to note at the outset that neither type of agreement affects the operation of state criminal jurisdiction in Indian country. Indeed, both types of agreements make it more likely that tribal members will be cited into state court for violations of state law. It's possible that the good relations fostered by cooperative law enforcement agreements may lead to agreements between tribal and county court systems as well. For example, the two systems could establish arrangements, such as deferred prosecution (referral of state cases to tribal court) or holding of county court sessions in the tribal courthouse (to facilitate participation and compliance by tribal community

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| <sup>47</sup> See Jonathan Mills & Kara Brown, "Law Enforcement in Indian Country: The Struggle for a Solution," available at <http://w3.uchastings.edu/plri/PDF/indiancountry.PDF> (last visited August 18, 2007).

| <sup>48</sup> Michael Barker and Kenneth Mullen, "Cross-Deputization in Indian Country" 16 *Police Studies* No. 4 157, 164-65 (1998).

| <sup>49</sup> *Id.* at 164.

members). There, however, is no necessary connection between cooperation in law enforcement and changes in the system of state prosecutions under PL 280. Thus, cooperative law enforcement agreements do not produce a more responsive and accountable system for dealing with socially disruptive conduct by tribal members on reservations.

### Accountability

Looking at law enforcement alone, then, deputization agreements ought to have an impact on the accountability of state/county policing on reservations. They allow for tribally employed police officers to patrol reservations and enforce state criminal laws, which, according to our data, should lead to greater availability of law enforcement according with tribal priorities, more thorough investigations, and more culturally sensitive and respectful law enforcement (see Chapters 6 and 11). Furthermore, deputized tribal officers have clear authority to arrest non-Indians on reservations, a power that allows tribes to prioritize enforcing the law against such individuals. However, the accountability gains are limited by several factors. First, only state certified police officers can be deputized, which may make it difficult for some tribal officers who are tribal members to qualify, even though they have passed through federal law enforcement training. Second, the tribal officers are still enforcing state law, which means that community members who mistrust the state system may not cooperate in reporting crimes and participating in investigations. Third, the agreements establish liability standards that effectively require tribal officers acting as deputies to operate according to state standards. To that extent, they are precluded from following the directives of the tribal communities themselves.

Deputization agreements could conceivably have an impact on the accountability of state/county police in PL 280 jurisdictions if terms of the agreements obligated county law enforcement to learn more about tribal communities and be more responsive to their concerns. However, deputization agreements rarely include provisions mandating cultural-awareness training or similar education for county police. They also do not include provisions for tribal involvement in police hiring or the review of complaints against individual officers.

With respect to accountability, police services agreements take a different approach. They do not empower tribal police to enforce state law, but rather turn the county police who enforce that law into a tribally hired force. Because the tribe is paying for the service, it's much more common to find provisions in such agreements allowing the tribe a role in hiring of officers and responding to complaints. Likewise, specific cultural training is often required of county deputies assigned to the reservation. However, the officers are still part of the county system, certified and promoted according to its standards rather than to tribal conceptions of proper policing. Lingering mistrust of county sheriff's departments may impede the effectiveness of the officers

assigned to the reservation. Furthermore, as with deputization agreements, the fact that the officers are enforcing state law may hinder crime reporting and investigations. Finally, the fact that the tribe is not maintaining its own police force may diminish its symbolic sovereignty, which can adversely affect its control over policing and other aspects of tribal governance.

### Funding

Deputization agreements can have a positive affect on funding for Indian country policing because of the combination of tribal and county resources. Economies of scale for the two departments and sharing of resources can increase the efficiency of use of existing personnel and equipment. Perhaps even more important, the involvement of tribal police under such agreements may facilitate access to federal sources of law enforcement funds that would not be available to the state or county alone. There are often tribal law enforcement programs, such as the Tribal COPS grants, that parallel state programs. Having access to both can expand the total pie of resources for the particular reservation. Also, more active law enforcement on the reservation by tribal police can potentially generate fines that could be available to supplement existing law enforcement budgets. An important question to ask about these deputization agreements, however, is whether they fairly allocate costs and benefits among tribes and counties. Given that states are legally obligated to provide equal policing services to reservation communities, it is unclear why tribes should have to hire their own forces to patrol their reservations, and then receive no returns from the fines that the states collect as a result.

Law enforcement services agreements solve the funding problem by pouring tribal funds into state or county policing on the reservation. As with deputization agreements, questions can arise about whether tribes are paying for something to which they are already entitled. Knowledgeable tribes, however, attempt to disaggregate the enhanced services they are seeking from base level (legally required) services. Only the most economically successful tribes can afford this particular option.

In sum, tribal-state cooperative law enforcement agreements have some capacity to address accountability and funding issues associated with state jurisdiction on reservations. The agreements have distinct limitations, however, especially about accountability. Either the exercise of concurrent jurisdiction by tribes or the retrocession of state jurisdiction to the federal government are possible ways of enhancing accountability.

### Interview Data: How Successful Are Cooperative Agreements in Mitigating Problems Associated with Public Law 280?

Of the 11 PL 280 tribes and one straddler in our sample, 5 (42%) had deputization agreements, 2 (17%) had law enforcement services agreements with the their local

county, and 1 (8%) had an informal agreement with the state regarding allocation of misdemeanors and felonies for prosecution by tribal and state courts. In all, 8 tribes in our sample, fully 67%, had some form of cooperative agreement. We asked all respondents from these jurisdictions several questions about their agreements, including why they were developed, what were the benefits and problems associated with the agreements, how the agreements could be improved, and whether they would be inclined to renew the agreements. The analysis that follows compares types of respondents within PL 280 jurisdictions that have cooperative agreements. Where possible, we distinguish between the deputization agreements and law enforcement services agreements. Future analyses should examine differences in levels of satisfaction with reservation law enforcement and criminal justice among PL 280 reservations, depending on whether the reservation has a cooperative agreement. Another potentially promising line of investigation would compare the experience with cooperative agreements as between PL 280 and non-PL 280 jurisdictions.

### Why Was the Cooperative Agreement Developed?

We asked respondents in PL 280 jurisdictions that had cooperative law enforcement agreements about the reasons for development of those agreements. There were 81 responses from reservation residents, and 16 from law enforcement officers.

Among the reservation residents, 9 (11%) said the reasons related achieving greater authority and involvement of tribal police. These responses included statements about enhancing tribal sovereignty and substituting tribal law enforcement for county police in situations where county police were mistreating tribal members. Not surprisingly, all of these responses were from reservations that had deputization agreements rather than law enforcement services agreements, since only the former deploy tribal police. Another 10 reservation-resident respondents (12%) indicated that the agreements were developed to achieve better working relations between the tribe and the county, including over issues such as liability for misconduct by police officers. Nine reservation-resident respondents (11%) focused on jurisdictional gaps and uncertainties as the precipitating factor for development of cooperative agreements, several mentioning issues that arose when state and federal courts found limitations on state jurisdiction under PL 280 (*e.g.*, over traffic offenses). The largest number of reservation-resident respondents, 29 (36%), emphasized enhanced law enforcement services as the reason for entering into a law enforcement agreement. Included in these responses were statements about achieving increased patrolling and faster response time to calls for service. Tribes with law enforcement services agreements were disproportionately represented in this group of respondents.<sup>50</sup> Eleven reservation-resident respondents (14%) reported that access to additional funding was the main reason why the cooperative agreement was

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| <sup>50</sup> Eleven of the 29 respondents in this category were from tribes with law enforcement services  
| agreements. The sample includes five tribes with deputization agreements and two with law enforcement  
| services agreements.

developed. All but 1 of these respondents was from Wisconsin, the only state that has created financial incentives for tribes and counties to make such agreements. Finally, 4 reservation-resident respondents (5%) stated that specific events (finding drug needles at the local school, a homicide) prompted establishment of the agreement, and 9 respondents (11%) indicated that they were unsure or could not say.

Illustrative statements from reservation residents are the following:

Over the years, the changes with Public Law 280 were first the city couldn't come in here, and then they could, then they couldn't again, then there was lawlessness, then we have our own police force. I think all that confusion is the reason, and the change.

Basically the ruling from 1997 when the ... state recognized that state agencies had no civil regulatory jurisdiction on enrolled members on reservations, which resulted in the formation of tribal police departments. The State ... said tribal police departments are to be in existence, and they might as well develop that state legislative statute where they can enter into cooperative agreements so they can also be used for criminal jurisdiction, as well.

Basically to get money from the state for funding our department as well as the Sheriff's Department.

The cooperative agreement was brought about when we had such a large portion of the people for this area complaining that the sheriff's office would never respond to a lot of the calls. Granted, [tribal police] started out just as a security department, shaking door knobs on tribal buildings, and you know, windows, and checking, and those types of things; then, gradually, we built our self up into a department where we're just as trained as the local sheriff's office .... [T]here's no reason why they should look on us any different, but it was brought about because of the response time by the sheriff's office to this community.

There seems to be some concern that when people out here call for an officer, the response time is considerable, and that goes back to the budget, lack of manpower thing. I'm sure that was one of the major factors.

(Before the agreement there was) no patrol in the area, they only came out when called to come out, and, when they were called to come out, it was come in with both barrels. Very little sensitivity

whatsoever as far as anything went. It was arrest and harass, and very little discretion. Always automatically somebody would have to go to jail. And we felt it was a double standard. The way we were being treated wasn't consistent with the way they were treating everybody else. So, yeah, that's one area where we felt the need to provide better law enforcement in the community.

We were able to hire our own deputies, and I think that's what people wanted from day one, was the reason why the whole agreement went through. Having them located in our community would stop a lot of the crime that was going on, and nobody was being arrested, nothing was being investigated, no prevention activities.

I think that community members wanted us to become — their argument was to exercise sovereignty. And a way of exercising sovereignty, of course, was the development of our own law enforcement and court system, and everything else.

Basically the community's perception was that they weren't going to get a fair shake, and they wanted to have the police force of their own that understands their cultural needs, their cultural ways of doing things, that are unique from the outside community. But they still wanted that ability to have protection and enforcement of their laws if that's what needed to be done.

Of the 16 law enforcement respondents from PL 280 jurisdictions, 5 (31%) emphasized the desire to enlist tribal law enforcement through deputization, 3 (19%) mentioned jurisdiction issues, another 3 (19%) pointed to enhanced service as the reason (these were divided between jurisdictions with deputization and law enforcement services agreements), 2 (13%) focused on specific events, and 2 others (13%) were unsure or could not say.

Illustrative comments from the law enforcement officers are as follows:

Well, probably back then, because tribal law enforcement were not recognized by the state as law enforcement officers, so they had to be deputized in order to have arrest powers with non-tribal members.

[T]here was a lot of confusion among the officers when they would arrive somewhere as to who was responsible for what and why, and

it got — I don't want to say nasty — but the confusion led to a lot of frustration, not only on the sheriff's department side, but on the tribal police department's side, too.

To bring an immediate fix ... to bring equal jurisdiction or equal enforcement for a criminal or civil regulatory on the reservation, as the result of (a court decision denying regulatory jurisdiction to the state).

I believe that was a state getting some money through the federal government, that if you worked together on these (issues), and I think that's probably what started it, was the funding.

[O]ur sheriff was looking at increasing the patrol time without increasing his budget. And it was, like, a win-win situation .... [T]hey have twice as many police officers as we do. ... So, it would give our county an option to have eight more officers at any given incident.

Of course, we say, if you're sharing service, then you have to get what you get. If you're buying your own service, then you simply are doing that. You're simply adding the availability of people that are out there, and they're your own special people .... [W]e provide them with more for less than they could buy on their own. ... For us, we have the additional support of canine, helicopter, drug units, all these things that make a big department itself. And you start saying, OK (Tribe), you start your own department .... I think they definitely could create their own quality police department. I don't think that's an issue. I think that the cost to do that would be tremendously high.<sup>51</sup>

Only 4 state/county criminal justice personnel in the PL 280 jurisdictions responded to the question about reasons for the development of cooperative agreements, and 2 of those (50%) were could not say or were uncertain. Of the remaining 2 respondents, 1 (25%) indicated that the reason was greater authority and involvement of tribal police, and the other (25%) emphasized enhanced services. As 1 respondent indicated, "I said [a deputization agreement is] a good solution ... because it really is a help to the sheriff to have the tribal police presence out there."

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| <sup>51</sup> Respondent is from a jurisdiction that has a law enforcement services agreement.



## What Are the Benefits from Cooperative Agreements?

We asked respondents in PL 280 jurisdictions that had cooperative law enforcement agreements: What are the benefits from those agreements? There were 81 responses from reservation residents, and 12 from state/county law enforcement officers. Only 1 state/county criminal justice official responded to this question.

Among reservation residents, the largest number, 30 (37%), emphasized enhanced law enforcement services as the greatest benefit. These responses included greater access to officers, better and faster response to calls for service, higher standards for tribal police, and people feeling safer within their communities. Fourteen (17%) said the major benefit was greater respect and sovereignty for the tribe and its police. Respondents who emphasized this benefit mentioned greater control over nonmembers; the capacity to enforce state law through tribal, rather than state, police; equality of tribal and county officers; and greater respect for tribal authority. Another 14 reservation-resident respondents (17%) indicated that the major benefit was more effective coordination and better relations between tribal and county police departments. These respondents stressed the value of better communication and the two departments working together. Five reservation-resident respondents (6%) focused on the benefits from closing jurisdictional gaps and overcoming jurisdictional uncertainties as the primary benefit. Three reservation residents (4%) viewed greater cultural understanding and sensitivity by law enforcement as the main benefit from the cooperative agreement. Eight reservation-resident respondents (10%) answered that resource gains were the major benefit from the agreement. These answers stressed that law enforcement services agreements were less costly than a separate tribal force, new resources could be brought into the system through deputization agreements, and sharing of resources between tribal and county departments was more efficient. Five respondents (6%) could find no benefits from the agreement, and another 2 (3%) were unsure or could not say. Thus, the vast majority of reservation respondents (91%) found some benefit from the agreements, with the largest being enhanced police services to the community, a benefit disproportionately found in the communities with law enforcement services agreements.

Illustrative statements from reservation residents are the following:

Then, I think, the long-term value from what I can see is that, by having that in place, that now it just gets renewed year after year pretty much as it's. We haven't had any new things added, and that was almost, like, the beginning of creating a good relationship, and then over time you have that trust and you have a knowledge of each other, and it helps to just have a better relationship that you can fall back on if something comes up.

Certainly the tribe would have seen (the benefit) as the officer having authority to deal with the situation completely and not have to determine whether they, in fact, have the authority of taking the person and dealing with them at a particular location.

I think you can just provide better service if everybody is working together.

[I]f there was ever a large-scale emergency here ... our law enforcement will integrate with federal and state authorities in a workable manner that would utilize the local knowledge and talent of our area, as well as the skills of the people under them, so that if we had to mobilize for a large-scale disaster, such as a flood, wildlife fire, toxic material spill, that they would have the best people on point in key positions on site here.

We're not at the mercy of non-Indians. It required both tribal people and non-Indian people to learn more about each other. ... It used to be at school, if money was missing, it must have been an Indian. I don't think there's so much suspicion anymore. I think that was alleviated.

[T]o us, it means that we have better response time. It means that our officers aren't — it means that there's a blend, and you don't come to a wall and stop on investigations. Often if you do a stop on a highway for speeding, there may be other things involved: drugs, alcohol. And if that was the case, then we'd be sort of stalled out and spending a lot of time trying to do a follow-up on anything. Whereas now our officers making the stop, who are cross-deputized, can follow through with the whole stop. So, there's continuity. If we didn't have that, we'd be hard-pressed to maintain continuity.

Obviously one of them is the more rapid response time and having officers who understand this community better .... I think it just made us a more professional department, and in dealing with a lot of the problems here, and we don't only get calls from tribal people, we get calls from all people that live here, whether it's Indian, non-Indian, or whatever. I think it's just helped us on a whole become a lot better department.

Well, again, I think that it can add to the overall staff level for the county. I think that, for tribal youth, it has the presence in that

community. It would possibly give the youth some Indian people to look up to as sort of mentors, and, you know, possibly try and take the right road.

Of the 12 state/county law enforcement respondents from PL 280 jurisdictions, 7 (58%) viewed the main benefit from cooperative agreements as enhanced services to tribal communities, including faster response, reduced crime, and greater officer presence). Two others (17%) emphasized greater clarity about jurisdiction and responsibilities, and another 2 (17%) saw the main advantage as the ability to share resources. One (8%) emphasized the value of equality in the response that people get from both county and tribal police.

Illustrative comments from the state/county law enforcement officers are as follows:

[T]hey get a fantastic service and ... we get to provide that which is a benefit to the county and the agency (from a reservation with a law enforcement services contract).

Again, just to let everybody know in case department heads, or somebody else, changes, at least there's something in writing that lets everybody know, yes, we should be doing this or shouldn't be doing this .... It helps with turf battles and those kinds of things.

[I]t enhances our department, too, because we can, I mean, we're putting on four people in (the county). You know, the faster response to services for the Native people there, I mean everybody, not only Natives there, but the non-Natives that live in that community. It's been a big plus.

I think there's a potential for sharing resources, training, and just a better knowledge of each other's departments and skills that we can better use our resources of bringing down the crime rate of (the county).

[T]he officers that work currently for tribal police department are all tribal members, and, I may be wrong, but I don't think I am in saying that they live on the reservation, so there's some ownership issues with the place they work and live. So, I think that they get a service from an ownership level — I think they're more attuned to the specific needs of their community. I think that greater understanding of who's who in the community, the history amongst families and relationships, and the relationships amongst them. We

have a better area knowledge and get a faster response time because of the better knowledge of the area. I think they can find and locate people with greater ease than the local deputies here.

Only 1 criminal justice official from a PL 280 jurisdiction responded to this question, and that respondent was from a jurisdiction that had a law enforcement services agreement. In a lengthy reply to the question about the benefits of the agreement, this respondent emphasized how the county in question looked beyond historical antagonism between non-Indian and tribal populations to see the agreement as a “business proposition.” According to this respondent, “[W]e look at [the Tribe and its associated casino] as a partner that’s helping an area that otherwise would be very depressed and without services, and helping to bring services to it.” This respondent also emphasized the advantages from having the sheriff’s deputies cross-deputized as tribal police, because “our sheriff can now cite people for reckless driving and speeding, you name it on [the reservation] road, whereas before, we couldn’t. So it’s just an absolute win-win. ...”

#### What Are the Problems with Cooperative Agreements?

We asked respondents in PL 280 jurisdictions that had cooperative law enforcement agreements: What are the problems with those agreements? There were 88 responses from reservation residents, and 15 from state/county law enforcement officers. Only 1 state/county criminal justice official gave a response to this question.

Among the reservation residents, 22 (25%) said there were no problems, and 5 (6%) could not answer or were unsure. Of the remaining respondents, the largest group was 26 respondents (30%) who identified problems related to tribal sovereignty or lack of respect for the tribe. Among the concerns that these respondents expressed were too much control by the county, tribal police being forced to operate according to county policies, a preference for tribal rather than county police, and fear that the agreement (especially police services agreements) would discourage the tribe from creating its own tribal police force. Another 9 respondents (10%) indicated that the chief problem resulting from the agreement was confusion and lack of clarity about jurisdiction and responsibilities. A related response was provided by another 9 respondents (10%), who identified problems associated with the meshing of county and tribal systems. These respondents mentioned such things as misunderstandings, inconsistent administration and political swings, passing the buck between departments, and lack of communication. Nine respondents (10%) focused on resource problems, including inadequate funds, an insufficient number of tribal police, and the county failing to allocate adequate resources to the reservation and over-relying on the tribe. Three respondents from tribes with police services agreements (3%) viewed the chief problem as inadequate, or poor-quality, services from the county; and another 3 respondents (3%) saw the problem as too many police on the reservation. Thus, three-quarters of the reservation residents identified

problems with their tribe's cooperative law enforcement agreement, with the largest set of concerns relating to sovereignty and respect for the tribe.

Illustrative comments from reservation residents are the following:

I don't think that the county trusts that we can hold our officers to the same standards as theirs are. ... [I]f you have a personality conflict or someone running against the sheriff in an election, that deputy card gets pulled. That job's gone. So, they control more with each and every one of those officers. So, how much cooperation is there, other than the money?

These cooperative agreements are developed in such a manner that they all state that the local sheriff, more or less, has the say-so over tribal police departments and all crimes, so whatever he says is what we have got to abide by. Which I have a problem with .... They expect us to follow the state policies and procedures, but yet, you know, we have got to be told what to do, you know? ... And to me it's morally wrong and it's really hard for me as an enrolled member. To me, I clearly see racial overtones to it, and I think we need to get over that ....

What happens is ... the tribal government usually changes every four years, new people come in. And with the sheriff's office also, and the county commissioners. And we lost communication ... and things just started slipping through the cracks, and the communication got worse. ... (The sheriff's department was complaining about) incident-complaint reports not being shared .... Just like, we had a different incident-complaint report form than they had. We realized we need to have the same one — same kind, exact same one .... We didn't have one of the statewide computers where you can look up vehicle registration. They wanted our vehicle registration. Lots of problems that could have been worked out.

There's always funding issues, and the government's only got so much money to go around. [S]o, (the police services agreement) may take away the initiative to develop a purely tribal police force and a tribal criminal justice system. It would delay the development of that.

Well, financial, we end up providing some of the services that the county normally does, like traffic citations, we could do that, but,

then again, the fines go to the court or the county courts, they don't come here even though the infraction happened here and we do the work, we do the processing and all that. We don't get compensated for that.

The problem that I see is, we get no services. We pay for services that we are not provided. And besides that, we shouldn't have to pay them anything. I don't think we should have to pay them to provide a service that they provide to everybody else around us.

There are some people that say that it's a sell-out. And to a certain extent, I guess you have to agree with them. Because it's a concession.

I don't want it to kind of breed complacency with the tribe. You know, if they get used to the county kind of covering it, then maybe they won't think as strongly about retroceding, or looking to retrocede, or pushing retrocession and strengthening their own police officers. ... I would like to see every tribe ... eventually get the state out of their business as much as possible.

I don't see a problem. I think it works very well between the tribal government and the state. And without any kind of agreement, then you're always going to have a jurisdictional battle.

Our [tribal police] deputies, once again, are in a situation that they have two taskmasters: [tribal police], as well as the sheriff's department. ... But at no time have we ever pulled the officer in two opposite directions. We always try and keep the goal in mind, and strive for that goal.

Of the state/county law enforcement respondents, 7 (47%) found no problems with the cooperative agreements, and 1 was not sure. In other words, nearly half of the law enforcement respondents were fully satisfied with the agreements, compared with only one-quarter of the reservation residents. Of the remaining law enforcement respondents, 4 (27%) viewed the major problem as the meshing of the two systems, including concerns about officer differences and an inability to rely on the tribe. One respondent (6%) identified inadequate resources as the main problem, another (6%) focused on lack of clarity about jurisdiction, and still another (6%) stressed the problem of non-Indian resistance to the empowerment of tribal police. Overall, a much higher percentage of law enforcement officers than reservation residents (47% vs. 25%) found the agreements to be problem-free.

Illustrative comments from state/county law enforcement personnel are the following:

There are bugs that come up, just operational things. One of them that came up about five or six months ago was they had their cops out there, were going outside of the boundaries of the reservation and writing speeding tickets and stuff. ... The problem with that is they're not indemnified by the tribe. So, they're kind of sitting out in never-never land out there. So, they had to get reined in there a little bit.

I think when you're in the field, people don't understand what the difference between civil and criminal is. So, when they start arguing with you, "Well you can't do that," or the state officer can't do that. "Why is he on our rez?"

The sheriff's department by Public Law 280 is mandated to provide services to the reservation, so we can't say we're not going to go handle a crime on the reservation. The (tribal) police department is not required under Public Law 280 to provide any services to the reservation. They can say, well, we're not staffing anybody today, or we're gonna go ahead and let everybody have a vacation day today. Or we're gonna send our entire department to Nevada for training. And they don't have any requirement to maintain staffing. So, that is the only frustration that I've ever had with tribal police department is I am required to have staffing, and I always, as a supervisory, am constantly battling the manpower needs of the reservation and vacation requests ....

It's been pretty open with all of the tribes that, when we do find a problem, we're at least able to say, "This isn't working right. What else do we need to do here?" So, I don't know if there's anything currently, but certainly if something comes up, we're going to work with it to try and correct it.

I don't think you're going to find too many (problems) on our side of the agreement. From their point of view, I could see that there's a lack of sovereignty, there's a lack of control and independence, and we're unique that our sheriff ... is so cooperative, I would say, and that the people we have up there are so well suited to the job, that if you had another agency with a less cooperative chief executive and less cooperative staff, you would be having a lot of cultural friction out there that wouldn't make this work. So, if you had that, I guess

what I'm saying is that it's not just PL 280, it's the fact that we get together so well and have PL 280. If we had PL 280 and we didn't get along, this cooperative agreement wouldn't work.<sup>52</sup>

The one criminal justice official who responded to this question identified a few problems with the cooperative agreement with the local tribe, including the possibility that the sheriff's deputies were not following through with the required cultural training, and the fact that the absence of a full waiver of sovereign immunity by the tribe was putting the county at risk.

### How Can Cooperative Law Enforcement Agreements Be Improved?

We asked respondents in PL 280 jurisdictions that had cooperative law enforcement agreements, How can those agreements be improved? There were 79 responses from reservation residents, and 13 from state/county law enforcement officers. No state/county criminal justice officials responded to this question.

Among the reservation residents, 13 (16%) said there was no need to improve the agreement. They were entirely satisfied. Sixteen respondents (20%) thought the agreements could be improved by placing greater weight on tribal sovereignty and respect for tribal officials. These responses included statements about eliminating PL 280 altogether, establishing state peace officer status without the need for a local agreement, introduction of more tribal police, and more reimbursement from the county for services the tribe provides in enforcing state law. Fourteen respondents (18%) identified more effective coordination and communication as the most needed improvement, including creation of a joint police oversight commission, allowance of state benefits for tribal officers, and better allocation of tribal police to serve the tribal community. Nine respondents (11%) viewed the main area for improvement as better understanding of the tribal community and culture by county law enforcement officers, and another 9 (11%) saw the biggest area for improvement as increased access to resources, including more funding, more officers, and additional federal financial assistance. Four respondents (5%) wanted to see greater clarity in the agreement, 1 each (1%) preferred fewer officers and extension of the agreement to juveniles. Finally, 12 respondents (15%) were uncertain or could not answer. Thus, approximately 70% of the reservation-resident respondents saw some need for improvement, with sovereignty concerns and administration/communication concerns highest on the list.

Illustrative comments from the reservation residents are the following:

I think there needs to be a clear definition of the relationship. And not only ... the jurisdiction but how the two departments are going

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| <sup>52</sup> This comment was from a jurisdiction with a law enforcement services agreement.



to work together, how they are going to respond, what information are they going to share .... The money side of it is interesting because there is some language in the agreement that says they are supposed to take into consideration our costs and things like that. We don't receive any kind of money from it. And I think that is something that we need to bring up. We have a dispatcher, our dispatcher dispatches for everything — ambulance, fire, police. The county accepts whatever we can provide to them that saves them money. It doesn't flow the other way.

There could be more meetings on the reservation with maybe tribal police and state police.

Well, it would be nice if the county would sit down with the tribal government — I would hope that the county has some long-range plans — and that the local tribal council could be a part of that planning process, long range so that maybe there could be a transition of some of the jurisdiction and some of the court process to the local community and the local tribal court system, looking for options to deal with juvenile justice ....

I think they need to make sure they know who it is or what it is they're working with, and what percentage of these crimes have to do with alcohol or substance abuse because you're going to have all of those kinds of situations with people who just have warrants, or people who are just acting up and be able to react to non-Indians, too, that are living within the boundaries of the reservation, and their actions, too. They're not just here to police us. They're here to police everybody within the boundaries of our reservation and not just the brown-skinned ones.<sup>53</sup>

(Tribal police) are certified by the same law enforcement and training standards as every other officer in the state, and then again, why are they not considered real peace officers and entitled to a state pension plan that is open to all law enforcement except ... tribal law enforcement? What is the purpose of the agreement? I have no idea! ... Most of these guys (tribal officers) have more training under their belt than any county sheriff out there. However, they are looked at like less than real law enforcement officers ...

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| <sup>53</sup> This response is from a community with a law enforcement services agreement.

I believe in sovereignty, and I believe the tribe should take measures to turn over all things that may end up in the county. ... I'd like to see us get to the point where we can prosecute our own. Because I just feel we'd be more fair.

I think the agreement should require more cultural-sensitivity training. I know that they are required to partake in some training on cultural sensitivity. ... But I think we should require even more than that. I think they should be required to participate in tribal trainings. Trainings provided by the tribe, about the tribe, more specific rather than just some cultural sensitivity training that is probably not even put on by somebody who is of a particular race or nationality. So, I think it should be more specific (to the tribe).<sup>54</sup>

More education, more them understanding the community better.<sup>55</sup>

Of the 13 state/county law enforcement respondents, 5 (38%) could see no areas for improvement of the cooperative agreements. Of the remaining respondents divided considerably over the areas they identified for improvement, with 2 (15%) emphasizing greater communication, and 1 each (8% each) focusing on greater clarity, more funding, more tribal police, creation of a joint powers board, better coordination, and a longer term for the agreement. As in the previous question, evidently the state/county law enforcement officers are more satisfied with the terms of existing cooperative law enforcement agreements than are reservation residents.

Illustrative comments from the state/county law enforcement officers are the following:

One of the things we're working on is the communication to improve. We are going to have their chief of police, literally part of their management headquarters, so they can reach out and talk to their cop anytime they want to. ... I believe that if we were in a proactive fashion, we can resolve all of those criminal warrants that exist, and we can keep those people from re-offending, with the tribe's help.<sup>56</sup>

Well, I guess it probably goes back to more interaction between our deputies and their officers, and that goes into the community then.

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| <sup>54</sup> *Id.*

| <sup>55</sup> *Id.*

| <sup>56</sup> *Id.*

You don't want to isolate our officers from the community, either. You want the community to know our officers, too. So, just more cooperative in communications ....

I can't think of any way that you can improve it.

If they came up with a joint-powers type situation where they have three people, we have three people, we have people from the community and some nonpartisan officials that would regulate it. So, if there's any questions or situations, they could bring it to this joint-powers board.

I think there could be better integration with training. On the part of the tribe, I think they could take better advantage of some of the opportunities that are here. ... We have a tough time getting into cooperative efforts with them .... If they (the tribe) can access a federal grant, they'll do it, but they're doing it in this area just on the reservation. Instead of looking at it a little more globally or regionally .... The agencies — and I'm talking all of us, from local agencies as well as the reservation — have never sat down and set the vision. OK, here's where we're going to go, and here's who's going to be responsible for what, and this is the way we're going to do it. That has never happened. So what happens, things change up there on the reservation. I don't know if it goes to the politics or who's exerting the influence on their department, or what drives it.

I think the tribal police department should take over the responsibility as the primary law enforcement jurisdiction for the reservation. And the sheriff's department could mutually aid any time they needed help, but they would then ... be a real police department.

#### Do You Think the Cooperative Agreement Should Be Renewed?

We asked respondents in PL 280 jurisdictions that had cooperative law enforcement agreements: Do you think the agreement should be renewed? There were 67 responses from reservation residents, and 11 from state/county law enforcement officers. Two state/county criminal justice officials responded to this question.

The vast majority of reservation-resident respondents, 47 (70%) favored renewing the agreement, and only 5 (7%) were opposed. Of the remaining respondents, the largest group, 8 (12%), favored renewal only if the agreement were renegotiated. Another 5 respondents (7%) would favor renewal only until the tribe develops more jurisdiction and

policing capacity of its own. Many of these respondents were from tribes with police services agreements. One respondent each (1% each) said they were uncertain, or that it would depend on who was in power in the county.

Illustrative comments from reservation residents are the following:

(The agreement should be renewed) as long as they're not going to make their own police force, sure. But if they're going to move on and made a (tribal) police force, Native based, then no.<sup>57</sup>

I think it should be renegotiated. Don't just go ahead and renew it.

Right now, I think the cooperative agreement's the best thing, in light of the tribe being able to handle all matters, civil and criminal, within the jurisdiction.

Yes, because if it'sn't, then we won't have any officers at all.

The amount of money and what happens next in the future could be changed in the agreement. More things could be addressed in the agreement as far as who's getting real help, and all of that is spelled out ....

Only until we can find a better way. Until we find a better way, I think it's really good.

Even if we went with our own full-time dispatch and the whole nine yards, and jails, you would still have to have the cooperative law enforcement agreement. We're not on a little island here ....  
Especially because non-Indian comes up here and commits a crime  
....

Ten of the 11 state/county law enforcement officers (91%) favored renewal of the agreement, and the lone remaining officer would favor renewal if the terms were renegotiated. Thus, although enthusiasm for renewal is high among both reservation residents and state/county law enforcement personnel, the latter support renewal more strongly. Of the 2 state/county criminal justice respondents who answered this question, 1 observed that it does not matter because the agreement is ignored in practice, and 1 supported renewal if the agreement was renegotiated. According to the respondent who supported re-negotiation, "[A]s the law has evolved over ... time, the existing agreement just doesn't fit .... A whole lot of things have been deferred into social services that used

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<sup>57</sup> *Id.*

to be law enforcement functions. They've got kind of a quasi law enforcement role. None of that's recognized."

## Conclusion

Two distinct types of tribal-state cooperative law enforcement agreements operate in PL 280 jurisdictions: deputization agreements (some of which involve cross-deputization) and law enforcement services agreements. One type deploys tribal police to enforce state law against tribal members and nonmembers, and the other pays county police to provide enhanced services on the reservation. In different ways, these agreements address some of the accountability and resources concerns that trouble reservation residents in PL 280 jurisdictions, but not all of them. Specifically, neither type solves the problem of an alien system of law being applied on the reservation through a state court judicial system that is perceived as discriminatory and not sharing the values of the community. Furthermore, neither is fully capable of producing policing that conforms to community cultures; and while police-services agreements generally benefit from the resources available to tribes from gaming and other forms of economic development, the deputization agreements place extra burdens on tribes to enforce another government's law.

It's not surprising then, that state/county law enforcement personnel, who are major beneficiaries of tribal-state cooperative law enforcement agreements, embrace them more enthusiastically than reservation residents. A consistent pattern from our interview data is that state/county law enforcement officers see greater benefits from the agreements, find fewer problems and areas for improvement, and more unconditionally support renewal. Reservation residents are especially grateful for the enhanced policing services that cooperative agreements make possible. They, however, are uneasy about the impact on tribal sovereignty and respect for tribal governments, and see a much greater need for coordination of the two sets of law enforcement authorities and cultural sensitivity/awareness from county police.

## CHAPTER 13

### Retrocession from Public Law 280<sup>1</sup>

Before Congress amended Public Law 280 (PL 280) in 1968, tribes could be subjected to state criminal jurisdiction under its terms without their consent. Furthermore, once a state was named in the Act or opted into its jurisdictional regime, PL 280 treated the decision as final and irreversible. As we have shown, both tribes and states have had significant, though not identical, concerns about the efficacy of the PL 280 system for administration of criminal justice in Indian country. Thus, it was predictable that soon after the passage of PL 280, both states and tribes would complain that there was no way for either type of government to change the arrangement back to the original situation, that is, to return state criminal jurisdiction to the federal government, reinstating the prior regime.

Congress attempted to rectify this omission with a provision in the Indian Civil Rights Act (ICRA) of 1968.<sup>2</sup> ICRA authorized states to “retrocede” PL 280 jurisdiction, or return criminal jurisdiction to the federal government. The effect of complete retrocession would be to reinstate the complex criminal jurisdiction regime that operates in Indian country that has never been subject to PL 280. That alternative regime entails:

- exclusive tribal jurisdiction over non-major crimes between Indians and over victimless crimes by Indians;
- shared federal and tribal jurisdiction over major crimes committed by Indians and over non-major crimes committed by Indians against non-Indians;
- exclusive federal jurisdiction over crimes committed by non-Indians against Indians;
- exclusive state jurisdiction over crimes committed between non-Indians and probably also over victimless crimes by non-Indians.<sup>3</sup>

ICRA’s provision for retrocession is brief :

The United States is authorized to accept a retrocession by any State of all or any measure of the criminal or civil jurisdiction or both, acquired by such State pursuant to (Public Law 280) ...<sup>4</sup>

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<sup>1</sup> Heather Valdez Singleton contributed substantially to the writing of this chapter.

<sup>2</sup> 25 U.S.C. §§ 1321-1326.

<sup>3</sup> This regime is described in Chapter 1 and in Nell Newton et al., *Cohen’s Handbook of Federal Indian Law*, Chapter 9 (LexisNexis, 2005 ed.).

<sup>4</sup> 25 U.S.C. § 1323.

Note that ICRA provides for *state* initiated retrocession, so that tribes seeking retrocession must first lobby and persuade their state governments.<sup>5</sup> Once state approval is secured, the process then moves to the Department of the Interior (DOI) for review. There are no guidelines regulating how DOI should review retrocession petitions, other than a federal Executive Order specifying that the Secretary of the Interior shall consult first with the Attorney General.<sup>6</sup>

### Questions for This Chapter:

#### Why So Few Retrocessions, Why Have Some Succeeded, and What Has Retrocession Accomplished?

Of the over 150 tribes under PL 280 jurisdiction in the lower 48 states, only 31 have successfully retroceded since 1968, and only seven of those are from the five “mandatory” PL 280 states other than Alaska. There have been no retrocessions by the more than 235 tribes and Native villages in Alaska.

#### Retrocessions in Mandatory PL 280 States

Alaska	<i>None</i>
California	<i>None</i>
Minnesota	Bois Forte [40 FR 4026 (1975)]
Nebraska	Omaha [35 FR 16,598 (1970)] (except for motor vehicle offences) Winnebago [51 FR 24,234 (1986)] Santee Sioux [71 FR 7994 (2006)]
Oregon	Burns Paiute [44 FR 26,129 (1979)] Umatilla [46 FR 2195 (1981)]
Wisconsin	Menominee [41 FR 8516 (1976)]

#### Retrocessions in Optional PL 280 States

Florida	<i>None</i>
Idaho	<i>None</i>
Montana	Salish Kootenai [60 FR 123 (1995)] (misdemeanors only)

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<sup>5</sup> For a discussion of why Congress may have failed to allow for tribally initiated retrocession, even as it was requiring tribal consent for future extensions of PL 280, see Carole Goldberg-Ambrose (with Timothy Carr Seward), *Planting Tail Feathers: Tribal Survival and Public Law 280* at 60-64 (UCLA American Indian Studies Center, 1997).

<sup>6</sup> Executive Order 11435, Nov. 21, 1968 (Lyndon B. Johnson).

Nevada	Battle Mountain Colony
	Carson Colony
	Dresslerville Colony
	Elko Colony
	Goshute Reservation
	Lovelock Colony
	Odger's Ranch
	Reno-Sparks Colony
	Ruby Valley Allotment
	South Fork Reservation
	Washoe Tribal Farms
	Washoe Pinenut Allotment
	Winnemucca Colony and
	Yomba Reservation [40 FR 27,501 (1975)]
Washington	Ely Indian Colony [53 FR 5837 (1988)]
	Quinault [34 FR 14,288 (1969)]
	Port Madison [37 FR 7,353 (1972)]
	Colville [52 FR 8,372 (1987)]
	Chehalis, Quileute, and Swinomish [54 FR 19,959 (1989)]
	Tulalip [65 FR 75948 (2000)]

As this list shows, in Nevada, 14 tribes retroceded in one group and, in Washington, three in one group. So, if we count discrete retrocession campaigns, the number shrinks to 16 retrocessions.

Considering the widespread evidence of tribal dissatisfaction with state criminal jurisdiction under PL 280, it's remarkable that so few tribes have retroceded. One purpose of this chapter is to investigate the reasons for the small number of retrocessions. Is the retrocession process too expensive, time consuming, confusing, or politically difficult? In other words, is there something about the way the process is structured that precludes or inhibits tribes from achieving retrocession? Are there other reasons why tribes have not successfully retroceded? For example, tribes may not wish to establish their own criminal codes and courts, something that they would likely have to do after retrocession, given that federal criminal jurisdiction in Indian country is not as extensive as states' PL 280 jurisdiction.<sup>7</sup> Perhaps tribes have been able to overcome the problems presented by PL 280 by means short of retrocession, especially through cooperative agreements with local counties. Conversely, what might explain why some tribes have succeeded in achieving retrocession? What concerns have motivated their retrocession initiatives, and what has proven most important to their positive results?

Besides understanding the reasons for so few retrocessions and the success of some tribes, we also want to investigate the experience of tribes that have chosen to retrocede. Has community satisfaction with law enforcement and criminal justice

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<sup>7</sup> This point is explained in Chapter 1.



increased? Does the community perceive that public safety is greater after retrocession than before?

### Case Studies of Retrocession

There is not an extensive literature on retrocession. However, from published sources, both scholarly and journalistic, we have been able to develop several case studies of tribes that succeeded in achieving the removal of state jurisdiction and the reinstatement of federal criminal jurisdiction, and one instance of failed efforts. These studies reveal the obstacles to success, as well as the strategies that successful tribes deployed to reach their goal.

**Omaha and Winnebago Tribes, Nebraska:** To understand the factors contributing to Nebraska's eventual retrocession of jurisdiction over the Omaha and Winnebago Tribes, one must appreciate the precipitous decline in law enforcement conditions caused by Public Law 280 in Thurston County, Nebraska, where the tribes' reservations are primarily located:

Criminal cases involving Indians in Thurston County increased from 249 in 1954 to 353 in 1958. Likewise, expenses for the county jail increased over 178 percent from 1950 to 1959. The Thurston County jail had lodged 93 Indians at some time during 1949; by 1958, that number has risen to 334.<sup>8</sup>

In 1956, though Indians constituted only one-third of the Thurston County population, they made up 84% of the county's total jail population. By 1970, according to the Thurston County attorney, total criminal cases in the county had risen from 380 in 1955 to more than 1,120 in 1970;<sup>9</sup> while neighboring counties' per capita spending on law enforcement was below \$1.00, Thurston County's was nearly \$5.50.<sup>10</sup> Conditions were such that Montana representative Arnold Olden, when introducing a 1961 bill that would have required tribal consent before permitting states to assume jurisdiction under Public Law 280, identified the Omaha reservation as an object lesson in Public Law 280 gone awry.

Public Law 280 specifically provided that the State of Nebraska shall exercise full criminal jurisdiction over all Indian country within the State. Yet, the administration of the criminal laws of Nebraska is the responsibility of the

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<sup>8</sup> Mark. R. Scherer, *Imperfect Victories: The Legal Tenacity of the Omaha Tribe, 1945-1995* at 26 (Univ. of Neb. Press, 1999).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 26-27.

county governments. The counties in which the Omaha Reservation is located refused to assume this jurisdiction. The Federal Government and the Omaha Tribe were deprived of jurisdiction by the act. A lawless area was created .... Murdered men have lain in the street within the Omaha Reservation for over 24 hours before police have investigated the crime.<sup>11</sup>

Non-Indian and Indian perceptions have differed as to the cause of Public Law 280's dismal effects. Nebraska politicians and law enforcement personnel lay the blame at Public Law 280's unfunded mandate. Under Public Law 280, Nebraska, like other mandatory states, became responsible for both major crimes and misdemeanors in Indian country,<sup>12</sup> but was given little additional federal funding to handle the increased law enforcement responsibilities. The State's responses to Thurston County's appeals for additional funding were woefully inadequate and, in one notable instance, perversely counterproductive.<sup>13</sup> In 1961, the Nebraska Legislature introduced Legislative Bill 713, which would "provide funding for up to three additional deputy state sheriffs in the counties affected by PL 280 jurisdiction."<sup>14</sup> The Bill enjoyed support from Indians and non-Indians alike, all of whom recognized the dire conditions prevailing on the State's reservations.<sup>15</sup> LB 713 passed in 1961, but with a significant last-minute addition: Only counties in which at least 60% of the persons convicted of violating state law were Indians would be eligible for the three additional deputy sheriffs.<sup>16</sup> The perverse effects transformed "a well-intentioned measure into an 'Indian Bounty Act.' Indians and their supporters contended that the county now believed that the most expedient method to obtain increased state funding was to arrest more and more Indians."<sup>17</sup>

In the minds of most Omahas, funding shortfalls and ineffective state legislation were not the primary contributors to the woeful administration of law enforcement. Rather, the fundamental flaw of Public Law 280 was that it vested authority in deeply racist and discriminatory local governments, whose "officials lacked the fundamental *will*

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<sup>11</sup> 107 Cong. Rec. H. 2576 (Statement of Rep. Arnold Olsen, Feb. 22, 1961).

<sup>12</sup> See Chapter 1.

<sup>13</sup> Scherer, *supra* note 8, at 27-28.

<sup>14</sup> *Id.* at 28.

<sup>15</sup> *Id.* at 29.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 30.

to police the reservation fairly and efficiently.”<sup>18</sup> Edward Cline, Omaha’s Tribal Council chairperson, alleged that

(the Omahas) were subject to physical abuse and discriminatory prosecution. Rehabilitation was nonexistent. Indians would be placed in jail upon arrest for minor offenses for which non-Indians would merely be told to appear in court. The county sheriff would refuse to set bail for an Indian, making him sit in jail until he could appear before the judge for arraignment.<sup>19</sup>

It’s little wonder that when Congress amended Public Law 280 in 1968 to permit retrocession of state jurisdiction over reservation Indians,<sup>20</sup> the Omahas quickly adopted a resolution (in January 1969) confirming their desire for retrocession. Though the Omahas regarded retrocession “as the long-awaited deliverance from their problems,” many local non-Indian factions opposed the presence of a “state within a state, complete with its own police force and tribal courts,” that would result if the state retroceded jurisdiction to the United States.<sup>21</sup> The feeling among many was that the local governments could redress the previous shortcomings if sufficient funding were made available. Nonetheless, in 1969, the Nebraska Unicameral passed Legislative Resolution 37, by which the State offered to retrocede all criminal jurisdiction, save for traffic offenses, over the Omaha and Winnebago Reservations, both located primarily in Thurston County.<sup>22</sup> Resolution 37 identified several reasons for retroceding jurisdiction, including:

- the assumption of such jurisdiction has led to steadily increasing costs for law enforcement in certain counties of Nebraska, and particularly in Thurston County;
- because of restrictions in original grants of land in Thurston County to Indians and Indian tribes, Thurston County has not had a sufficient tax base to meet the increasing costs of law enforcement; and

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> See Act of April 11, 1968, Pub L No 90-284, Title IV, § 403, 82 Stat 78, 79, codified at 25 U.S.C. § 1321.

<sup>21</sup> Scherer, *supra* note 8, at 37.

<sup>22</sup> See Leg. Res. 37, 80th Leg., 1st Sess. (Neb. 1969). See also *Omaha Tribe of Nebraska v. Walthill*, 334 F. Supp. 823, 827-28 (D. Neb. 1971), *aff’d per curiam*, 460 F.2d 1327 (8th Cir. 1972); *United States v. Brown*, 334 F. Supp. 536, 538 (D. Neb. 1971).

- since 1957, state assistance has been provided for law enforcement purposes in Thurston County, and the cost of this assistance has increased each biennium.<sup>23</sup>

In October 1970, the Department of the Interior accepted Nebraska's retrocession of jurisdiction over criminal offenses (except those involving the operation of motor vehicles over public roads or highways) committed by or against Indians on the portion of the Omaha reservation within Thurston County.<sup>24</sup> The Omaha Tribe became the first to undergo retrocession.

Soon thereafter, Nebraska attempted to revoke its retrocession on two grounds. First, LB 37 had not been presented to the governor for his signature, in violation of the State Constitution.<sup>25</sup> Second, the Secretary of the Interior's acceptance of jurisdiction was invalid because it did not comport with the State's offer: Nebraska had offered retrocession of *all* criminal jurisdiction, except for traffic offenses, over Indian Country in Thurston County (which included both the Omaha and Winnebago Reservations), but the Department accepted retrocession only over the Omahas.<sup>26</sup> The federal courts rejected Nebraska's arguments and upheld the retrocession of criminal jurisdiction over the Omahas.<sup>27</sup>

Upon the Secretary's acceptance of retrocession, Congress appropriated \$100,000 in interim funding to establish a BIA law enforcement presence on the reservation, including a tribal court and judge, a police captain, and several tribal police officers; by 1971, construction of a new courthouse, jail, and police station was completed.<sup>28</sup>

Predictably, relations between tribal law enforcement and Thurston County started off poorly. The tribal court's lack of criminal jurisdiction over non-tribal members "led to substantial uncertainty in the investigation and prosecution of crimes. Until the specific ethnic identity of a criminal offender or suspect was determined, it was

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<sup>23</sup> *Omaha Tribe of Nebraska v. Walthill*, 334 F. Supp. 823, 827 n.6 (D. Neb. 1971), *aff'd per curiam*, 460 F.2d 1327 (8th Cir. 1972).

<sup>24</sup> 35 FR 16,598 (Oct. 24, 1970).

<sup>25</sup> See Leg. Res. 16, 82nd Leg., 1st Sess. (Neb. 1971). See also *Omaha Tribe of Nebraska v. Walthill*, 334 F. Supp. 823, 828 (D. Neb. 1971), *aff'd per curiam*, 460 F.2d 1327 (8th Cir. 1972); *United States v. Brown*, 334 F. Supp. 536, 538-39 (D. Neb. 1971).

<sup>26</sup> *State v. Goham*, 187 N.W.2d 305, 312 (Neb. 1971) (holding that retrocession was invalid); *Walthill*, 334 F. Supp. at 828 (rejecting *Goham* and upholding retrocession); *Brown*, 334 F. Supp. at 541-43; *Scherer*, *supra* note 8, at 40-42.

<sup>27</sup> *Walthill*, 334 F. Supp. at 828-29; *Brown*, 334 F. Supp. at 538, 541-43.

<sup>28</sup> *Scherer*, *supra* note 8, at 40; *Walthill*, 334 F. Supp. at 828.

impossible for county or tribal police to know which force had jurisdiction.”<sup>29</sup> The State’s retention of criminal jurisdiction over traffic offenses on the reservation’s public highways created additional uncertainty.

The friction between the Tribe and the County has persisted. In 1985, nearly 15 years after retrocession, Thurston County Sheriff Clyde Storie complained that the Omahas “ ‘should be assimilated into the white man’s culture’ and that retrocession had been a ‘step backward’ for the tribe.”<sup>30</sup> Moreover, friction has arisen when the Tribe has attempted to enforce traffic laws against nonmembers driving on the reservation, a power the State believes it has, exclusive of the Tribe.<sup>31</sup> Attempts to negotiate a cross-deputization agreement like the one in place between the State and the Winnebago Tribe have failed. Nonetheless, the Tribe considers retrocession a crucial step to tribal self-determination that has increased its members’ self-esteem and satisfaction.<sup>32</sup>

Unlike the Omahas, the Winnebago Tribe, “[w]ith no budget to pay for law enforcement and court services at the reservation ... [and] fearing total withdrawal of state and local police services on the reservation,” declined the State’s 1969 offer to retrocede its jurisdiction.<sup>33</sup> Instead, the Winnebagos set about rebuilding their governmental and economic infrastructure “to ready [themselves] for the eventual retrocession.”<sup>34</sup> In 1974, the Winnebago Tribal Council petitioned Nebraska to retrocede its civil and criminal jurisdiction over the Winnebago reservation. The Tribe was dissatisfied with the Thurston County law enforcement services, and believed that a reservation-based tribal law enforcement and court system, reflecting tribal customs and standards, including its preference for rehabilitation of criminal offenders and not mere confinement in jail, would provide more sensitive and better quality law enforcement on the reservation.

Nebraska state senator Walter George introduced a measure in the Nebraska legislature supporting retrocession, but the bill met with strong opposition. The Thurston County Board of Supervisors passed a resolution adamantly opposing the retrocession of criminal jurisdiction “on any land or county owned by or leased by non-Indian persons within Thurston County,”<sup>35</sup> while “[n]on-Indians who owned and operated businesses and

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<sup>29</sup> Scherer, *supra* note 8, at 43.

<sup>30</sup> *Id.* at 45 (quoting Sheriff Storie).

<sup>31</sup> Paul Hammel, “State Seeks Agreement on Tribal Ticketing,” Omaha World Herald, Jan. 9, 2003, p.3b.

<sup>32</sup> Scherer, *supra* note 8, at 43.

| <sup>33</sup> Milo Colton, “Self-Determination And The American Indian: A Case Study,” 4 Scholar 1, 24-25 (2001).  
| See also Charles F. Wilkinson, “Civil Liberties Guarantees When Indian Tribes Act As Majority Societies:  
| The Case Of The Winnebago Retrocession,” 21 Creighton L. Rev. 773, 791-92 (1987).

<sup>34</sup> Colton, *supra* note 33, at 24.

<sup>35</sup> Walthill Citizen (May 2, 1975).

farms on the reservation lobbied against retrocession.”<sup>36</sup> The bill stalled, failing to make it out of judiciary hearings.

In 1984 the Nebraska Indian Commission conducted hearings concerning the interaction between Thurston County and its American Indian population. Four main findings emerged:

[1] There was a lack of understanding and communication between tribal and county officials;

[2] The county had failed to recognize, appreciate or provide for the cultural and rehabilitative needs of Winnebago arrestees;

[3] The lack of cooperation and mutual working relationships, coupled with inadequate funding and accountability had led to Indian perceptions of disparate and retaliatory treatment” and to “inadequate and below standard services and facilities;” and

[4] There was a mutual reluctance by both county and tribal officials to recognize the validity of each other’s law enforcement.<sup>37</sup>

On the heels of these hearings, and after years of continued economic and governmental development, including the creation of a tribal court system, the Winnebagos, assisted by Native American Rights Fund attorney Bob Peregoy,<sup>38</sup> resumed their campaign for retrocession. The Tribe wanted “to assume more responsibility for its own people and affairs and thereby endeavor to remedy the many problems associated with the high arrest rate of its members and the present P.L. 280 jurisdictional arrangement.”<sup>39</sup>

To counter non-Indians’ views that the Winnebagos were not competent to assume jurisdiction over their reservation, the Tribe took up a public relations campaign touting

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 25-26. See also Colton, *supra* note 33, at 25 n.191 (“Looking specifically at 1983, the following statistics describe the difference between Indian and non-Indian arrest records: between 60-65% of the Indians arrested were charged with alcohol-related offenses, compared with 21% for non-Indians; 62% of Indian arrests may have been accomplished without an arrest warrant, compared with only 47.8% for non-Indians; 80% of Indians were held for pretrial reasons, compared with 64% of non-Indians; Indians also completed their sentences in greater percentages than non-Indians.”).

<sup>38</sup> “Winnebago Tribe Regains Jurisdiction,” *Indian Country Today*, Mar. 5, 1986, p.1.

<sup>39</sup> Native American Rights Fund, Abstract of Briefing Document: Public Law 280 and Retrocession Affecting the Winnebago Indian Reservation 4 (Feb. 1985).

their accomplishments since the government's move away from Termination policy.<sup>40</sup> According to a study conducted by Professor Milo Colton,

The first accomplishment was the increase in the level of qualifications held by tribal officials. During the 1960s, a Tribal Council member's average age was sixty-five years, while their average formal educational level was limited to eight years of schooling. By 1985, the average age of a Tribal Council member was forty-eight years, and the average educational level was fourteen years. One member of the Council had a master's degree, two had bachelor's degrees, and several others had two to three years of college. The attainment of higher education levels and the increase in the tribal budget demonstrate the considerable advancement of the Winnebago Tribe. After the amendment to the federal termination policy, the Tribe created a strong tribal government. It also built a number of enterprises on the reservation. The annual tribal budget grew from a mere \$6,000 in the 1960s to \$ 2.7 million in 1985.

Further development is shown in other areas of the reservation that demonstrate the capacity of the Winnebago Tribal Government. By 1985, twelve tribal members had been certified as qualified police officers by the Bureau of Indian Affairs and/or the Nebraska State Police Academy. The Chief Judge of the Winnebago Tribal Children's Court, an enrolled member of the Tribe, had a law degree from the University of Nebraska. In addition, pursuant to the Indian Child Welfare Act of 1978, the Tribe reassumed jurisdiction over child custody proceedings and heard nearly 300 cases. To address health and infrastructure needs, the Tribe promulgated codes in child welfare, fish and game, natural resources, and hazardous waste or disposal areas. The Tribe also developed codes for building, environment, taxation, and criminal and civil matters.

Tribal social service programs also operated in the areas of substance abuse and child welfare. Rehabilitation and related counseling services were enacted for those dependent on drugs, and foster care and group homes were made available for needy children. Additionally, the Tribe

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<sup>40</sup> Colton, *supra* note 33, at 27.

had an emergency medical team, a tribal health department, a community college, pre-school and other adult level educational programs, and employment assistance services.<sup>41</sup>

In February 1985, state senator James Pappas introduced Legislative Resolution 57, recommending retrocession of civil and criminal over the Winnebago Reservation. Despite the obvious problems with the prevailing law enforcement scheme, opposition to retrocession was, again, fervent. The most vociferous opponents were non-Indian residents of the reservation, who owned 80% of the land within the original boundaries of the reservation and who had the support of the county's sheriff and its Board of Supervisors. The Board expressed the concern of its citizens that the Tribe would use its civil jurisdiction to tax and condemn the land of non-Indians.<sup>42</sup> Senator James Goll, whose district included the Winnebago reservation, opposed retrocession because he believed it created racial segregation and would not guarantee a competent substitute for state law enforcement.<sup>43</sup> Senator Wiley Remmers opposed the resolution because it would delay the Tribe's assimilation into American culture and "perpetuate reservation life that is not a credit to anybody."<sup>44</sup>

Initially, opposition was not limited to non-Indians. Some tribal members were concerned about inadequate funding, inadequately trained tribal personnel, poor level of responsiveness from BIA, cronyism within the Tribe, and the potentially divisive effects that assuming jurisdiction would have on internal tribal relations. Moreover, there was a prevailing feeling among some that a tribal court was no different from the Anglo system, so why bother. In the end, however, the tribal members overwhelmingly supported retrocession.

LR 57's civil jurisdiction component was a magnet for the most vociferous opposition because of concerns surrounding "tribal court authority over major civil lawsuits involving non-Indians."<sup>45</sup> In addition, many voiced concerns that subjecting non-Indians to a tribal court system with foreign procedures and limited federal court

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<sup>41</sup> Colton, *supra* note 33, at 27-30.

<sup>42</sup> Wilkinson, *supra* note 33, at 794. On March 28, 1985, the Nebraska Attorney General issued an opinion indicating that the tribe would not gain additional powers of taxation and condemnation as a result of retrocession. Neb. Att'y Gen. Op. No. 085587, March 28, 1985, available at <http://www.ago.state.ne.us/> (last visited August 18, 2007).

<sup>43</sup> Kevin Dugan, "Winnebago Tribe Given Independence," U.P.I., Jan. 16, 1986.

<sup>44</sup> *Id.*

<sup>45</sup> Wilkinson, *supra* note 33, at 794.



oversight would imperil the non-Indians' civil liberties.<sup>46</sup> Retrocession of criminal jurisdiction raised fewer problems because it would merely restore the Tribe's jurisdiction over tribal members.<sup>47</sup>

Eventually, Senator Pappas and other pro-retrocession senators abandoned the fight for civil jurisdiction to protect the return of criminal jurisdiction. When finally put to a vote in the Nebraska legislature, LR 57 to retrocede criminal jurisdiction passed by a bare majority, 25-21.<sup>48</sup> The Tribe, the BIA and the Nebraska State Patrol (a statewide police agency), then agreed to enter into a full cross-deputization agreement covering the Winnebago Reservation, which would go into effect on the date of retrocession. That day came in July 1986, when the Department of the Interior accepted Nebraska's retrocession of criminal jurisdiction over the Winnebagos.<sup>49</sup>

Since the passage of Resolution 57, "the positive impact of attaining a semblance of self-government has been reflected in the strides and achievements the Winnebago have made."<sup>50</sup> The Tribe has established a thriving economic empire through its economic arm, Ho-Chunk Inc., which has used the profits from the Tribe's casino to finance reservation housing, medical facilities, and improvements to the high school.<sup>51</sup> Indeed, through diversified investments, Ho-Chunk Inc. boosted "the Tribe's discretionary annual income ... from a mere \$150,000 [in 1991] to \$50 million" in 2001.<sup>52</sup> The Winnebago Tribe has also negotiated an agreement with the State that authorizes tribal police officers who have passed a state law enforcement training course to write traffic citations on nontribal members.<sup>53</sup>

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<sup>46</sup> See Hearing Before the Judiciary Committee of Nebraska, at 23 (statements of Senator Beutler) (Apr. 17, 1985); Wilkinson, *supra* note 33, at 792.

<sup>47</sup> Hearing Before the Judiciary Committee of Nebraska, at 23 (statements of Senator Beutler) (Apr. 17, 1985).

<sup>48</sup> *Id.* at 28-29.

<sup>49</sup> 51 FR 24,234 (1986).

<sup>50</sup> Colton, *supra* note 33, at 33.

<sup>51</sup> "Winnebago Tribe Prospers From Casino Profits," *Hocak Worak*, Aug. 8, 2001, available at <http://www.hocakworak.com/> (last visited August 18, 2007).

<sup>52</sup> *Id.*; Colton, *supra* note 33, at 35.

<sup>53</sup> See Cross-Deputization Agreement By and Between The Bureau of Indian Affairs, The Nebraska State Patrol and the Winnebago Tribe of Nebraska (signed June 1, 2001), available at [http://www.ncai.org/main/pages/issues/governance/agreements/documents/ne\\_tax\\_motor\\_fuel\\_tax\\_agreement\\_between\\_winnebago\\_tribe\\_of\\_nebraska\\_and\\_state\\_of\\_nebraska\\_january\\_2002.pdf](http://www.ncai.org/main/pages/issues/governance/agreements/documents/ne_tax_motor_fuel_tax_agreement_between_winnebago_tribe_of_nebraska_and_state_of_nebraska_january_2002.pdf) (last visited August 18, 2007); Paul Hammel, "State Seeks Agreement on Tribal Ticketing," *Omaha World Herald*, Jan. 9, 2003, p. 3b.

**Shoshone-Bannock Tribes of the Fort Hall Reservation:** In 1963, Idaho opted for Public Law 280 jurisdiction, limited to seven specified subject matters: compulsory school attendance; juvenile delinquency and youth rehabilitation; dependent, neglected, and abused children; insanity and mental illness; public assistance; domestic relations; and operation and management of motor vehicles on roads maintained by the county or state.<sup>54</sup> Then, the state was permitted to assume such jurisdiction without tribal consent; while the Shoshone-Bannock expressly objected to the extension of state jurisdiction.<sup>55</sup> Furthermore, the Supreme Court had not yet determined that Public Law 280 encompasses criminal prohibitory jurisdiction and jurisdiction of civil actions, but does not grant states jurisdiction over civil regulatory matters.<sup>56</sup> That later ruling was to make it questionable whether the state could exercise authority over all the seven subject areas designated in state law.<sup>57</sup>

At the same time Idaho extended its jurisdiction over the seven subject areas, it also provided that, with tribal consent, state jurisdiction could extend further, either following negotiations with the state or through unilateral action of the tribe.<sup>58</sup> There are five tribes in Idaho: Coeur d'Alene, Kootenai, Nez Perce, Northwestern Band of Shoshoni, and Shoshone-Bannock. Only one, Nez Perce, opened the door to additional state jurisdiction, by passing a resolution consenting to concurrent state jurisdiction over 18 criminal offenses.<sup>59</sup>

Retrocession became a possibility under Public Law 280 in 1968. Eight years later, the American Indian Policy Review Commission (AIPRC) issued its Final Report, which included harsh criticism of Public Law 280 and called for its repeal.<sup>60</sup> Just a few years after that, an Idaho state senator from the Shoshone-Bannock area introduced a bill that would remove the state's Public Law 280 jurisdiction over the seven subject areas for

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<sup>54</sup> Idaho Code § 67-5101.

<sup>55</sup> Lori Edmo-Suppah, "Committee Prints P.L. 280 Retrocession Bill: Legislation Would Give Jurisdiction Back to Tribes in 7 Areas," *Sho-Ban News*, Feb. 4, 1999, Vol. 23, Iss. 5, p. 1.

<sup>56</sup> See *Bryan v. Itasca County*, 426 U.S. 373 (1976).

<sup>57</sup> For example, in *State v. George*, 127 Idaho 693, 905 P.2d 626 (1995), the Idaho Supreme Court found that Idaho's traffic laws were criminal/prohibitory rather than regulatory in nature. In several other Public Law 280 states, such as Minnesota, the courts have reached the opposite conclusion. See *State v. Stone*, 572 N.W.2d 725 (Minn. 1997). For further discussion of disputes regarding the scope of Idaho's Public Law 280 jurisdiction, see Emily Kane, *State Jurisdiction in Idaho Indian Country under Public Law 280*, 48 Advocate (Idaho) 10 (January 2005).

<sup>58</sup> Idaho Code § 67-5102.

<sup>59</sup> Nez Perce Tribal Resolution 65-126 (April 13, 1965), cited in Kane, *supra* note 57, at 11. Nez Perce was relatively late in developing its own law enforcement and criminal justice infrastructure. See "State Solons Consider Repealing P.L. 280," *Sho-Ban News*, Jan. 17, 1979, p. 3.

<sup>60</sup> American Indian Policy Review Commission, Task Force Four Report on Federal, State, and Tribal Jurisdiction, Issues in Public Law 280 States 4-33 (1976).

any tribe that did not request such jurisdiction.<sup>61</sup> Idaho's largest tribe, the Shoshone-Bannock, had also developed its own law enforcement and judicial apparatus, as well as a social services system. Reporting on this measure, the Shoshone-Bannock tribal newspaper emphasized the AIPRC's critique of Public Law 280, particularly its connections with the reviled federal policy of termination, and its adverse affect on tribal sovereignty.<sup>62</sup> While the bill failed, the Shoshone-Bannock's interest in retrocession did not wane. In 1986, for example, at a tribal Business Council meeting to discuss whether to endorse state legislation authorizing peace officer status for tribal police, council members expressed their hope that "passage of the bill would eventually result in retrocession of Public Law 280 in Idaho."<sup>63</sup>

Not until 1994, however, did Shoshone-Bannock retrocession efforts achieve some real momentum. In that year, the Tribes' attorney presented proposed retrocession legislation to the Idaho Senate Judiciary and Rules Committee. Limited to just the Tribes' Fort Hall Reservation, and focused exclusively on criminal and civil jurisdiction over traffic offenses, the draft bill was a way of testing, on a relatively small scale, whether retrocession could work.<sup>64</sup> Tribal attorney Wolfley explained that the Tribes were seeking retrocession for two "fundamental reasons: To assume more responsibility over their people and affairs to realize greater self-determination, and to foster a comprehensive system of justice responsive to the unique cultural, social, and rehabilitative needs of their people."<sup>65</sup> She also emphasized the cost-saving advantages for the state. Shortly thereafter, however, another reason for tribal interest in retrocession became known: the Tribes' concern about "ill treatment and unnecessary stops of Indian drivers by county and state police officers ...."<sup>66</sup>

The Shoshone-Bannock had reason to expect the retrocession bill would be enacted into law. Two years earlier, when the Idaho governor and legislature had wanted to place an anti-gaming measure on the ballot, many lawmakers had pledged support for future tribal economic development by other means. Furthermore, after Wolfley gave her testimony to the state legislature, she thought she had a commitment from the committee members to support the bill. Finally, the elected attorney general of the state was none other than the Tribes' former general counsel, Pawnee tribal member Larry Echohawk.

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<sup>61</sup> "State Solons Consider Repealing P.L. 280," Sho-Ban News, Jan. 17, 1979, p. 3.

<sup>62</sup> *Id.*

<sup>63</sup> "Council Endorses POST Training Bill," Sho-Ban News, Mar. 20, 1986, p. 3.

<sup>64</sup> Lori Edmo-Suppah, "Wolfley to Present Proposed Retrocession Legislation Wednesday in Boise," Sho-Ban News, Feb. 17, 1994, p. 6.

<sup>65</sup> *Id.*

<sup>66</sup> Emily Hone, "Prosecutors Scuttle Tribes Hopes on Bill," Sho-Ban News, Mar. 24, 1994, p. 1.

Without notifying the Tribes, however, the state legislative committee took testimony from state prosecutors, who registered their strong opposition, and indicated that county police serving reservation areas were also opposed. According to the prosecutors, there were too many unanswered questions about the consequences of retrocession, especially what would happen in instances of hot pursuit, both onto and off the reservation; what would happen when a tribal officer stopped a non-Indian driver, or a county officer stopped an Indian driver; and what would be the jurisdictional status of nonmember Indians.<sup>67</sup> What really bothered the prosecutors, however, was the possibility that state officers might be precluded from patrolling and enforcing on major interstates running through the reservation. As one legislator put it, “We can’t have them controlling the interstate and citing non-Indians into tribal court.”<sup>68</sup> As to the problem of racial profiling of Indian drivers by county officials, the Bannock County prosecutor who testified before the state legislative committee said, “I’m sick and tired of hearing those stories, and I’ve told the officers that, but I don’t know how to stop it.”<sup>69</sup> In the end, however, the prosecutors, and other state and county officials did not close the door on future negotiations over retrocession, and Idaho Attorney General Larry Echohawk offered to set up the meetings.

Nonetheless, the momentum for retrocession legislation appeared to be lost. Although the Shoshone-Bannock felt betrayed by the legislature,<sup>70</sup> they did not give up hope for retrocession. In February 1999, with Larry Echohawk hired to work on the project,<sup>71</sup> the Tribes got another bill introduced to the Idaho Senate State Affairs Committee.<sup>72</sup> Like the earlier bill, it applied only to the Shoshone-Bannock Tribe, but went further than the earlier measure by including all seven subject areas Idaho restricted to state jurisdiction. To make the legislation less threatening, the proposed legislation had limited effect on Indians.

This time, the Tribes sent a busload of supporters and witnesses to the hearing, and the Bannock County Sheriff issued a letter of support for the legislation. In that letter, Sheriff Nielson declared: “the Shoshone-Bannock Tribe should have the right to self-determination and that right should be respected .... We have this window of opportunity to work with the Tribe to help right what they perceive as a 36-year wrong. I

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<sup>67</sup> *Id.*

<sup>68</sup> Emily Hone, “Idaho Indian Tribes Come Home Empty-Handed from Legislature, Lloyd Agrees,” Sho-Ban News, Apr. 21, 1994, p. 3.

<sup>69</sup> Emily Hone, “Prosecutors Scuttle Tribes Hopes on Bill,” Sho-Ban News, Mar. 24, 1994, p. 1.

<sup>70</sup> Emily Hone, “Idaho Indian Tribes Come Home Empty-Handed from Legislature, Lloyd Agrees,” Sho-Ban News, Apr. 21, 1994, p. 3.

<sup>71</sup> Lori Edmo-Suppah, “Committee Prints P.L. 280 Retrocession Bill: Legislation Would Give Jurisdiction Back to Tribes in 7 Areas,” Sho-Ban News, Feb. 4, 1999, p. 1.

<sup>72</sup> Lori Edmo-Suppah, “S1086 Hearing Scheduled,” Sho-Ban News, Feb. 25, 1999, p. 1.

believe if we take this step, it will open a new dialogue between our agencies.”<sup>73</sup> One of the witnesses at the hearing recounted the history of Shoshone-Bannock opposition to Public Law 280 at the time the state opted for jurisdiction, and another accused the state of “35 years of neglect” in its implementation of Public Law 280.<sup>74</sup> After the hearing, the committee sent the bill to the Senate floor with a “do pass” recommendation,<sup>75</sup> and the Senate voted overwhelmingly to approve the bill.<sup>76</sup> One Senator, however, requested reconsideration, based on a letter (later described as a call) he had received from a tribal member “citing the instability of the tribal government, Tribal Court and Fort Hall Police Department.”<sup>77</sup> The same senator observed the frequency of recall petitions on the reservation, and insisted that there should be a vote of the tribal membership to approve the retrocession. At that point, the retrocession initiative began to unravel. The measure was sent back to committee for amendment, and the Tribes pulled the bill, attorney Echohawk stating that “we just ran out of time.”<sup>78</sup> According to Echohawk, passing a bill often requires two years, and they had gotten a late start. Governor Dick Kempthorne sent a letter to the Tribes, expressing his support for tribal self-determination and pledging a “good faith” effort to resolve the issues holding up retrocession legislation.<sup>79</sup>

The problem seemed to be greater than adequacy of time, however. As the Tribes contemplated whether to reintroduce the same bill or to narrow it back to traffic-only,<sup>80</sup> state and county representatives revealed further concerns. Foremost among them was fear that the Tribes would not adequately police the major roads running through the reservations, thereby endangering non-Indian drivers.<sup>81</sup> At a meeting on the Fort Hall Reservation called by several state legislators, one state representative wanted assurance that there would be sufficient funding for tribal law enforcement, either from the Tribes

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<sup>73</sup> *Id.*

<sup>74</sup> Lori Edmo-Suppah, “Idaho Senate Reconsiders S 1086 After Initial Approval: Sen. Evan Frasure Gets Letter from Tribal Member Who Wants Tribal Referendum; Says Government, Courts, Police, Unstable,” Sho-Ban News, Mar. 11, 1999, p. 1.

<sup>75</sup> Lori Edmo-Suppah, “More Than 200 Attend Called Meeting: Another Meeting Scheduled March 20,” Sho-Ban News, Mar. 11, 1999, p. 1.

<sup>76</sup> Lori Edmo-Suppah, “Idaho Senate Reconsiders S 1086 After Initial Approval: Sen. Evan Frasure Gets Letter from Tribal Member Who Wants Tribal Referendum; Says Government, Courts, Police, Unstable,” Sho-Ban News, Mar. 11, 1999, p. 1.

<sup>77</sup> *Id.*

<sup>78</sup> Lori Edmo-Suppah, “Retrocession Bill Withdrawn,” Sho-Ban News, Mar. 18, 1999, p. 1.

<sup>79</sup> Lori Edmo-Suppah, “PL 280 Retrocession: FHBC Votes to Go After Only Traffic Area,” Sho-Ban News, Jan. 13, 2000, p. 1.

<sup>80</sup> *Id.*

<sup>81</sup> Nellie Broncho, “Wheeler Wants Positive Retrocession Action,” Sho-Ban News, Oct. 6, 1999, p. 3.

or the federal government.<sup>82</sup> Idaho Senator Moon Wheeler decried the absence of any mechanism for reporting tribal traffic offenses, especially DUI, to state authorities. According to Senator Wheeler, “We don’t want the reservation to be haven for people who have gotten away with DUI charges. We have had people with 16 or more DUI’s. It’s difficult for the state to keep track of them.”<sup>83</sup>

Even with support from the other Idaho tribes and many other northwest Indian nations,<sup>84</sup> the Shoshone-Bannock Tribes could never successfully relaunch their retrocession effort. In 2000, the Idaho Senate declined a bill drafted by the Tribes that would have retroceded only the state’s jurisdiction over traffic issues to Indians.<sup>85</sup> Meanwhile, conflict between county and tribal law enforcement persisted, with matters coming to a head in May 2002, when a Bannock County deputy sheriff attempted to serve warrants on two tribal members, and instead found himself being handed a ticket for trespassing on the Fort Hall Reservation.<sup>86</sup> While state representatives continued to claim that concurrent jurisdiction could work with appropriate cooperative agreements, Tribal Chair Blaine Edmo insisted that the tribal government could take care of its own territory and would continue to insist on return of the exclusive jurisdiction it lost with Idaho’s acceptance of Public Law 280. Edmo complained to Idaho State Senator Moon Wheeler, “You’re trying to enforce a ’50s mentality in a new millennium.”<sup>87</sup>

At bottom, the Shoshone-Bannock’s support for retrocession rests on a desire to apply their own conception of justice within their community. This aspiration is captured in a statement by Fort Hall Business Council Vice-Chairperson Nancy Eschief Murillo at a February 21, 2006, meeting of the Idaho Council on Indian Affairs.<sup>88</sup> Murillo commented that although the state asserts jurisdiction, “it fails to provide rehabilitation services in such areas as juvenile delinquency. In such circumstances, the tribal court may enter orders but the state does not honor the orders.”<sup>89</sup> Mark Echohawk, representing the Shoshone-Bannock, pointed out that where Idaho has jurisdiction under Public Law 280, Indians are sent off the Reservation for adjudication. If non-Indians

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> Lori Edmo-Suppah, “ATNI Votes to Support Sho-Ban’s Efforts to Retrocede from P.L. 280,” Sho-Ban News, Oct. 6, 1999, p. 1.

<sup>85</sup> Winston Sam, “Clarification of Public Law 280,” Sho-Ban News, May 16, 2002, p. 1.

<sup>86</sup> Corey Taule, “County, Tribe Seek Solution on Jurisdiction,” Idaho Falls Post Register, July 24, 2002, p. C1.

<sup>87</sup> *Id.*

<sup>88</sup> The minutes of this meeting are available at <http://www.legislature.idaho.gov/sessioninfo/2005/Interim/indian0221min.pdf> (last visited August 18, 2007).

<sup>89</sup> *Id.*

rightfully object to being subject to tribal court jurisdiction, “Indians feel the same about being required to appear before state courts; as such, this is an offense to sovereignty and self-determination.” Members of the Council on Indian Affairs discussed several possible responses to this tribal concern, including the possibility of a national legislative fix and a state summit that could “utilize experts to find common ground on such matters as P.L. 280 and the retrocession process.” To date, however, no substantial progress toward retrocession has been made.

**Confederated Salish and Kootenai Tribes:** In 1963, pursuant to Public Law 280, the Montana Legislature introduced a bill that would authorize the state to exercise jurisdiction over Montana’s seven Indian reservations. The bill required Montana to procure tribal consent before exercising jurisdiction, even though PL 280 then did not require states to do so.<sup>90</sup> Only the Confederated Salish and Kootenai Tribes of the Flathead Reservation gave their assent. The Tribes were motivated in part by the federal government’s failure to adequately police the reservation. Leo Siras, the Chair of the Tribes’ Law and Order Committee, described the law enforcement problems to the State’s Judiciary Committee:

I can testify that the matter of law and order on criminal/ civil jurisdiction is festering like cancer and getting progressively worse. I could cite many examples of this. ... After the most careful study and consideration ... we on the Flathead Tribal Council are convinced we need this piece of legislation.<sup>91</sup>

The Tribes’ assent to state jurisdiction also stemmed from a paucity of resources. In 1965, “they had 11 employees, two of whom were police officers, and the entire annual tribal budget was less than \$250,000,”<sup>92</sup> a mere \$25,000 of which went to law enforcement.<sup>93</sup> “The tribal court system was barely functioning.”<sup>94</sup> As a result, in May 1965, the Tribes agreed to Montana’s exercise of concurrent jurisdiction over on-reservation criminal and limited civil matters.<sup>95</sup>

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<sup>90</sup> The amendments to Public Law 280 in the 1968 Civil Rights Act required states to obtain tribal consent before exercising jurisdiction. *See* 25 U.S.C. § 1326.

| <sup>91</sup> Bonnie Bozarth, “Public Law 280 and the Flathead Experience,” *Journal of the West*, 46, 47, Vol. 39, No. 3 (Summer 2000).

<sup>92</sup> *Id.* at 47.

<sup>93</sup> *Id.* at 46.

<sup>94</sup> *Id.* at 47.

<sup>95</sup> *See Larrivee v. Morigeau*, 602 P.2d 563, 566-67 (Mont. 1979) (discussing eight subjects over which Tribes ceded concurrent civil jurisdiction).

The Montana legislation requiring tribal consent to jurisdiction also permitted the Tribes to withdraw their approval within two years by “appropriate resolution.”<sup>96</sup> The tribes attempted to revoke their consent almost immediately. In 1966, the Tribal Council passed a resolution rescinding their earlier consent, but the BIA superintendent, whose approval was required on every piece of proposed tribal legislation, opposed it.<sup>97</sup> Subsequent attempts were, for various reasons, also unsuccessful.<sup>98</sup>

By 1991, circumstances had changed in two significant ways. First, the Tribes were angry over “the extremely high percentage of Salish Kootenai Tribal members incarcerated in the State prison,”<sup>99</sup> and the statistics demonstrating that Lake County gave harsher sentences to Indians than non-Indians.<sup>100</sup> Second, by 1991, the Tribes had the necessary resources and expertise to assume exclusive jurisdiction over the criminal and civil affairs of Indians on the Flathead reservation:

The tribes had more than 1,200 employees and an annual budget of over \$70 million. They had one of the largest tribal law enforcement programs in the state, with officers trained at the Montana Law Enforcement Academy or the Federal Law Enforcement Training Center. They had a trial court, appellate court, and youth court with three full-time judges, a part-time judge, visiting judges, prosecutors, defenders, paralegals, social workers, and probation officers.<sup>101</sup>

In February 1991, in response to the Tribes’ push for full retrocession of jurisdiction conferred by the 1965 agreement, state representative Angela Russell introduce House Bill 797, which would allow the Tribes to withdraw their consent to the state’s criminal and limited civil jurisdiction over Indians within the Flathead reservation.<sup>102</sup> HB 797 met strong opposition from Lake County, a large, mostly non-Indian populated county that is almost entirely within the boundaries of the Flathead

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<sup>96</sup> Mont. Code Ann. § 2-1-306 (1992).

<sup>97</sup> Bozarth, *supra* note 91, at 47.

<sup>98</sup> *Id.*

<sup>99</sup> Testimony of Rhonda R. Swaney, Chairwoman Confederated Salish And Kootenai Tribes of the Flathead Nation, before the Committee of Indian Country Affairs of the United States Senate (Sept. 24, 1996).

<sup>100</sup> Plummer, Maggie, “House Committee Hears Testimony On Partial Retrocession Bill: Committee Vote Expected Monday Or Tuesday,” *Char - Koosta News*, Mar 19, 1993, p.1 (Tribal attorney quoted as saying: “Statistics...indicate that our people have been left in Lake County Jail for as long as 27 days before even getting to a hearing.”).

<sup>101</sup> Bozarth, *supra* note 91, at 47.

<sup>102</sup> “Departed Year was Full of News,” *Char - Koosta News*, Jan 10, 1992, p. 1.



reservation, and All Citizens Equal, a reservation-based organization and long-standing opponent of tribal authority.<sup>103</sup> The opponents feared that retrocession would lead to gaps in criminal prosecution caused by the anticipated lax prosecution by the federal government of major crimes,<sup>104</sup> thereby inviting “lawlessness and economic loss.”<sup>105</sup> There was also concern that “retrocession would allow a minority of tribal members to govern the majority of non-tribal members, who could neither vote nor otherwise directly participate in tribal government.”<sup>106</sup>

Senate Minority Leader John Mercer, a staunch opponent of tribal jurisdiction, voiced the concerns of his fellow Lake County residents: “The Tribes can’t govern 15,000 people who have no say in how they’re governed.” Eventually, HB 797 “died in April when the State Senate Judiciary Committee, chaired by Sen. Dick Pinsoneault ... failed to give the bill a favorable recommendation.”<sup>107</sup> Recognizing the magnitude of the retrocession issue, the Montana Legislature called for the state Committee on Indian Affairs to hold public hearings involving federal, state, county, and tribal representatives as part of a study of retrocession, with findings and recommendations to be presented during the next legislative session.<sup>108</sup>

Because the Montana legislature meets every two years, the Tribes had that long to redouble their efforts in preparation for the legislature’s 1993 sitting. During the 1993 term, at the Tribes’ request, the legislature enacted Senate Bill 368, a more modest version of 1991s proposed retrocession. Rather than seek full retrocession as in 1991, the 1993 bill authorized the tribes to exercise only partial criminal jurisdiction over misdemeanors committed by Indians on the reservation. Despite its call for limited retrocession, SB 368 set off a firestorm of opposition, principally from Lake County officials and its non-Indian residents, though some tribal members also expressed reservations about the proposed retrocession, feeling that the Tribal Council had not solicited tribal members’ views before pushing to regain partial criminal jurisdiction.<sup>109</sup> The bill easily passed in the Senate, but met fierce resistance in the House, spearheaded by former Minority Whip and then-current House Speaker John Mercer, whose

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<sup>103</sup> Ken Toole, *Drumming Up Resentment: The Anti-Indian Movement in Montana* (Jan. 2000), available at <http://www.mhrn.org/news/Drumming.html> (last visited April 24, 2005).

<sup>104</sup> See Indian Major Crimes Act, 18 U.S.C. § 1153. While tribes have concurrent jurisdiction over such offenses, under the Indian Civil Rights Act, their sentences are limited, per offense, to one year in jail and a \$5,000 fine. 25 U.S.C. § 1302(8).

<sup>105</sup> Bozarth, *supra* note 91, at 49.

<sup>106</sup> Bozarth, *supra* note 91, at 49.

<sup>107</sup> Toole, *supra* note 103.

<sup>108</sup> Bozarth, *supra* note 91, at 50.

<sup>109</sup> Plummer, Maggie, “Public Comments on Retrocession,” *Char-Koosta News*, Feb. 12, 1993, p.1.

opposition to the bill prompted fellow representative Bob Gervais to call him a racist.<sup>110</sup> Mercer's efforts were initially successful, defeating the bill in March 1993.

In response, the Tribal Council passed a resolution "declar[ing] an economic boycott against Lake County businesses,"<sup>111</sup> and "directing department heads to buy out-of-county as much as possible, and requesting the same of the general membership."<sup>112</sup> In addition, the Tribes moved their money "to banks in Missoula or Kalispell [Counties], whose governments ha[d] shown support for SB 368."<sup>113</sup> "The tribes also threatened to shut down the airport in Mercer's district, part of which sits on tribally controlled land, withhold their signature from a critical document that could affect drinking water supplies in another reservation town, and close the south half of Flathead Lake and reservation lands to non-Indian use."<sup>114</sup> The resolution also called for the Tribes to "stop granting easements or rights of way to Lake County until the retrocession issue is resolved."<sup>115</sup>

Due in part to the economic pressure, Lake County officials met with tribal representatives to hammer out an agreement on how the retrocession process would be implemented. On the heels of this meeting, the Montana legislature adopted an amended version of SB 368,<sup>116</sup> allowing the Tribes to reassume exclusive jurisdiction over misdemeanor crimes committed by Indians and providing for continued, concurrent state-tribal jurisdiction over felony crimes committed by Indians.<sup>117</sup>

To facilitate the transition of jurisdiction over criminal misdemeanors from the State to the Tribe, the Tribes met with state, county, and city officials to discuss

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<sup>110</sup> Toole, *supra* note 103; "New Retrocession Bill Passes," Char-Koosta News, Apr. 23, 1993, p.1.

<sup>111</sup> Toole, *supra* note 103.

<sup>112</sup> "SB 368, boycott discussions dominate quarterly meeting: SKC-TV will recap meeting Friday at 6 p.m.," Char-Koosta News, Apr. 9, p. 1.

<sup>113</sup> *Id.*

<sup>114</sup> Selden, Ron, "Salish-Kootenai Chairman Michael T. Pablo Dead at 51," Indian Country Today, Aug. 30, 1999, p.A1.

<sup>115</sup> Plummer, Maggie, "Tribes Use Economic Pressure To Push Retrocession Issue," Char-Koosta News, Apr 2, 1993, p.1.

<sup>116</sup> Sec. 1, Ch. 542, L. 1993, codified as Montana Annotated Code § 2-1-306.

<sup>117</sup> "New Retrocession Bill Passes," Char-Koosta News, Apr. 23, 1993, p.1. See also The Tribal Nations of Montana: A Handbook for Legislators, published by the Montana Legislative Council (March 1995), available at [http://leg.state.mt.us/textonly/publications/research/past\\_interim/handbook.asp#Footnote30](http://leg.state.mt.us/textonly/publications/research/past_interim/handbook.asp#Footnote30) (last visited August 18, 2007).

anticipated “problem areas and issues” that retrocession would create.<sup>118</sup> The goal was to create a law enforcement agreement among the jurisdictions that would be affected by retrocession. Among the significant issues were:

... how to handle lesser misdemeanor charges that are included in felony charges; which law enforcement agency should be first to respond to dispatch calls; who investigates which crimes, and how do agencies communicate on important investigations ... how to make charging decisions; whether or not cross-deputization is a good idea; whether or not penalties in the Tribal and state systems should be similar.<sup>119</sup>

In September of 1994, the Tribes entered into a memorandum of agreement, pursuant to the State-Tribal Cooperative Agreements Act, with the State of Montana; Flathead, Missoula, and Sanders Counties; and the cities of Hot Springs, Ronan, and St. Ignatius to implement the retrocession legislation.<sup>120</sup>

The Tribes’ resolution to withdraw from P.L. 280 provides for cooperation between state, tribal, and local law enforcement agencies and includes language allowing continued state misdemeanor criminal jurisdiction in limited areas, such as a guilty plea entered in state court, pursuant to a plea bargain agreement that reduces a felony crime to a misdemeanor, or in the case of a conviction in state court on a lesser included offense in a felony trial. For felonies committed by Indians, both the state and tribes retain concurrent jurisdiction, but either may transfer prosecution to the other if consideration of the factors specifically outlined in the agreement warrants transfer.<sup>121</sup>

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<sup>118</sup> Plummer, Maggie, “Tribal Retrocession Resolution Expected in Early December: Coming Down the Home Stretch,” *Char-Koosta News*, Oct. 15, 1994, p.1.

<sup>119</sup> *Id.*

<sup>120</sup> Stewart Wakeling, Miriam Jorgensen, Susan Michaelson, and Manley Begay, Policing on American Indian Reservations: A Report to the National Institute of Justice, 35 & n.22 (July 2001), available at <http://www.ncjrs.org/pdffiles1/nij/188095.pdf> (last visited August 18, 2007). The agreement was renewed in April 2003. See “Renewal of Memorandum of Agreement Between The State Of Montana, Flathead County, Missoula County, Sanders County, City Of Hot Springs, City Of Ronan, Town Of St. Ignatius And The Confederated Salish And Kootenai Tribes Of The Flathead Nation,” in Laws of the Confederated Salish and Kootenai Tribes, Codified January 1, 2000 (revised April 15, 2003), 320-38, available at <http://www.cskt.org/documents/laws-codified.pdf> (last visited August 18, 2007).

<sup>121</sup> The Montana Legislative Council, The Tribal Nations of Montana: A Handbook for Legislators (March 1995), available at [http://leg.state.mt.us/textonly/publications/research/past\\_interim/handbook.asp#Footnote30](http://leg.state.mt.us/textonly/publications/research/past_interim/handbook.asp#Footnote30) (last visited August 18, 2007).

The only affected governmental entity refusing to sign the agreement was Lake County, which objected to the agreement's provision permitting tribal officers to ticket non-Indian traffic offenders.<sup>122</sup> With the proclamation of Montana's governor on September 30, 1994, the requested retrocession went into effect; the Department of the Interior accepted the retroceded jurisdiction in June 1995.<sup>123</sup>

Anticipating an increased workload associated with its assumption of exclusive criminal misdemeanor jurisdiction over reservation Indians (except for crimes committed against non-Indians, for which the federal government has concurrent jurisdiction), the Tribes expanded and improved their court system in several respects:

- a. *Development of an Independent Prosecutor's Office.* All Prosecutors must be licensed to practice law....
- b. *Establishment of Separate Defender's Office.* This Office represents all people facing a criminal charge in Tribal Court....
- c. *Expanded Legal Services Program.* This program provides representation in civil cases to individuals meeting representation guidelines. Office staff currently, consists of four attorneys and one advocate. ...
- d. Adult and Juvenile Probation Services and Community Service Placements.<sup>124</sup>

The Tribes also remodeled their tribal court's chambers and expanded their appellate court system.<sup>125</sup>

The Tribes' preparations would prove to be invaluable. As a report to the National Institute of Justice noted:

Retrocession engendered a flood of new police activity. Calls to the department nearly doubled between 1993 and 1996, from 4,109 to 7,049. To its credit, the Salish and

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<sup>122</sup> "Officials Have Different Opinions on Impact of Retrocession Issue on Lake County Ballots," Char-Koosta News, Nov. 11, 1994, p.1; "Tribal Officials: Retrocession Details Can be Worked Out," Char-Koosta News, Oct 7, 1994, p.1; "Retrocession Agreement Takes Effect Saturday: Despite Opposition by Lake County," Char-Koosta News, Sept. 30, 1994, p.1; Wakeling et al., *supra* note 120, at 35 & n.22.

<sup>123</sup> 60 FR 33318 (June 27, 1995); *State v. Spotted Blanket*, 955 P.2d 1347, 1351 (Mont. 1998).

<sup>124</sup> See Testimony of Rhonda R. Swaney, *supra* note 99. As of 1996, most of the attorneys in these offices were nonmembers.

| <sup>125</sup> *Id.*; "Tribal Court Remodeling Project Completed," Char-Koosta News, Dec. 23, 1994, p.3.

Kootenai department adjusted well to its increase in size and activity level, as well as to the new jurisdictional rules. Salish and Kootenai officers reported (and we observed) that they worked well with officers from the other jurisdictions, even the Lake County deputies (although on an administrative level, Lake County and the Confederated Tribes did not have a warm relationship).<sup>126</sup>

In 1999, the retrocession agreement was renewed for eight more years, though Lake County and the City of Polson refused to sign. Then the prevailing sentiment was that the agreement had been a success, and would continue to be “as long as the attorneys and politicians don’t interfere.”<sup>127</sup>

**Ely Colony:** In 1955, pursuant to Public Law 280, the Nevada Legislature enacted NRS § 41.430, which authorized the State’s assumption of “criminal and civil jurisdiction over public offenses committed or civil causes of action arising in areas of Indian country in Nevada.”<sup>128</sup> From the outset, Nevada counties had concerns about the financial burdens associated with PL 280 jurisdiction.<sup>129</sup> Building on these concerns, many Nevada tribes undertook an effort to persuade the state to retrocede statewide, in the interest of strengthening tribal sovereignty and government.<sup>130</sup> In 1975, Nevada passed legislation offering to retrocede all of its jurisdiction, except over tribes that explicitly consented to continued jurisdiction. In June of that year, the United States accepted Nevada’s retrocession over 14 Indian reservations and “colonies.”<sup>131</sup> At the time, the only Nevada tribe not included was Ely Colony. With only 100 acres at the time on the outskirts of Ely, Ely Colony determined that it was not ready for retrocession responsibilities, and successfully sought exclusion from the sweeping statewide legislation.<sup>132</sup>

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<sup>126</sup> Wakeling et al., *supra* note 120, at 35.

<sup>127</sup> “Law-Enforcement Agreement Proves Beneficial to Officers,” Char-Koosta News, Nov. 26, 1999, p.1.

<sup>128</sup> *Davis v. Warden*, 498 P.2d 1346, 1348 (Nev. 1972).

<sup>129</sup> See Goldberg-Ambrose, *supra* note 5, at 56-60.

<sup>130</sup> Email from Robert Peregoy, former attorney for Ely Colony, to Jay Shapiro, research assistant to Professor Carole Goldberg, May 18, 2005 (copy on file with author).

<sup>131</sup> 40 Fed. Reg. 27501 (1975). The term “colony” has been applied to American Indian settlements, mainly in Nevada, where local tribal members settled because of proximity to potential jobs. Many of these colonies organized and were federally recognized as tribes through the Indian Reorganization Act of 1934, 25 U.S.C. § 476.

<sup>132</sup> Email from Robert Peregoy, former attorney for Ely Colony, to Jay Shapiro, research assistant to Professor Carole Goldberg, May 18, 2005 (copy on file with author).

In 1985, Ely Colony, under a new tribal government, voted to approach the Nevada legislature for retrocession. Although the Tribe was not particularly dissatisfied with the county's law enforcement services, retrocession was a tribal priority because of concerns about sovereignty and self-determination.<sup>133</sup> Ely easily persuaded the legislature to support retrocession, given that jurisdiction over all other reservations had already been retroceded, and this would provide statewide uniformity.<sup>134</sup> Furthermore, the county sheriff and other local officials supported the Tribe's request because the Sheriff's budget was strapped. He received no funds for Ely Colony law enforcement, other than his general countywide budget.

But Nevada's first offer of retrocession, made that same year, was rebuffed by Assistant Secretary of the Interior for Indian Affairs Ross Swimmer, who stated that retrocession "would not be 'cost effective, considering the small territorial size of the colony of 110 acres and its small population of 185 tribal members,' "<sup>135</sup> and that continued state jurisdiction under PL 280 would not impinge on the tribe's self-determination.

Undeterred, the Colony then enlisted the help of Native American Rights Fund attorney Bob Perego. Perego believed that Swimmer's statement about "cost-effectiveness" had no basis in fact. So he set up a meeting with the Tribal Council, the BIA Superintendent, and the County Sheriff.<sup>136</sup> Perego describes what happened at that meeting:

I asked the BIA Superintendent if, under a proposal to Swimmer, he would allocate \$5,000 per year to the County Sheriff's budget, and the BIA and Tribe would cross-deputize the County officers as BIA cops. The source of law to be applied would be state and county law, to be adopted by the Tribe as tribal law. Everyone agreed this should defeat Swimmer's "cost-effectiveness" excuse.<sup>137</sup>

Perego presented this plan to Swimmer in a long letter. In addition, he pointed out that the federal government had accepted two other recent retrocession offers (Winnebago and Colville) that had cost the United States a combined figure of

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<sup>133</sup> *Id.*

<sup>134</sup> "Ely Shoshone Tribe Regains Jurisdiction," Indian Country Today, Mar. 30, 1988, p.16.

<sup>135</sup> *Id.* Swimmer estimated that retrocession would cost the federal government \$45,000 per year. Email from Robert Perego, former attorney for Ely Colony, to Jay Shapiro, research assistant to Professor Carole Goldberg, May 18, 2005 (copy on file with author).

<sup>136</sup> Email from Robert Perego, former attorney for Ely Colony, to Jay Shapiro, research assistant to Professor Carole Goldberg, May 18, 2005 (copy on file with author).

<sup>137</sup> *Id.*

nearly \$900,000 for law enforcement. Finally he made an argument about the federal government's trust responsibility, noting that:

...a refusal to accept the state's offer would constitute an unlawful rule or policy whereby the United States was prohibiting an Indian colony from exercising its sovereign governmental powers in the contest of civil and criminal jurisdiction simply because the colony is small in terms of territory or population.<sup>138</sup>

After waiting six months with no response, Peregoy wrote to Swimmer again, this time indicating that he would be coming to Washington, D.C., to meet with him. In preparation for that meeting, Peregoy lined up support from the governor's office and the two Nevada senators.<sup>139</sup>

Instead of attending the meeting himself, Assistant Secretary Swimmer sent a member of his staff and someone from the solicitor's office to meet with Peregoy. According to Peregoy:

One of the issues BIA raised was: How is tribal sovereignty advanced where a Tribe is going to adopt state law and cross-deputize County officers to enforce it on tribal land. The answer: it doesn't matter. All of the authority is in the hands of the Tribe. If they don't like the law, or need special provisions, they can make changes. If the officers are rednecks, the Tribe can jerk their badges.<sup>140</sup>

When the Assistant Secretary's representative insisted that Swimmer would stand by his original decision, Peregoy replied that his client had instructed him to meet the Assistant Secretary personally to hear his response. Peregoy explained that he had already arranged a meeting with the Governor and Nevada's two senators in the senior senator's office, so the Assistant Secretary could explain why he was refusing to accept a \$5,000 retrocession offer, the last in the state, when the previous year he had approved two other retrocessions costing together nearly \$1 million.<sup>141</sup> The meeting would be scheduled in two weeks, when the Governor had planned to be in D.C., and the senior senator would be calling Mr. Swimmer to make the arrangements. A half hour later, Peregoy had a message on his hotel room phone — the Assistant Secretary had relented

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<sup>138</sup> "Ely Shoshone Tribe Regains Jurisdiction," Indian Country Today, Mar. 30, 1988, p.16.

<sup>139</sup> Email from Robert Peregoy, former attorney for Ely Colony, to Jay Shapiro, research assistant to Professor Carole Goldberg, May 18, 2005 (copy on file with author).

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

and was willing to accept the retrocession. In February 1988, the retrocession became effective.<sup>142</sup>

**Tulalip Tribes:** The Tulalip Tribes, located along the Pacific coast approximately 30 miles north of Seattle, became subject to state jurisdiction under PL 280 in the late 1950s. In 1957, Washington passed a statute opting into PL 280, but only for tribes that petitioned for state jurisdiction.<sup>143</sup> Shortly thereafter, Tulalip submitted such a petition, indicating its consent.<sup>144</sup> Then, in 1963, Washington enacted a second law, opting for state jurisdiction over eight named subject areas regardless of tribal consent, and opting for jurisdiction over all fee lands and non-Indians regardless of tribal consent.<sup>145</sup> This statute made no difference for Tulalip, as it had already consented to full state jurisdiction under PL 280.

The system of state jurisdiction was not particularly effective at Tulalip. Interrelated social problems of drug abuse and crime, often associated with poverty and the absence of control over community and justice institutions, made Tulalip “ ‘a very unsafe place.’ ”<sup>146</sup> In the early 1990s, these problems were especially acute. Although the Tribe was experiencing greater economic prosperity due to gaming and commercial development, “State and county authorities essentially had stopped policing the reservation, allowing much drug-abuse related crime and violence to go unchecked.”<sup>147</sup> According to an assessment prepared by a site visit team for the Harvard University’s Honoring Nations, “[W]hen Tulalip citizens were caught up in the non-tribal justice system, they neither trusted it to treat them fairly nor felt as if anyone in that system cared about their rehabilitation....” As a consequence, community members were reluctant to report crimes to the county authorities or to cooperate with investigations. Although tribes have concurrent jurisdiction under PL 280, Tulalip, like most PL 280 tribes, had never developed the governance infrastructure and programming that could support an effective tribal response to drug abuse, associated violence, and crime. The Nation had a

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<sup>142</sup> 53 FR 5837 (1988).

<sup>143</sup> Ch. 240, Laws of 1957, p. 941, Wash. Rev. Code, ch. 37.12 (1976); see *State v. Paul*, 53 Wn.2d 789, 792 337 P.2d 33, 36 (1959).

<sup>144</sup> *State v. Paul*, 53 Wn.2d 789, 792 337 P.2d 33, 36 (1959) (upholding state’s assumption of PL 280 jurisdiction).

<sup>145</sup> Wash. Rev. Code § 37.12.010.

<sup>146</sup> 2006 Site Visit Report, Honoring Nations, Tulalip Tribes Alternative Sentencing Program (statement by a long-time Tulalip resident). The Site Visit team included Professors Duane Champagne and Carole Goldberg, as well as Dr. Miriam Jorgensen of the Harvard Project on American Indian Economic Development.

<sup>147</sup> *Id.*



small, limited-operations court since the mid-1970s, formed to address tribal fishing regulations violations, evictions, and collections issues.<sup>148</sup>

The Tribe determined that retrocession was a necessary first step to raise community confidence in the justice system and to reclaim its tribal members lost to drugs and alcohol.<sup>149</sup> At first, the Washington legislature rejected the Tribe's requests, forcing the Tribe to resubmit petitions for several years.<sup>150</sup> During that period, the Tribe cultivated good relations with the local Snohomish County government.<sup>151</sup> Retrocession finally occurred in 2000,<sup>152</sup> at a time when the Tribe's financial and political strength were considerable. Department of the Interior funding for the Tribe's new responsibilities was not at issue, because the Tribe was able to assume the burden of additional law enforcement and criminal justice responsibilities.

In anticipation of the retrocession, the Tulalip Tribes tripled its tribal police force to nine officers (all Native American), an enterprise funded solely by the Tribe, mostly from its 9-year-old casino, but also from its commercial/retail development, Quilceda Village.<sup>153</sup> It also hired a top-quality Indian police chief with extensive experience in Indian country and beyond.<sup>154</sup> In addition, the Tribe and Snohomish County entered into a cross-commission agreement that empowered approved county and tribal officers to "exercise on the reservation all powers of a Tulalip Police Officer or Deputy Sheriff as provided by applicable law."<sup>155</sup> Initially, however, the agreement was an unrealized opportunity because "[n]one of the officers had been through the state police academy,

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<sup>148</sup> *Id.*

<sup>149</sup> The state retained concurrent jurisdiction over the eight subject areas identified in its 1963 statute; so while *comprehensive*, the grant of retrocession may not have been *complete*. See note 145, *supra*.

<sup>150</sup> Michael Ko, "New Tulalip Police Get Greater Power: Nine-Member Force to Take Criminal Cases Sheriff Used to Handle," *Seattle Times*, Nov. 15, 2001, p.B1.

<sup>151</sup> Testimony of Donald C. Hatch Before The United States Senate Committee On Indian Affairs Oversight Hearing On Tribal Sovereign Immunity, Federal Document Clearing House Congressional Testimony (Sept. 24, 1996).

<sup>152</sup> 65 FR 75,948 (2000) (corrected at 65 FR 77,905 (2000)).

<sup>153</sup> Jennifer Sullivan, "Moving Up in the Ranks: The Tulalip Police Department Is Moving Forward in Its 2-Year Effort to Become a Credible Force," *Seattle Times*, March 3, 2004, p.H20; Ko, *supra* note 150; Janet Burkitt, "Tulalips Fighting Graveyard Stigma: Slaying Victims' Bodies Turn Up on Reservation," *Seattle Times*, May 19, 2001, p.B1.

<sup>154</sup> 2006 Site Visit Report, Honoring Nations, Tulalip Tribes Alternative Sentencing Program.

<sup>155</sup> See Tulalip & Snohomish County Cooperative Law Enforcement Agreement ¶ 5, available at <http://www.ncai.org/main/pages/issues/governance/agreements/documents/Tulalip-Snohomish%20County%20Law%20Enforcement%20Agreement.pdf> (last visited May 4, 2005). Retrocession allowed the Tulalip Tribes to negotiate this agreement from a position of strength, as it granted the nation great authority over activity on tribal lands.

and the department relied heavily on the Snohomish County Sheriff's Office for backup and guidance."<sup>156</sup>

By 2004, the Tribe's circumstances had changed considerably.

[T]he patrol staff ha[d] grown to 15. The agency now ha[d] four fish-and-wildlife officers, whose jurisdiction ranges far beyond the reservation, a fleet of new squad cars, three recently purchased boats and the beginning of a volunteer police corps. Many tribal members ha[d] come to recognize the department as the community's watchdog.<sup>157</sup>

In addition, J. A. Goss, head of the Tulalip Police Department, began sending his officers to the state's Criminal Justice Training Commission, which provided them with the same training given most state police and made them eligible for a County law enforcement commission under the parties' 2001 agreement.<sup>158</sup> The cross-commission gave the tribal officers authority to arrest non-Indians, an authority that otherwise rested exclusively with the state.

With retrocession also came the possibility for the Tribe to introduce its own courts and philosophies of justice. With help from the Northwest Intertribal Court System, Tulalip "upgraded its court facility, and ... hired and contracted for prosecutors, a second judge, clerks, probation and compliance officers, and other necessary court personnel. Additionally, it developed a relationship with the University of Washington clinical law program to provide counsel for needy defendants."<sup>159</sup>

Although the early versions of the Tulalip Police Department and Tulalip Court appeared quite Western in both structure and operation, the Tribe realized that it did not want to replicate the state and county systems. Thus, the chief of police and criminal court judge quickly moved to create "a system that Tulalip citizens could trust, that was viewed as interested in recovering people and not 'throwing them away,' and that generated results."<sup>160</sup> After convening all the relevant stakeholders and tribal personnel in the community, they devised an alternative sentencing system using GPS technology and mandatory treatment, established a "healing to wellness" court, and initiated the development of an intertribal detention facility (to be leased from the county) that would

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<sup>156</sup> Sullivan, *supra* note 153.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> 2006 Site Visit Report, Honoring Nations, Tulalip Tribes Alternative Sentencing Program.

<sup>160</sup> *Id.*

focus on rehabilitation.<sup>161</sup> The new system made extensive use of tribal elders and tribal teachings.

Harvard University's Honoring Nations program has provided some indicators of the effectiveness of Tulalip's post-retrocession law enforcement and criminal justice systems:

- The police chief claimed that crime is declining and that today, the Tulalip Reservation is "the safest place in Washington State." While we did not see geographical statistics on crime, this sentiment was echoed by other parties. At a completely different time and without knowing what the chief would tell us, a tribal attorney noted that Tulalip used to be a very unsafe place "but now it's not."
- More specifically, tribal and county officials who are in a position to know claimed that TASP (Tribal Alternative Sentencing Program) has greater traction against recidivism than typical programming. Reportedly, 20-25% of the participants in TASP do not re-offend, as compared to only 7-9% in Snohomish County's defendant population.
- The tribe presented estimates of jail-cost savings of approximately \$120,000 over the last four quarters; these estimates are based on the number of days defendants would have been in jail had they not been on GPS ankle bracelets as TASP participants.<sup>162</sup>
- Participants in TASP provided testimony that it is working for them. The chief of police and criminal court judge both reported hearing from parents who said, "TASP gave me my child back." The chief even said he had parents giving tips about their children's offenses, with the intention of getting them into TASP, since it has established a reputation for caring rehabilitation. We were particularly struck by the experience of a young female client who is pregnant and wanted to stay in the same home as her child's father. The requirements of the program are that she must live in a clean and sober home, and not surprisingly, she and her boyfriend used together. The two petitioned the program for the boyfriend to *also* be subject to TASP-administered random drug testing, which the court agreed to, with the proviso that the defendant go to jail if the boyfriend's test was ever positive. This sort of flexibility would have been impossible in the county system. Thus, through TASP, both are staying clean and

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<sup>161</sup> *Id.*

<sup>162</sup> This is not a net jail cost savings, but rather, evidence of a more cost-effective way to serve a larger custody population.

sober, learning how to stay organized, taking better care of themselves, and building a more positive family life.<sup>163</sup>

The consensus at Tulalip seems to be that retrocession was a major step forward for sovereignty, tribal culture, and public safety.

### Lessons from the Case Studies

The five case studies of Omaha, Winnebago, Salish & Kootenai, Ely Colony, and Tulalip retrocessions, as well as the one study of an unsuccessful retrocession campaign at Shoshone-Bannock, share some common features. Regarding reasons for retrocession, one or two concerns dominate: The tribes may be receiving inadequate services from state and county law enforcement, and/or they may be seeking to make their law enforcement and criminal justice regimes more consistent with their overall assertions of sovereignty. Where the concern is inadequate services, the problems may relate to lack of availability of police, cultural insensitivity of county law enforcement and criminal justice agencies, discrimination against Indians in the county system, or some combination of the three. The relative significance of all these reasons is unclear and seems to vary from case to case.

The most serious obstacle to retrocession in these cases has been resistance from local governments, followed next by financial considerations. In the one case where retrocession did not go forward, the local sheriff was supportive, but other state and local officials (*e.g.*, the prosecutor) were resistant, largely because they did not trust the Shoshone-Bannock Tribes to deliver effective law enforcement. Interestingly, even where local governments do not have adequate resources to maintain effective law enforcement and criminal justice services on reservations (as in the Winnebago and Salish & Kootenai cases), they have sometimes attempted to maintain their jurisdiction, often at the behest of non-Indians living on the reservation (who may be receiving more satisfactory services). Money to fund tribal and federal law enforcement and criminal justice post-retrocession has recently become another difficult point in navigating the retrocession process. As the Ely Colony case suggests, the Department of the Interior has become increasingly reluctant to provide money for this purpose, leaving tribes (like Tulalip) to foot most of the bill for their new jurisdictional arrangement.<sup>164</sup>

The successfully retroceding tribes in our five case studies deployed a variety of strategies to overcome state, local, and federal resistance to retrocession. The most common approach was to address the concerns of local communities, either through

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<sup>163</sup> *Id.*

<sup>164</sup> In the case of the very recent Santee Sioux retrocession in Nebraska, the Tribe received a COPS (community-based policing) grant from the United States Department of Justice the year before the retrocession, to help it in preparing for the changeover of jurisdiction. See Press Release, "Rep. Osborne Announces \$180,000 Grant Awarded to Santee Sioux Tribe," August 26, 2005.

careful limitations on the scope of retrocession<sup>165</sup> or through cooperative agreements or contracts allowing county officials to participate in reservation law enforcement. For example, Omaha excluded traffic offenses on public roads from its retrocession, the Winnebago excluded civil jurisdiction altogether, and Salish & Kootenai excluded felonies. Most retroceding tribes established cross-deputization agreements with local governments or, in the case of Ely Colony, a contract for the county to provide law enforcement services. These agreements helped ease non-Indians' concerns about the efficacy of tribal law enforcement. Where local communities were more resistant, tribes turned to public relations campaigns and even, in one case, a boycott of local non-Indian businesses. Increased tribal political and economic power, as a result of gaming and other economic development ventures, has recently improved tribal prospects for securing state support of retrocession.

In all the successful retrocession cases, there seems to be a high level of tribal satisfaction with the results. Not only has tribal sovereignty been enhanced through more active involvement of tribal government in community affairs, but law enforcement has been rendered more accountable to the community and is more trusted to address community concerns. Thus, there is more frequent police patrolling, and a higher level of community cooperation with law enforcement and criminal justice systems that more closely match community values. The ultimate consequence has been a drop in crime in several of the case study tribes. More stable legal institutions have also been associated with enhanced economic development, as in the case of Winnebago.

### Findings from Our Research

Although the case studies are useful in illustrating the common features of successfully retroceding tribes, our selection of the cases for study has been limited by the availability of published sources on this rather obscure topic. Moreover, the case studies do not examine tribes that have chosen not to retrocede or have been unable to do so. It's possible, for example, that the tribes for which retrocession has occurred had unusually bad experiences with PL 280 or were unusually well-organized. Likewise, it's possible that the states that agreed to retrocession were atypical of states, with respect to financial resources for the exercise of Indian country jurisdiction or other motives for returning jurisdiction to the federal government. Our PL 280 research project was designed to provide a systematic examination of retrocession using the comparative method to look at retrocession in a broader context. It also provides far more extensive, broad based, and detailed interview data than the published sources.

The 17 reservation sites for our study include tribes that are under PL 280 jurisdiction, tribes that are not now nor have they ever been under PL 280 jurisdiction,

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<sup>165</sup> PL 280 provides that retrocession can apply to less than all of a state's jurisdiction under the act. 25 U.S.C. § 1323.

tribes that were explicitly excluded from PL 280, and tribes that have successfully retroceded from PL 280. The last category of retroceded tribes consists of 2 tribes and a total of 43 interviews, including reservation residents, law enforcement personnel, and criminal justice officials.<sup>166</sup> In this section we analyze the data from those 2 reservations, as well as the data from tribes in the study that have never retroceded.

### Two Tribes That Have Retroceded

Because of confidentiality requirements, we cannot provide rich, ethnographic context for understanding the experience of both tribes with retrocession. The most general of contextual elements on these two groups is as follows:

Tribe 1: This tribe has a membership of over 2,500 and retroceded over 20 years ago, at which time they had little economic development on the reservation. Since then, the tribe has enjoyed successful economic development.

Tribe 2: Has a membership of under 2,500 and retroceded within the past 20 years, at which time they had a very successful gaming facility.

What follows is an analysis of the interviews from both reservations mixed together, to begin to form a broad picture about retrocession. There are some instances, however, where there were differences apparent in the responses from Tribe 1 and Tribe 2, particularly because of the different historical and political contexts when they retroceded, in which case we explicitly analyze them separately. In addition, when reporting responses to specific questions from the interview instrument, we give response rates (such as 14 of the 25 interviewees who responded to this question ... ) but when themes emerged outside of the interview schedule, we report these simply as the total number of interviewees who responded in this way.

### Why Tribes Retrocede

Why do tribes go through the expensive, time-consuming, and politically difficult process of retrocession? What were the complaints of reservation residents that pushed them to pursue retrocession? Our case studies from published sources suggested that the dissatisfaction with PL 280 ranged from sovereignty infringement, long response times, discrimination, and lack of cultural understanding. Our study bears out this evidence and adds additional areas of dissatisfaction. Thirty interviewees spoke of the reasons why the tribe made the decision to retrocede. We have identified six themes that emerge from the

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<sup>166</sup> Some caveats must be made about these data. The use of the interview data to make generalizations about the process of retrocession is limited. The 43 interviews are not randomly selected, but consist of the experiences of two tribes in specific contexts. This portion of the analysis does not include a third tribe in the study which straddled two states. Some of this third tribe's territory had been subject to retrocession, and some was covered by PL 280 and had not been subject to retrocession.

interviews: Poor services, prejudicial treatment, police brutality, sovereignty, high crime and cultural insensitivity. The frequencies of responses are displayed in the graph below.

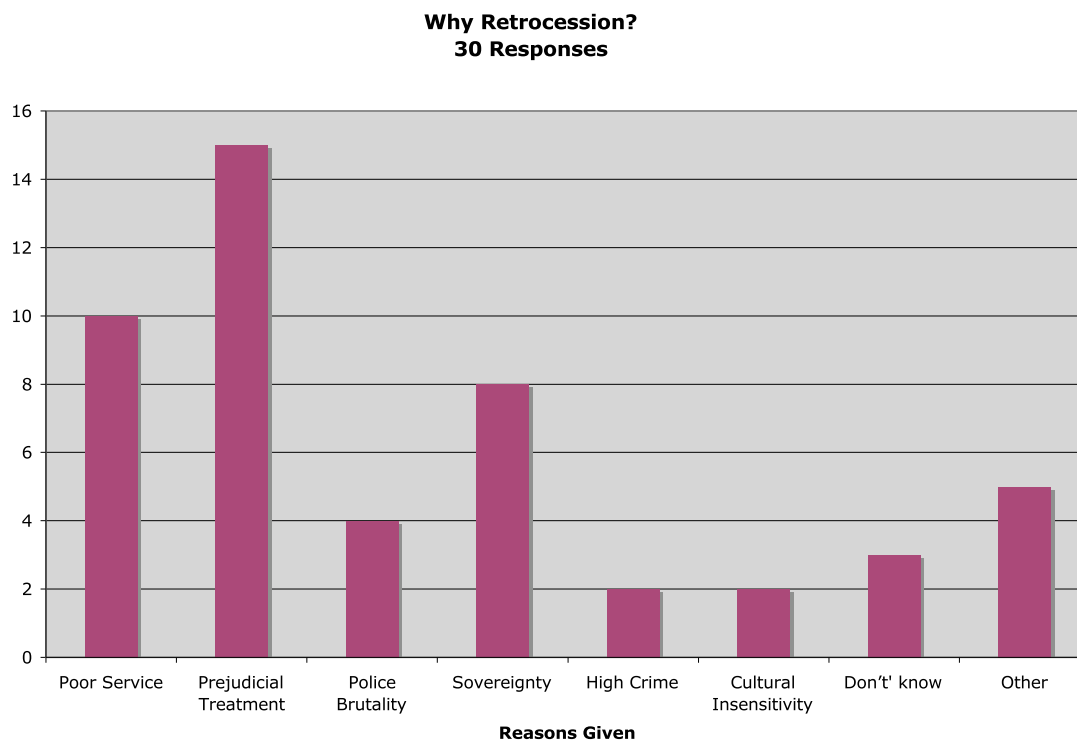


Figure 13.1

### Poor Services

The first category “poor services” refers to any reasons cited that dealt strictly with lack of law enforcement resources, as opposed to complaints that resulted from prejudicial treatment (a separate theme). Poor services were the second most commonly cited reason. Out of 30 respondents, 10 cited poor services as one of the reasons the tribe sought retrocession. The complaints in this category focused primarily on a lack of law enforcement staff. Both regular patrols and response times were negatively affected by police forces that were stretched too thin. There may be several reasons for this: the far distance necessary to travel to these reservations; a general countywide lack of staff due to resource shortages, or an implicit or explicit policy to provide less resources to reservation residents because of limited resources. The following comments are representative of the sample:

So, the law enforcement back then wasn't very sufficient. Because the state cops come here when they feel like it, patrol a little while and go back because they had the whole county to patrol. And that's why we had about two cops, which were two old men, usually, and they didn't do nothing, you know.

There was an assault here that I know of a couple of years ago. And it was a major assault. And it took the county to respond over 45 minutes to get here. And people were getting frustrated with this kind of response. They had to 1: get the people together. Not just one person would come out. They needed more than one person to come out for safety. And their deputies were spread out for a long ways to be able to respond. Maybe one car would cover 25 square miles and not be able to get here in time.

... the system of turning control away from a tribe to a state was inherently bad. It just was not going to work. The state did not have the tax base to cover their cost.

Poor services also resulted in law enforcement coming only for serious offenses. This can have negative consequences for safety on the reservation, as one interviewee pointed out:

It was a place of fear, especially for women and children, because there was no authority on the reservation. ... As an Indian person, if you were being attacked in your home, there was no one to call. You could call the sheriff, but you thought twice, and you thought too long about doing that. The sheriff would come in and clean up the murders and the really bad auto accidents and stuff like that, but even though [reservation] is a relatively small place, smaller than anyplace I worked before, it became a haven for lawless behavior on the streets.

### Prejudicial Treatment

The perception that the county criminal justice system (law enforcement and court system) was prejudiced against tribal members was the most often cited reason for seeking retrocession. Of the 30 respondents to the question, 15 cited prejudicial treatment as the reason for seeking retrocession. Responses were categorized as prejudice when they focused on unfair treatment that was directed specifically toward the tribe or the reservation residents because of their Native identity. This prejudice manifested itself in a continuum of severity that included profiling tribal members, accusations of unfair detention practices, and use of excessive force.



Incarceration disparities were a significant problem at one of the reservations visited. The disproportionately large number of American Indians in the county jail was reportedly the result of the something known among tribal members as the “Indian Bounty Act.”

He [the sheriff] went down to the state legislature at one point saying that it was really burdensome and expensive for him to have to arrest all these Indians because they didn’t pay any local taxes. So, the state legislature passed this law which came to be known as the Indian Bounty Act. A law whereby they gave [the sheriff] \$25 a day for every Indian he had in jail. What he would do is go out after dinner and go over to the reservation and round up a few Indians, if he could find some drunk ones to pick on, that would be fine. Otherwise, if he found others, then he’d haul them over to jail after the evening meal had been served at the jail, book them in, and then real early in the morning before breakfast, he’d release them. And so the record would show for each of those Indians two days in jail. So, that’s \$50, and it never cost him a cent. He never had to feed them a meal or a cup of coffee. They’d just be there over night, but it would be two calendar days on the reports. And he’d turn them loose, and it didn’t really seem to matter to him if it was a winter in a blizzard, or what. He’d just do it, and it was a 20-mile walk back over to where the Indian people were living for the most part, and it was redneck city over where he was. They couldn’t really hitchhike home, either. So, [the Sheriff] did that for many, many years.

I know it happened because I got word from someone who was released that my elderly uncle was going to be released at 10:30 that day, and it was only five degrees. So, I went rushing over there, and I found him walking about a mile out of town, and his lips were turning white. He was already getting frostbite walking home. You pick him up over here, and you let him out of jail over there, you don’t care how he gets home. Besides all that, if they really are breaking the law by being a public drunk, and you put them in jail six times a year, why don’t you ever sentence them to go and get an evaluation and get treatment?

... before retrocession, it was like they had a quota to do. It was getting close to the end of the month, you’d see the two county cop cars roll into town and start trying to pick people up, and fill the jail up, and everything else. It wasn’t only just our perception seeing it, we actually got to see it researching all those books and writing everything down [for the retrocession effort].

While the tribe had always suspected that their members were incarcerated at higher rates than the countywide population, the disparities were documented during the tribe's bid for retrocession.

... what I did at the time was there was a group of about four of us and we went down to ... the county courthouse, and two of us recorded all the criminal and two of us recorded civil, all the entries that were in the county books for the previous two years. ... Almost every one of those pages was either somebody from [the reservation or a town within the reservation] .... We'd take the whole page, and we'd just record how many entries were on that page and then how many of those entries were people from [the Reservation] involved. I don't remember exact numbers on every page, but we always ended up being either half or two-thirds of the page.

The amount of people that occupied the ... county jail was terribly disproportionate. At that time, I think we were maybe 20% of the population. But we were 90 to 95% of the inmate population there. The bounty law that ... [I] told you about, where they collected a certain amount for Indian heads ...

## Police Brutality

Although only 4 respondents reported that police brutality was the impetus for retrocession, the accusation is serious enough that it merits some attention here. Responses were categorized as brutality when they involved violence committed by the law enforcement on reservation residents.

But I also saw the times where he [the sheriff] would goad different members into saying something, into getting smart with them, and he'd handcuff them to a chair. And he had this big old flashlight, and they would say certain things. And he'd grab that flashlight and whack them across the head. And they'd fall over handcuffed, bleeding. But that was the way that he taught you that you don't dispute anything that he says. That was a major, major issue.

And he had a long history of abusing Indian inmates. He was accused on numerous occasions of raping Indian women in the jail.

... because I do know when the police would pick up a woman here, sometimes she didn't get to the station ... in one piece. She was raped. There's nothing at the time we could do about it .... And same with the guys. They'd get to the police station pretty beat up and leave that way.

When you go down to visit them, they're pretty beat up. It's always your word against theirs, and naturally our word was never good enough, so they always took the officer's word.

Before retrocession, one tribe in particular fought back with traditional forms of power and influence that were sometimes effective. As the following quote shows, in one instance, community power won out over an abusive sheriff:

My cousin Vernon apparently had one of these dubious arrest warrants for public intoxication or some kind of thing. He was really a harmless old character. He was just crazy. The county sheriff was trying to arrest Vernon and take him to jail. Vernon was related to us, and his parents were gone, so he would always go to my mother's and she would feed him and take care of him and get after him to straighten up ... Vernon was down there and resisting. He didn't want to go to jail. Because the previous time, my mother told us later, is that on the way to jail, the county sheriff stopped between [the reservation and the county jail] and worked him over. Really, really beat him up bad. Vernon wasn't so much concerned about going to jail, he didn't want to get beat up on the way to jail. That's why he was resisting. This whole thing was taking place, and my mother happened to drive by. I was kind of surprised at my mother; she got out of the car and she said, "[Sheriff], what are you doing?" The sheriff said, "I'm trying to take Vernon to jail." She said, "For what?" And I think it was public intoxication or some old warrant or something like that. She said, "Well he doesn't want to go with you." He said, "Well he has to go." She said, "He's afraid. The last time you took him to jail you beat the hell out of him on the way to [county]. That's why he's afraid." She said, "You promise me you won't beat him up on the way to [county Jail]." Of course there are all these kids, a whole crowd was there. Finally she said, "[Sheriff], will you promise me that you will not beat up my nephew on the way to [county jail]?" So ... all the kids were watching him. He says, "... I promise you that I won't lay a hand on Vernon on the way to [County Jail]." Vernon was feeling pretty confident. He thought he was going to get out of this whole mess because his substitute mother, his aunt, was really going to bat for him. She says, "Vernon, don't worry about getting beat up on the way to [county]. He's not going to beat you up. Now you get in that car, and you go with him and get that all straightened out. When you get it all straightened out, come back. Come on up to the house, and we'll feed you. Come on home." Vernon looked at the sheriff, he jumped in the squad car. They took him to jail, and the whole incident was over in a second. But that brings out the power that was going on in understanding what the problem was. How both groups were not relating well. In that situation, the

resolve was a straightforward promise of a sheriff to an Indian mother that her nephew would be treated fairly. They resolved it. About a week later, Vernon came back, and that chapter of his life was past. Those kinds of things were rampant. A lot of times, nobody came up and spoke to the sheriff, or asked him what he was doing.

One of the results of police brutality was a fear of the police by the community. Stories of rape, police beatings, and profiling became legendary in the community and created a fear of law enforcement, even among those who had never experienced brutality themselves.

And, like I said, I never had a run-in. I thought it was against the law to be seen out at night, so I was scared. I'm 65 years old, so I go way back being scared of the police. One time, one drove up to the yard just asking for directions. Oh my God, I scattered to the cornfield! What did I do that I had to run into the cornfield? (laughs) And my grandmother, she goes, "Why is he coming here?" She gets scared, too.

## Sovereignty

While tribes retain concurrent criminal jurisdiction in many areas under PL 280, that jurisdiction has been impeded by PL 280. Furthermore, under PL 280 tribes must always share criminal jurisdiction with an outside government, whereas on non-PL 280 reservations tribes have exclusive jurisdiction over non-major crimes committed by one Indian against another and Indian victimless crimes. Thus, PL 280 was a move away from general principles of the government-to-government relationship between tribes and the federal government. The law was viewed by many as an infringement on inherent sovereignty of the affected tribes. The third most commonly cited reason surrounded these issues of sovereignty. Eight out of the 30 respondents gave sovereignty as one of the key reasons for retrocession. Responses were categorized as "Sovereignty" when they mentioned tribal control, local control, or sovereignty.

We wanted to have jurisdiction; we're our own tribe and we're our own people ... we wanted to have a say-so in what happened to our own tribal members.

That was just the biggest thing ... just to try to get ahold of our future, to have our own people judging each other when they broke the law.

Some respondents saw retrocession as an important step in the evolution of tribal self-government:

If you want to be a government, you've got to have control of these things. It's hard to outsource police and court system when you're trying to be sovereign. Because you'll never grow up.

Well, they wanted to regain control of their lives and their future. That's really what it boiled down to. If you're going to exercise ... sovereignty and self-determination, it is pretty hard to do that if you're under the thumb of state jurisdiction. So [the Tribal Chairman] was a very visionary leader, and he saw this as a central doorway to the future for the [Tribal] people. They had to get this done so they could unfold their culture. You know, develop the kind of court they wanted, and the kind of community and law enforcement system they wanted. And take control of their lives and their destiny.

### Cultural Insensitivity

Two respondents cited cultural insensitivity as a key factor in the decision to retrocede.

The other thing was people getting frustrated with the lack of knowledge of the culture and respect for the people. Local knowledge for the bad actors and who people could take real seriously about the danger of certain people and the not danger of other people. Not reacting to everybody the same.

Cultural insensitivity has been a common complaint among the PL 280 respondents in our larger study,<sup>167</sup> but apparently this was not severe enough for either of the two tribes in the retrocession group to have been an impetus for retrocession.

### High Crime

Only 2 respondents cited high crime as the reason the tribe retroceded. This is significant because it shows that, at least for the respondents in this study, retrocession is about much more than effectively dealing with crime. While crime may have indeed been a problem on these reservations, other issues such as prejudice, poor services, and police brutality rated higher as motivations for retrocession.

The reservation just was a wild place ... out on the street, it was just lawless.

But we needed our own law because we were having problems with drugs and alcohol, and all of that. ... We needed them because it was getting out

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<sup>167</sup> See Chapter 6.

of hand at times. I find that true all over, though. But we needed them here.

Other issues mentioned by respondents included the growing population that created the need for additional law enforcement, the arbitrary application of laws, better protection of fishing rights, and that retrocession was the “obvious choice.”

The themes that emerged from these interviews included some serious complaints, such as prejudicial treatment and police brutality. It may not be surprising that these themes have not emerged as clearly in the case studies or in public venues such as hearings. The NIJ study assurances of confidentiality provided some reassurance that reservation residents could safely speak privately about what may have been too controversial or shameful to speak about publicly.

### Obstacles to Successful Retrocession

According to ICRA, tribes cannot petition directly to the Department of the Interior for retrocession. Instead, tribes must first petition the state to pass legislation, which the state then forwards on to the Department of the Interior. The lobbying necessary at the local level and the state level, as well as the persistence to keep DOI on the task can be quite a large undertaking with significant political opposition likely to be met along the way. Because the two tribes included in this analysis had successful retrocession attempts, the degree to which they experienced obstacles may have been significantly less than those that have attempted and failed; and therefore this sample should not be seen as representative of all obstacles that tribes are likely to come across.

Our study asked respondents specifically about whether there was difficulty securing federal acceptance of retrocession. The number of responses to this question were limited somewhat by the fact that only a small group of those directly involved in the retrocession process were knowledgeable about this level of detail. Nevertheless, the data from our research show that surprisingly, this obstacle to the retrocession process was not significant to either group and is likely a reason for their successful attempts. We have identified one additional obstacle from the interviews: the tribal community itself.

### Federal Resistance

Two themes emerged from the interviews when discussing obstacles to securing federal acceptance: the funding problem and lack of knowledge of the retrocession process. Five of the 16 respondents to this question said that the financial obligations that retrocession would impose on the federal government proved to be a major obstacle. Retrocession requires the BIA finding additional funding for law enforcement services to the retroceded reservation — funding to be provided either directly to the tribe through a 638 contract, or through BIA police officers who would enforce law on the reservation.

One tribe in particular had their retrocession held up for four years in the Department of Interior because of the lack of willingness by the DOI to commit funds to tribal law enforcement.

Q: Let's go to the four years with the BIA. What was the hold up there?

IN: They basically didn't want to fund us. ... That was it. They just didn't want to fund us. ... Some of them, you get in there talking with them, "Well, it's really that we don't have the money." Because we were successful [gaming tribe] and trying to say, "You just give us that chunk of money, and we'll worry about the rest. Just let it happen there." So, we finally convinced [Head of BIA]. He said OK. It took over four years to get it done, though.

Besides funding, another obstacle is the lack of any policy on how to deal with retrocession at the federal level. While only one respondent spoke of a holdup at the federal level due to a lack of knowledge of the process, this respondent was intimately involved in the retrocession and his response included some rich detail on the problem,

And then we got it to the governor, and the governor signed it, and then we sent it off to D.C., and it just sank like a ship in the night. And for three years we kept trying to get the (presidential) administration to do something about this, and every time we would broach the subject, they would call us back or write us back and say, "We don't have any of the stuff, where is the bill that the legislature passed? And where's the proclamation from the governor?" At least six times we would get together this package and send it to the Bureau of Indian Affairs. Who knows where it went? ... Nobody in the Bureau knows what retrocession is. They don't understand it; they don't know how to handle a retrocession anymore. In the '80s there were people there, when you went in and talked about retrocession, they knew what it was. But now there's nobody who knows what it's ... they don't know (how to) process it, they hardly know how to spell it.

### Tribal Community Resistance

The tribal community does not always support retrocession unanimously. While there was no specific question directed at tribal community support, 3 respondents cited apprehension among the tribal community about retroceding PL 280 jurisdiction. Two of these responses focus on opposition coming from elders.

It was actually more problems getting the people out here to agree to it than it was the state and the feds. ... It was mostly the elder people like me

that didn't, you know, want it. I wanted it. But they were so programmed into having the state and the feds, [they] felt more comfortable.

The tribal attorney for one of the retroceded tribes explained how tribal members had been convinced that they could not police themselves:

The problem we had was with a few elders, people that I'd known for years ... and had a lot of respect for, who had been convinced by their former counsel ... that with regard to law enforcement [that] they were incapable. So, they bought this idea that they couldn't police themselves. They'd come to my office and say, "... you're a great guy, and I'm glad you're here, but this retrocession is bullshit, the [Tribe] can't do this." And I'd say, "Come on, I've been everywhere, and tribes all over the country have been doing this. We've got a bad situation here, and we've got to fix it. Retrocession is one of the ways." And they'd go out shaking their heads saying, "You're wrong ... we can't do this."

### Factors for Successful Retrocession

What are the measures that have led to successful retrocession bids? We asked interviewees specifically about how they secured state acceptance and, more generally, what factors they felt led to the success of their bids for retrocession. Funding again came up as a major issue, but the converse of what we saw for the federal government. The funds that retrocession would free up for state and local governments worked as a very convincing argument presented by tribes. In addition, a good relationship between the tribal government and the state government was seen as helpful to a successful retrocession bid.

#### Convincing the State: Funding Shortfalls

Five of the 13 interviewees who spoke about the factors that persuaded the state to agree said that the funds that retrocession would free up for country law enforcement were a major factor. Because state law enforcement received no additional money to fund increased policing responsibilities and because reservations are not subject to many state taxes, county sheriff's departments took on extra responsibilities without extra resources. Often, it was tribal representatives who focused on this point to get the backing of county law enforcement.

(Interviewer) Did the money factor work in your favor with the county and the state? Were they agreeable because it was going to save them money?

(Respondent) We kind of pitched a little bit of that. Saying we'll help you reduce [costs].



One tribe used timing to its advantage — countywide budget shortfalls made retrocession seem like an attractive option for the state to save money it would have otherwise spent on reservation-based criminal justice issues:

What I heard was the county didn't have enough officers, and, at that time, they were cutting down on personnel because they didn't have funds. There was hardly any coverage, even in their area. If we could get our own, the sheriffs were happy to have us take care of this area.

### Convincing the State: Good Relationship

Another reason cited by several individuals was the relationship that the tribe had with the state. One respondent said that developing this relationship was part of the strategy for securing state acceptance of retrocession, and 2 others cited a relationship that was fostered from a previous court decision mandating that the tribe and state work together on hunting and fishing issues.

Because I think, the first year, it was kind of the strategy, developing the relationship with the [state government], and actually that really helped us with our relationship with the [state government] because we were aligned with people, eventually, who were already to the point of having it adopted by resolution, going to the various committees.

Several other reasons for state acceptance cited by individual interviewees included: non-Indian community support; state confidence in the ability of the tribe to police itself; state knowledge of retrocession from previous successful attempts by other tribes; high quality of people involved in lobbying effort; and the fact that tribal people themselves were doing the lobbying proved to help win over state support.

### Success Generally

While it was not a formal question in the interview schedule, 5 respondents commented more generally on what factors they think led to their petition for retrocession being successful, while other tribes failed. These 5 respondents, who were heavily involved in the retrocession itself, offered detailed responses involving a variety of answers some of them overlapping with the reasons given for state acceptance. The responses included the following:

- Great leadership cited from the Chairperson and tribal police chief;
- Friends in high places, such as the BIA and U.S. Attorney General's Office;

- Support from non-Indian community;
- Experienced and competent tribal police;
- State funding savings that would result from retrocession;
- Stories of the sheriff's mistreatment;
- Testimony from other tribes that had successfully retroceded;
- Public relations effort that included mass mailings to the surrounding non-Indian community.

#### Success Generally: Leadership

Good leadership by a visionary tribal chair and an experienced tribal police chief were the top reasons offered.

The whole process of what we did, really is a credit to [the Chairman] and what he did. The managing of it, the bringing of the insight of what we're doing to the council and to the community. ... He managed, and he orchestrated the majority of what happened and brought in the resources and the people who were committed to doing this. ... I think because he was a well-rounded individual — spiritually, mentally, physically ... he had a real diverse kind of a background in the area of Indian communities, knowing the issues that faced us. And I think, in knowing that, he was also on the traditional part.

#### Success Generally: Friends in High Places

Friends in high places who are amenable to negotiating can also be an important key to success, as this experience demonstrates:

So, finally (another attorney) and I made a trip back there at the end of the (presidential) administration, and, by that time, a guy who was a friend of mine and had been my law clerk ... he had gone to work for the BIA. Just was brand-new there, but he helped us. He helped us get the right people and get this thing signed off on. And the U.S. Attorney, U.S. Attorneys are always reluctant to do this, and this particular U.S. Attorney was a friend of mine. ... And her deal was that she wanted the tribe to crack down on (a particular practice on the reservation). We told her, "Look we need a police department here, so you back us, and we'll get a police department, and we'll shut down the (practice)." She wrote a letter, the process is that

the Interior Department gets the proclamation from the governor they have to ask the attorney general what the attorney general thinks, and usually those letters are ugly for the tribe, they bring up all the horrible stuff that's going to happen if the tribe takes over on the reservation. But this particular U.S. Attorney, in return for our promise that we would shut down the[practice], agreed to send a little warmer-than-luke letter to the whoever was the attorney general in those days. And so it came across to Interior as, this is OK. So, between my friend in the BIA and the help of the U.S. Attorney, we were able to get a retrocession. There were significant problems with it, but we were eventually able to get the Bureau to sign off on it.

#### Success Generally: Experienced Tribal Police

One of the reservations included in the study underwent their retrocession when another tribe in the state was also petitioning the state for retrocession, but unsuccessfully. This respondent felt that the difference for these two tribes came with the advantage of having a 638 contract already in place so that the tribal law enforcement had some experience:

(Interviewer) Can you tell me if you have any suggestions for other tribes who are preparing for retrocession, and what sort of things they can expect after retrocession? (Respondent) Well, a couple of things occurred to me. One is, you talked about (other tribe) and (other tribe) not being able to get a retrocession. I think they were working on this at the same time (we) did. ... And (we) had an advantage, it was a peculiar advantage, and very small and a surprising one to me, but we used it effectively. And that was that some years before I came here ... they had negotiated a small 638 contract for law enforcement on the ... reservation. (The tribe) had been successful in going to the BIA, and they were troubled about what I described as a volatile situation on the ... reservation. So, they got the BIA to put up \$60,000 a year as a line-item 638 distribution for law enforcement on the ... reservation. And how that was done was kind of interesting. Instead of pressing for a tribal police presence they, together with the sheriff's office, went to the BIA and said, "look give us the \$60,000, and we will budget it for the sheriff's department, so that we could get a regular deputy here at the reservation." I guess prior to that they were served by somebody racing out here when there was a very serious issue. That was fine, but it didn't do the job.

## Financial Impact of Retrocession

Running a police department, tribal court, and the associated social service agencies are all very expensive. We asked explicitly about the financial impact of retroceding. Out of 17 respondents to this question 8 interviewees said that the financial impact on the tribe had been significant. There is a distinction to be made on this question between Tribe 2, that retroceded relatively recently, and Tribe 1, that retroceded over 20 years ago. Tribe 2 received very little financial help from the federal government; Tribe 1 that went through the process some years ago received BIA start up funds.

### Financial Impact on the Tribe

Tribe 2 had to allocate tribal funds immediately after retrocession to tribal law enforcement and the tribal court.

[I]t cost a hell of a lot of money to run this operation, I know that. And I guess they get funding from different places. I don't know about all the funding, but they spent a lot of money .... It's expensive to do.

(Respondent) The officers. They spent over a million dollars. That's just the budget besides the building and land, cars. ... the court, about \$400,000 the tribe contributes. The attorneys, I think they are about \$500,000.

(Interviewer) So these are all new expenses? (Respondent) Yes. Pretty much. (Interviewer) It's one of the reasons for many years why people never thought about retrocession, because the burden was way too high?

(Respondent) Yes.

One respondent from Tribe 2 also had experience with retrocessions in the past and was able to compare the financial impact:

Well, it's expensive. As I said, in the [old] days, you could expect a big pile of money to help you if you got retrocession, and that was my experience up until [now]. And now, that's not the case. So, it's expensive to do this, but more expensive to the community not to do it.

### Financial Impact on the Federal Government

Seven of the respondents, all of them from Tribe 1, the tribe that retroceded many years ago, said that, instead of costs coming directly out of tribal funds, the federal government funded criminal justice operations — either through grants or through 638 contracts with the tribe.

(Interviewer) Can you remember anything if there was any financial impact to the tribe after retroceding? (Respondent) Not right off the bat because there were feds. There were BIA police. (Interviewer) You didn't have tribal police then thought, right? Those came later. (Respondent) Yes.

I remember when I was in the court, when I first got in there, the BIA funded most of the salaries of the court system. The tribe would have to allocate money for maintenance and upkeep and overhead cost and stuff like that. But through a grant through the Bureau of Indian Affairs, there was a lot of 638 dollars that were given to help around the court system. I don't think it was too big a financial burden on the tribe. Again, the police officers were BIA to begin with, so it wasn't a financial burden on the tribe that much at all ... I don't remember hearing anything about the tribe being in financial difficulties or anything.

### Results of Retrocession

The costs associated with retrocession can be quite significant, but what of the benefits? We asked respondents if they thought the nature and/or amount of crime had changed since retrocession. The majority of the respondents felt that there was some change, but responses varied as to whether or not they directly attributed the change to retrocession itself, or other factors that may have been by-products of retrocession, such as increased prosecutions, increased reporting, and more awareness of crimes. In addition, some interesting unsolicited comments were made in interviews about the broad impact of retrocession.

#### Crime Reduced as a Result of Retrocession

Of the 21 interviewees who responded to the question, 9 felt that crime was reduced as a result of retrocession. Five respondents felt that there was a reduction in crime that could be directly attributed to retrocession.

Quite a bit. Because a lot of this stuff weren't turned in. A lot of them — rapes and child molesting, things like that. Things that weren't turned in. But now, if anything happens, it's reported. We're there.

The majority of respondents were hesitant to attribute a change in crime directly to retrocession but instead mentioned factors that were responsible for a change in crime that were positive by products of retrocession. Four respondents said that more prosecutions and more enforcement since retrocession were having a positive effect on crime.

One other respondent felt that the reduction in crime and presumably the decision to retrocede was a result of effective leadership:

(Respondent) I don't know if it's about retrocession, what happened with the crime. I think it's more about the tribal council, our leaders, saying, "We're tired of this." I remember as a child it was all right and acceptable to walk down the street drunk and pass out on the side of the bar, or beat your woman up on the side of the bar, and everyone just accepted it. You just walked by it. I think once the local government said, "Enough is enough. These things aren't acceptable anymore." You can walk down the streets of [the Reservation] now, and for years I've never seen a drunk person on the street. Maybe they're in their homes drinking; maybe they're having parties in their houses, but you don't see them on the main street of [the Reservation] anymore. It's not acceptable. (Interviewer) Do you think that may be due to the presence of tribal police on the reservation? (Respondent) I think so. ... Now we have five or six police units. You see them cruising around, you see them parked on the street. It's very evident that crime's gone down because of the appearance of law enforcement. But I think a lot has to do with the government, the leadership, saying, "We're not going to put up with this anymore."

Four of the 21 respondents felt that there was no change in crime since retrocession.

### Broad Impact on Community Well-Being

Throughout the course of interviews with people who were involved in successful retrocession attempts, several interviewees made statements about how regaining jurisdiction through retrocession can have positive effects that reach beyond criminal justice.

And you look at us now, and we're so much more sophisticated. And we've developed ... we've made mistakes; we've screwed things up. There's things we probably should have done better. But here we are. And we're doing it, and we're getting better all the time. And just having that sense of accomplishment, in knowing you can do it, stretches over into other areas, education, health ... There's nothing negative about it, nothing.

We're going to provide quality training to our police officers and put the best police officers on the reservation that we are capable of. We are going to begin to develop our laws. We're going to refine them, we're going to change them because law is a living thing. It dies, grows, dies, grows. We've come a long way since they actually gave us retrocession,

and I think that the quality of life, for the most part, has improved as a result of retrocession. I think it said to the non-Indian people of this state that hey, we are going to take control of our own lives, and we are going to enforce our sovereignty. And look, here's an example of it right here. We ... are going to enforce law here on this reservation, not the state.

The process of obtaining retrocession can have great significance to tribal members. One interviewee discussed the scene at the state-government building when the retrocession bill was before the state legislature:

... and the gallery was filled with [tribal members] of every age. And when that vote came it was absolutely dead silent in there. And when the vote tally came down to the last vote, [it] was counted, and the [tribal members] were free by one vote. There was a moment where there was just a complete hush while it sunk in. And that balcony just absolutely erupted in war whoops from the women. Just these shrill piercing whoops from the women. And then there was applause and people came pouring out of that balcony down into the rotunda outside the legislative chamber and just openly weeping, people were just crying and hugging each other. It was very important to them.

### Conclusions for Two Retroceding Tribes

The experiences of these two tribes highlight several important issues that can shed light on the retrocession process, some of which did not emerge clearly from the case studies:

- Tribes that retrocede do so because they perceive state law enforcement to act prejudicially toward tribal members;
- Despite this prejudicial treatment, tribal community members sometimes oppose a return of jurisdiction to the federal government;
- The federal government is less willing now than it has been in the past to allocate funds to the law enforcement operations of recently retroceded tribes. Tribe 2 in the NIJ study as a successful gaming tribe that was able to provide a significant amount of start up funds;
- The funding issues can also work in favor of tribes. When convincing the state, the funds retrocession would free up appear to be a major factor in winning state support;

- Effective leadership, competent tribal police and a good relationship between the state and tribal government can all be important factors to a successful retrocession bid;
- While retrocession can have a positive impact on crime on reservations, through increased police presence, prosecutions and reporting of crimes, it also has broad-ranging benefits to community well-being and provides for a sense of self determination.

As the research of the Harvard Project on American Indian Economic Development has suggested,<sup>168</sup> strong and healthy tribal criminal justice systems in Indian country contribute to strong and healthy tribal communities. Ensuring public safety not only creates a healthy environment, but when public safety is provided through tribally run agencies that respect tribal law and tradition, public safety can create a strong foundation from which sovereignty can be realized to its fullest extent. As one interviewee put it when providing advice for tribes that are seeking retrocession, “Just go through it, and be persistent. ... Don’t let go. And I always add to that, sovereignty isn’t cheap. But you won’t get the self-determination and self sufficiency without all the tools of a government system.”

This limited study of two tribes should be the beginning of a much deeper and methodical analysis of the process of retrocession so that tribes that have been under PL 280 jurisdiction will have a viable option for realizing a healthier and safer environment through the development of tribally run programs. Again, the advice of someone who went through the process provides an eloquent summation:

I think they have to think through their own vision for what they want as justice for their own tribal people ... you need to key people that see the pain and hurt of the tribe, but also see the vision of healing and working toward a just law system. We’re not there yet. ... That doesn’t mean we can’t be there, but we’re a lot farther away from the devastating models we had in the past. ... Look toward the point where they will get law enforcement officers, personnel, court personnel systems that are respective to tribal and cultural mores. That are respectful to human beings. And that can understand and maintain within diverse culturally traditional patterns. So, move along the steps in that way. That’s the advice I’d tell them. But have fun, too, because, to me, it was an exciting period in my life. For every tear, there’s a big laugh. Laughing is tribal people’s way of maintaining sanity under duress.

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<sup>168</sup> See, e.g., Wakeling et al., *supra* note 120, at 35 & n.22.

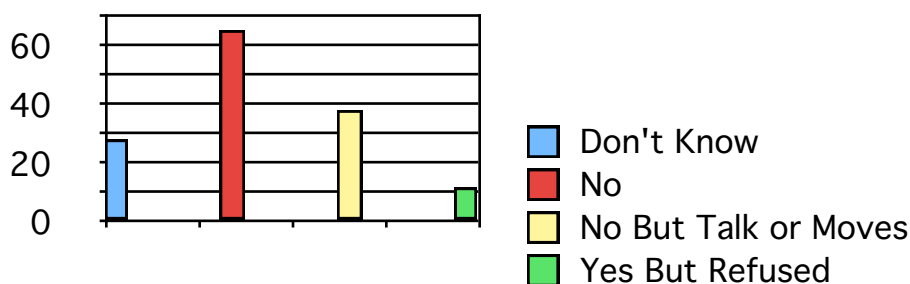


## Tribes That Have Not Retroceded

Studying only tribes that have successfully retroceded runs the risk of focusing exclusively on tribes that had especially bad experiences with state criminal jurisdiction, faced unusually low obstacles to retrocession, or were particularly well-positioned to overcome those obstacles. Accordingly, we inquired about retrocession from the perspective of tribes still subject to PL 280.

We asked reservation residents, state/county law enforcement personnel, and state/county criminal justice personnel in PL 280 jurisdictions several questions about retrocession, designed to gauge their experiences with the process and their views about its desirability. Initially, we asked whether the tribe in question had ever asked the state to initiate the retrocession process. As there were very few responses from the law enforcement and criminal justice personnel to this question, we examine only the 143 responses from reservation residents. Of those 143 respondents, 28 (19%) indicated that they did not know whether their tribe had approached the state regarding retrocession. Another 65 (46%) responded that their tribe had not done so, while 38 (27%) responded that their tribe had been talking about retrocession or had made some initial moves toward activating the retrocession process. A small number (12, or 8%) indicated that their tribe had requested retrocession, but had not been successful, either because the state refused to cooperate or because the federal government had refused the state's offer. The responses are presented in the chart below:

Has Your Tribe Ever Asked the State to Retrocede Public Law 280 Jurisdiction?  
(143 Responses from Reservation Residents)



Number of Responses

**Figure 13.2**

The respondents whose tribes had discussed or advanced partially toward a request to the state for retrocession often offered accounts of why the process had not gone further. Some illustrative comments appear below:

The tribe voted back in the '70s, when there were a bunch of young radicals running around talking about Public Law 280, they put it on the ballot, the people voted against retroceding. Mainly because, I think, a general distrust of tribal government, and lack of a tribal court at the time. And we're just learning what it means to have a tribal court....[When they were discussing retrocession back in the '70s, the question was] what would we replace it with? And how would we do it? And those were questions that weren't answered. We now have a visible, tribal law enforcement and tribal court, and so this is how it's gonna work, and do you need a tribal jail, and how would that work? It's a shift, and back in the '70s, people remembered how the feds did it. Nobody wanted to go back to that.

I know that when I was [a tribal leader] that we've looked at it a couple of times, and I can remember prior [that] there was some discussion. ... But I think there was not enough understanding ... of what it would do. They thought tribal governments were told that if they retroceded, it would take them two to three years in order to get some federal funding or whatever. So, as tribal governments, they were reluctant to do something, reluctant to change .... And there has always been a focus, that we need to govern ourselves, that we don't have to have someone, always a hand on our shoulder.

We looked into it, and we did the referendums and everything, and had a huge tribal meeting back in the '70s on the possibility of retroceding. And we determined at the time we couldn't afford to do it. Because you have to have your own jail and at that time we didn't even have a police department or deputies. ... I would think maybe we might be poised for it more now than before.

There's been talk, and I don't think the people fully understand. And I don't fully understand what the retrocession is all about. There's been talk.

We've talked about it, but what I've tried to remind them is that they need to be prepared to fill the gap. Because the federal government's probably not going to fund anything.

Eight or 10 years ago, there was a push for it, but then someone gave some misinformation ... about losing some type of funding or something. And then it just halted it altogether, so then it just stopped. [What inspired the effort was that] back in '85, a tribal member got his neck broke in the county jail. He was fighting with

deputies in the county jail, and he had his head rammed up against the old iron bars in the jail house. And he had his neck broke. Basically after that, the tribe decided that they're going to have to make their own police department. ... For a while there, it seemed that the tribal members were getting roughed up a little bit more than they should have been. I'd seen that ... when a deputy was taking one of our tribal members on a warrant, and it was outside of an establishment. The tribal members and the family never had the money to pay for his fine. He was wanted on a fine. He didn't take the money, and threw the tribal member against the car and roughed him up a little bit, and then put him in a car. Individuals that were standing outside the establishment started stoning the squad.

We did talk about that when things were really bad [with the county] .... We understand the problem with funding .... Even the U.S. Attorney said there's not enough funding to go around for retrocession.

In our strategic plan, it's an item, and in our studies ....

We've had more than one person come and talk about how to do it, what's involved, what you need to do, and the last time was, like, in 1993, before the political crisis. The tribe just wasn't ready financially. They didn't have any money until the casino opened ....

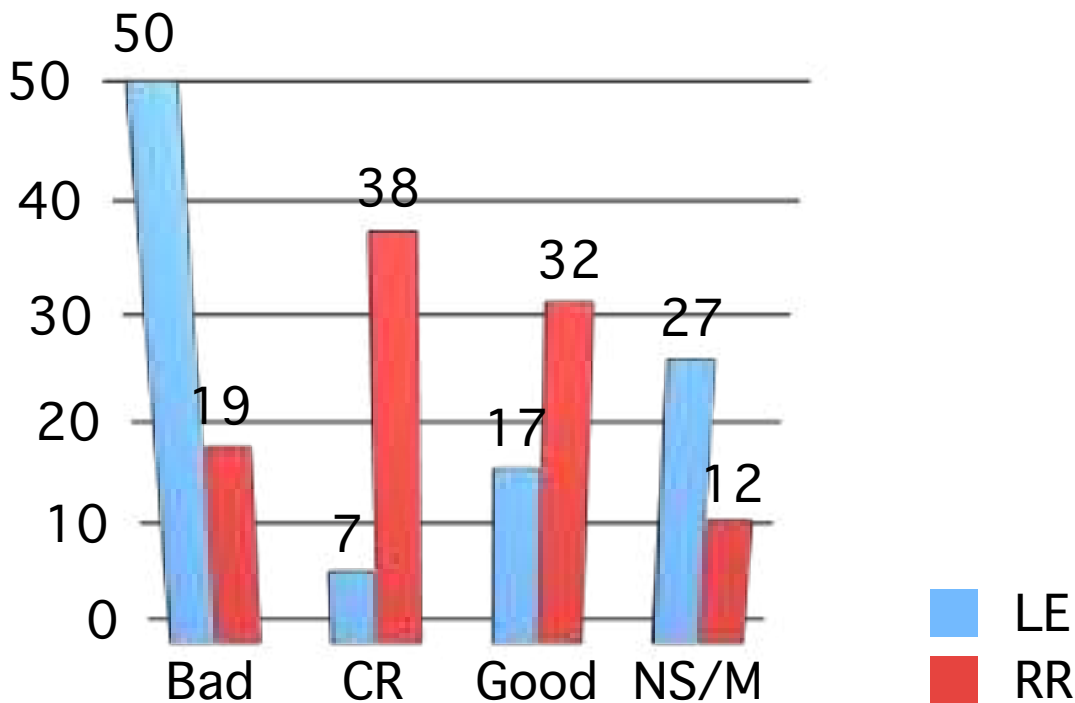
For the 27% of respondents who stated that their tribes had discussed or initiated moves toward retrocession, funding and infrastructure issues appear to be the main reason why efforts did not advance further, with concern over the politicization of tribal justice being a minor theme.

For the respondents who indicated that their tribe had asked their states to retrocede, most indicated that the obstacle to success was federal acceptance. As one reservation resident stated:

The explanation we always heard was that even though the tribe had the resources to have its own police department, the Interior Department thought that wasn't adequate enough because there was always a contingent liability on their part for the accepting of retrocession, that if the tribe didn't have funding, the Interior didn't have to provide funding. That was the tribe's understanding. I don't know if that was true or not.

We then asked respondents whether they thought retrocession was a good idea. For purposes of analysis, we did not receive a sufficient number of responses from criminal justice personnel in the PL 280 jurisdictions. We did, however, receive a sufficient number from both law enforcement personnel and reservation residents — 30 total responses from law enforcement personnel in those jurisdictions, and 136 total responses from reservation residents in those jurisdictions. We divided the responses into four categories — Bad Idea, Conditional Response (CR), Good Idea, and Not Sure or Mixed (NS/M). The Conditional Responses were those where the respondent indicated that retrocession would be a good idea if certain conditions were fulfilled, usually additional funding and/or augmented law enforcement and criminal justice infrastructure at the tribal level.

### Is Retrocession a Good Idea?



### Percentages of Respondents from PL 280 Jurisdictions

Figure 13.3

The responses of the state/county law enforcement officers (LE) were substantially less positive toward retrocession than those of the reservation residents. Of the law enforcement officers, 15 (50%) thought retrocession was a bad idea; 2 (7%) gave conditional responses, 5 (17%) thought retrocession was a good idea, and 8 (27%) were unsure or thought the prospects were mixed. In contrast, of the reservation residents (RR), 26 (19%) thought retrocession was a bad idea; 51 (38%) gave conditional

responses; 43 (32%) thought retrocession was a good idea; and 16 (12%) were unsure or thought the prospects were mixed. These differences are represented in Figure 13.3.

Fully one-half of the state/county law enforcement personnel believe that retrocession is a bad idea, compared with only 19% of the reservation residents. And if we join together those with Conditional Responses and those who think retrocession is a good idea (since both have a basically positive view toward retrocession), only 24% of the law enforcement personnel could support retrocession, while 70% of the reservation residents hold the more positive view.

Among those state/county law enforcement personnel and reservation residents who think retrocession is a bad idea, there is some overlap in reasons given for the response. The most common reason given by both sets of respondents is that the current system is working well and people are accustomed to it, a reason given by 13% of law enforcement respondents (4 responses) and 4% of reservation-resident respondents (5 responses). The second most common reason given by both sets of respondents is that the federal government won't provide adequate support for law enforcement and criminal justice should retrocession take place, a reason given by 10% of law enforcement respondents (3 responses) and 4% of reservation-resident respondents (5 responses).

The other reasons that law enforcement personnel give for opposing retrocession range widely, and do not fit a pattern:

- The county will cut the sheriff's department's budget;
- The federal court is too far away;
- It would inflame relations between the tribe and non-Indians;
- The PL 280 regime is too complicated;
- Criminal justice would become too politicized if the tribe administered it.

Illustrative comments from state/county law enforcement personnel opposed to retrocession include the following:

I would support the tribe in whatever decision they wanted to make, but I would think that would be the greatest mistake they could possibly make. What we have with our relationship with PL 280 is what empowers us to have this relationship, and without it, we couldn't provide the services that we are providing now.

I don't know that the federal government has such a glowing reputation for providing enforcement services. I don't know .... there are certain things that you can get done simply because, on a local level, I think local jurisdictions probably know better what the problems are within their communities. ... Don't get me wrong, we have good working relationships with the FBI and DE, Customs, whatever. All too often there, I think, what happens — and it's not a knock on it, it's just the nature of the business — they set thresholds as to what types of crimes will be prosecuted. Their personnel, if you want an advancement, you have to bounce around the country ....

[M]y board of supervisors could say, "OK [the tribe] has retroceded. You no longer have an obligation, you don't need those five, six, seven deputies or whatever it is. So, we're going to cut your budget." So, it comes up to a turf issue, if you will. Or it potentially could be a turf issue.

The other reasons offered by reservation residents echoed some of those mentioned by law enforcement personnel, but not all; the reservation residents offered some different reasons as well. The reservation residents who thought retrocession was a bad idea emphasized the following, in addition to satisfaction with the current system and lack of available funding from the federal government:

- The federal system is too remote and too harsh;
- The tribe would not be effective in providing service;
- The tribe would not be effective in deterring crime;
- The tribe has higher priorities for use of funds, such as health and education.

Examples of statements by reservation residents who opposed retrocession are the following:

Back in my younger years, I would have said [retrocession was a good idea]. But now, no. Because we have a great relationship going, now, with the county and the state.

I think it's easier with the state because it's here. You know, I mean it's like it's ... a distance to the nearest federal court, you know, and it's, like, state court is right here, so it makes it more convenient and quicker and easier to deal with major problems.

...[I]t gets back to all of our people who would be subject to federal charges, then and federal charges are more stiff than state ....

On [another nearby reservation not subject to PL 280] I have seen people who molest children go to prison because I revoked their previous probation for stealing a car. And that's due to the feds declining prosecution because it was an Indian against another Indian, even though it was a 2-year-old child, and there was a witness there, and the person already had a history. But the feds declined prosecution; they don't want to get involved with it. ... And so my frustration is over a lot of things that the feds decline on. And it's, like, it's not important enough unless somebody dies or the person's white.

I don't see [tribal prosecutions] as being much of a deterrent as far as the criminal element. I think as far as a deterrent, these folks up here that understand that, hey, they're going to go to [the county system], they're sitting before a white judge, they're going to get the goddamned book thrown at them. That, in and of itself, is more of a deterrent than, "Oh, we're just going to go up to tribal court and get slapped on the wrist."

I think we need more housing on the reservation than to justify retrocession and jail and more judges in the court.

...[The] tribal level with the tribal politics has proven time and time again that they're not capable of handling serious legal matters and offenses in a just and timely manner.

For those state/county law enforcement personnel and reservation residents who believed retrocession would be a good idea if certain conditions were met (Conditional Responses), the most frequently mentioned conditions were increased federal funding and the development of tribal infrastructure, especially police forces, courts, and jails. Both of the law enforcement personnel (7% of all law enforcement respondents to this question) who gave Conditional Responses indicated the need for a tribal court and detention facility. Of the 50 reservation residents who gave Conditional Responses, 11 (8% of all reservation-resident respondents to this question) made general statements that the tribe was not ready or needed to undertake additional planning. Another 18 (13% of all reservation-resident respondents to this question) believed that additional funding would be essential before retrocession would be a good idea. And 12 (9% of all reservation-resident respondents to this question) stated that additional tribal infrastructure would be necessary before retrocession would be a good idea. The

remaining 9 reservation residents who gave Conditional Responses emphasized such things as the need for additional training for tribal police, greater judicial independence for the tribal court, and the establishment of cooperative agreements with the county.

There is a sizable gap between the percentage of state/county law enforcement personnel in PL 280 jurisdictions who believe that retrocession is a good idea (17%) and the percentage of reservation residents in those same jurisdictions who favor retrocession (32%). Of the 5 law enforcement respondents who believed retrocession to be a good idea, 3 (10% of all law enforcement respondents to this question) thought that retrocession would bring better, or less discriminatory, service to tribal communities, and 1 (3%) thought that retrocession would bring new funding for law enforcement. A final respondent (3%) was relatively indifferent, because retrocession wouldn't affect the county very significantly and the tribe was already conducting most of the law enforcement activities.

Of the 43 reservation residents favoring retrocession, 9 (7% of all reservation-resident respondents to this question) gave no reason. Of the remaining 34 reservation-resident respondents, 14 (10%) indicated that they would receive better service under the tribal/federal non-PL 280 arrangement, 11 (8%) indicated that retrocession would enhance tribal sovereignty, 5 (4%) indicated that tribal/federal law enforcement would provide greater cultural understanding of their community, and 4 (3%) indicated that retrocession would bring new funding sources. The following statements capture two of the themes that appear in other responses, improved service and enhanced sovereignty:

Well, Public Law 280 isn't working here. ... I think we're better off just to go back being a reservation and not being molested anymore. It takes away a type of our sovereignty that we don't need, and that gives the white people an excuse to abuse the privilege they think that they have, resulting in many court cases. And they eventually find out that they don't have the authority to do this and do that. The BIA was given that responsibility within the treaty, and it should go back to that because it'sn't working with Public Law 280. If we have the 10 major crimes, the FBI can handle it. They're everywhere anyhow. And this is a sovereign nation within the nation. And it should be regarded as such. We need to return to that.

Well, [retrocession] would put more responsibility onto us, but it would also take us to a higher level of being able to assert our authority. So, with that sovereign authority comes responsibility to actually carry it out. But I do think, even though this is a small tribe, that they could rise to that occasion, because they're very heartfelt, strong people that believe in themselves as a nation. And



the only time that we would ever really get fair treatment in law enforcement, and that meets the needs of this community with the heart for the community, would be doing it ourselves.

Another statement relates the concerns about cultural understanding and cultural appropriateness that can be found in several of the positive responses regarding retrocession:

I think [retrocession] would help the Native people to give back quicker to their own lifestyle and identity. We have natural ways of taking care of things. We could start programs that are more culturally based, and if you're drinking too much you go over to rehab, if you're a batterer you go over here to a batterer program, but taking care of that right on the reservation.

With a lot of these counties — I know with our county — they don't understand our culture, they don't understand our ways, they don't understand the people, they don't take time to understand it, which I think is really important. I mean, if you're going to be working with these people, understand who they are, understand where they come from before you start dealing with them. I think it would be more effective that the tribes take over the jurisdiction because they know the people. They deal with them every day.

I just think we're a sovereign nation, and the more we can handle our own things, the better off. I understand that we need more money, we need more jails. ... But I don't think jail is the answer to everything. With some things, yes, you've got to go to jail. I believe that Peacemaker Court is most appropriate for a lot of things.

The last question we asked of state/county law enforcement personnel and reservation residents in PL 280 jurisdictions was what type of law enforcement arrangement they would like to see if state jurisdiction were retroceded. Would they prefer service entirely by the BIA police, or would they prefer a tribal force, funded through a 93-638 Indian Self-Determination Act contract or otherwise?

Only 3 state/county law enforcement personnel responded to this question, and 2 of them refused to speculate, indicating that they preferred the existing system. The one county law enforcement officer who ventured a response indicated a preference for BIA rather than tribal police.

We received 109 responses from reservation residents in PL 280 jurisdictions to the question about post-retrocession arrangements. Eight of the respondents refused to speculate, affirming their preference for the existing system. Of the remaining 101 respondents, 7 (7%) said they weren't sure about their preferred post-retrocession arrangement; 11 (11%) stated a preference for BIA or combined BIA and tribal police, court, and jails; 52 (52%) preferred an all-tribal arrangement (police and/or courts and jails); 2 (2%) preferred an intertribal arrangement; 25 (25%) preferred a tribal arrangement combined with cooperative agreements with state or county criminal justice agencies; 3 (3%) preferred a three-way arrangement, with tribal, federal, and county agencies playing some role; and 1 (1%) said to deploy "the best people." Of those preferring a full or partial tribal arrangement, 14 mentioned the value of a 93-638 Indian Self-Determination Act contract, whereby the tribe would contract out federal law enforcement functions.

The clear preference among reservation-resident respondents was for a post-retrocession criminal justice arrangement controlled by tribal authorities. The ability to make the criminal justice system more culturally appropriate was a distinct theme within these responses. Several respondents went so far as to state a preference for lifting federal sentencing limitations on tribal courts, so that tribes could take more effective control over serious felonies. An interesting second preference was to maintain cooperative agreements with state and local police, even though those authorities would no longer have independent jurisdiction, except for crimes committed by non-Indians against other non-Indians or non-Indian victimless crimes. One advantage of such agreements, many indicated, is that it would allow tribal police to arrest non-Indians and turn them over to proper authorities (either state or federal). They would also maintain successful relationships that had developed under PL 280. Federal police involvement came in as a weak third preference.

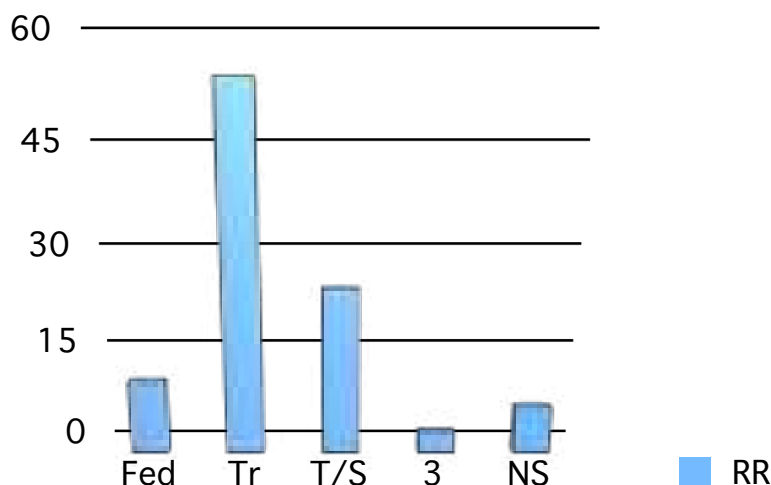
### **If Your Tribe Were to Retrocede, What Kind of Law Enforcement/Criminal Justice Arrangement Would You Like To See?**

Representative responses from the reservation residents include the following:

I would have them build a single police department. BIA officers, tribal officers all under the same umbrella. (respondent preferring BIA/tribal combination)

Right now, we have a complaint that is quite valid in that some of the people are saying it's a conflict of interest with tribal council being the authority over the tribal police. I'm thinking going BIA might be better because we don't want that .... (respondent preferring BIA)

I would still like to see that cooperative agreement so that even if a [county] officer had to respond with the jurisdiction of the [reservation], then that case would be brought to the [tribal] court. Not to have a separatist movement where we don't want county officials on a reservation at all. I think we would lose on that scenario as a community. (respondent preferring tribal police with state/local cooperative agreement)



**Number of Reservation Resident (RR) Respondents (Total = 101)**

**Fed = BIA or combined BIA/Tribal**

**Tr = All Tribal or Intertribal**

**T/S = Tribal with State or Local Cooperative Agreements**

**3 = Combined BIA/Tribal/and State or Local Cooperative Agreements**

**NS = Not Sure**

**Figure 13.4**

Well, you still have cooperative agreements, or mutual-aid agreements, or something with (the county) because, as you said before, with retrocession, still the county and the city will have authority on the reservation over certain people and crimes, and how those interact with who is providing the services on the tribal side is still going to be important in solving crimes. That's where ultimate cross-deputization matters, too, in having the authority and the feel to do it, but you still have to have a lot more cooperation and mutual interdependence on dealing with criminal activities so that you don't

have someone saying, “Well I can deal with this person, but I can’t deal with that person, and you have to wait while I call backup to be able to deal with the other person.” (respondent preferring tribal police with state/local cooperative agreement)

I would want to have the regular tribal law enforcement. I would want our court to have full authority over all the crimes in terms of — I know the Major Crimes Act would also come into play there — but in terms of what is allowable in your tribal jurisdiction, I think we should handle all of our criminal stuff, all of our juvenile offenders, I think we should have detention facilities, at some point, for both juvenile and adult offenders. And I think we should have what’s called “the peacemaking panel,” which is really mediation, and a sense of how to deal with both criminal and civil issues. I think we should have a full-blown system, really. (respondent preferring tribal control)

[I’d prefer] if the tribe did it all, if the tribe had the funding and the personnel, we had our own jail, our own juvenile system and just handled all of our own cases. (respondent preferring tribal control)

I’d like to see the tribe have control over the reservation, just because they have a better understanding of the people that they’re dealing with ... (respondent preferring tribal control)

## Conclusion

Tribes that have experienced retrocession of PL 280 jurisdiction, both those in our case studies from published sources and those responding to our research questionnaires, sought the removal of state criminal jurisdiction in order to improve law enforcement services and to enhance tribal sovereignty. Reservation residents deemed law enforcement services deficient because of inadequate patrolling or response time, cultural insensitivity, discrimination against tribal members, or some combination of these problems. For those tribes still subject to state jurisdiction under PL 280, there is a significant disparity between the views of state/county law enforcement personnel and reservation residents regarding the desirability of retrocession, with the latter far more inclined to think retrocession is a good idea, either immediately or conditionally. Those reservation residents in PL 280 jurisdictions who approve of retrocession generally do so for the same reasons that retroceded tribes sought retrocession — to achieve enhanced service and sovereignty.

Retroceded tribes generally prepared for retrocession by building up their law enforcement and criminal justice capabilities, and, especially in recent years, by

arranging for funding independent of the federal government. Correspondingly, tribes that have not retroceded generally view inadequate tribal law enforcement and criminal justice infrastructure, together with inadequate funding sources, as the greatest obstacles to retrocession. Interestingly, state resistance was not listed as a major factor, even though the retroceded tribes we have studied invariably encountered serious resistance from state and local governments. Either the reservation residents from PL 280 tribes view the infrastructure and funding issues as prior to the issue of possible state resistance, or they perceive that they can overcome such resistance if they can only resolve the infrastructure and funding problems.

In order to enlist state support for retrocession, the retroceded tribes often had to limit the scope of retroceded jurisdiction and make cooperative agreements with county law enforcement agencies. Interestingly, when the reservation residents in PL 280 jurisdictions were asked about the kind of law enforcement arrangement they would like post-retrocession, they overwhelmingly preferred an exclusively tribal arrangement, though many also supported cooperative agreements with state and county officials. Thus, the preferences of reservation residents in PL 280 jurisdictions may already be conducive to successful negotiations over retrocession.

For the retroceded tribes, retrocession has been a positive experience. As indicated by the case studies and the reservation residents we interviewed, public safety has been improved, and community well-being has grown due to enhanced sovereignty. Most striking were the statements indicating that retrocession brought the ability for tribes to create justice systems that matched community values and conceptions of justice, and thereby achieved legitimacy in the eyes of tribal members. Greater community confidence in the criminal justice system translated into increased reporting of crime, greater cooperation with criminal investigations, and greater compliance with community-imposed sanctions. We would expect such results, given the greater accountability of tribal law enforcement and criminal justice to reservation communities.

Since the retroceded tribes had to be able to amass sufficient resources, either from the federal government or other sources, in order to achieve retrocession in the first place, funding problems did not appear to plague these tribes. However, most reservation residents in the PL 280 tribes were acutely aware that unless they could put together sufficient funds to develop their infrastructure and maintain services to their community, retrocession would not be a realistic possibility. At present, funding for that purpose does not seem to be available from the federal government.

## CHAPTER 14

### CONCLUSIONS AND RECOMMENDATIONS

In this chapter we present a summary of our research findings, keyed to the questions we posed in our proposal. In addition, we offer some reflections and conceptualizations that we believe may assist in understanding these findings. Finally, we offer recommendations, including recommendations for further research.

#### Summary of Research Findings

Our study has produced qualitative and quantitative data from a group of more than 350 reservation residents, law enforcement officials, and criminal justice personnel connected with 17 different reservations, 12 of which are subject to state jurisdiction under Public Law 280. Reservation residents are people who live on the reservation or work for the tribal government, and generally have some connection to tribal government and/or criminal justice issues. Law enforcement personnel are people who work for state/county or federal-BIA police departments, or tribal police in non-Public Law 280 jurisdictions. Criminal justice personnel are people who work for federal-BIA, county, or non-Public Law 280 tribal courts. We have also compiled and analyzed funding data for law enforcement and criminal justice for Public Law 280 and non-Public Law 280 tribes, as well as published material regarding cooperative law enforcement agreements and retrocession under Public Law 280.

Certain hypotheses about the prerequisites for effective and well-received law enforcement and criminal justice, drawn from prior research, have framed our inquiry. In particular, we have focused on the degree of accountability of law enforcement and criminal justice to tribal populations, as well as the adequacy of resources to provide policing and court services.

Our study aimed to answer five questions: 1) How do crime rates on reservations affected by Public Law 280 compare with crime rates on other reservations and elsewhere within Public Law 280 states? 2) Is law enforcement more or less available or well funded for tribes affected by Public Law 280, as compared with non-Public Law 280 tribes and elsewhere in Public Law 280 states? 3) What is the quality of state/county law enforcement and criminal justice under Public Law 280 in terms of cultural awareness and sensitivity, fairness of treatment, responsiveness to community priorities, thoroughness of investigations, etc., as compared with law enforcement and criminal justice in non-Public Law 280 jurisdictions? 4) Does the presence of state/county law enforcement inhibit or impair tribal legal development? 5) How effective have cooperative agreements, concurrent jurisdiction, and retrocession efforts been to alleviate any problems that may be associated with Public Law 280?

**Crime Rates:** We were unable to secure sufficient data from county sheriffs serving Public Law 280 reservations to be able to determine whether crime rates in Public Law 280 jurisdictions are higher or lower than crime rates in non-Public Law 280 jurisdictions or than elsewhere in Public Law 280 states. These sheriffs reported to us that they do not differentiate between Indian country and non-Indian country parts of their counties when they compile their crime data; and the FBI's uniform crime-reporting system does not require that they do so. However, some county sheriffs who were asked to provide crime data for reservations within their service areas indicated that it would be neither time-consuming nor costly to reprogram their data collection software to separate the Indian country data from other statistics; and a few have done so after this study raised their awareness of the value of such information.

**Availability of Law Enforcement:** Law enforcement availability refers to police patrolling services and police response to calls for assistance. Reservation residents in Public Law 280 jurisdictions report that state or county law enforcement is less available to them than tribal police in such jurisdictions. Furthermore, Public Law 280 reservation residents report significantly less police availability than do reservation residents in non-Public Law 280 jurisdictions, who are served by tribal and/or BIA police. On a series of criteria, state or county police serving Public Law 280 reservations are rated by Public Law 280 reservation residents as less available, slower in response time, less prone to equally attend to minor or serious calls, provide less beneficial patrolling services, less willing to act without authority, more likely to decline service owing to remoteness, and are located farther away than federal-BIA and tribal police on non-Public Law 280 reservations. When asked to offer reasons for unavailability of law enforcement, reservation residents in Public Law 280 jurisdictions more often cite community relations issues such as jurisdiction, lack of priority, and selective enforcement, than lack of resources. By comparison, reservation residents in non-Public Law 280 jurisdictions are more likely to mention lack of resources as the reason for unavailability of law enforcement.

Where we have comparative data, state/county law enforcement disagrees with Public Law 280 reservation residents on the provision of adequate patrolling services. State/county law enforcement workers believe they provide more adequate patrolling services than Public Law 280 reservation residents give them credit for providing. While only about one-third of Public Law 280 reservation residents say their reservation benefits from county and state police patrols, over three-fourths of non-Public Law 280 reservation residents say federal-BIA and tribal police provide patrols beneficial to their reservation communities. Non-Public Law 280 reservation residents are more comfortable with police patrols than Public Law 280 reservation residents are with state and county police patrols.

**Funding for Law Enforcement and Criminal Justice:** The quantitative data regarding federal-BIA funding levels for tribal law enforcement and criminal justice

suggest that Public Law 280 tribes are receiving far less than tribes subject to federal-BIA and tribal jurisdiction. At least for the non-straddler mandatory Public Law 280 tribes, federal funding from the Department of the Interior for tribal law enforcement and criminal justice has been dramatically lower than for the non-Public Law 280 tribes. Although data were difficult to obtain from the BIA, we did determine that, for FY 1998, non-straddler<sup>1</sup> mandatory Public Law 280 tribes received less than 20% per capita of what non-Public Law 280 tribes received. While Department of Justice funding per capita is much more equitable as between Public Law 280 and non-Public Law 280 tribes, the percentage of Public Law 280 tribes receiving no funding at all is much higher.

The qualitative data regarding county, federal-BIA, and tribal law enforcement and criminal justice indicate that the dominant pattern for all respondents, both Public Law 280 and non-Public Law 280, is that funding levels are considered too low to support law enforcement and criminal justice of adequate quality in Indian country. Interestingly, however, reservation residents from Public Law 280 jurisdictions were the most notable exception to this pattern.<sup>2</sup> Nearly one-third of them expressed the view that funding was not the reason for inadequate law enforcement services. Rather, they pointed to problems that one might associate with lack of accountability, such as failure of county law enforcement to place a high-enough priority on providing services to Indian country. In this assessment, the reservation residents in Public Law 280 jurisdictions differed significantly from the law enforcement and criminal justice personnel in those jurisdictions. By comparison, in the non-Public Law 280 jurisdictions, reservation residents and law enforcement/criminal justice personnel were largely in accord that funding was the most serious source of inadequate services. Thus, federal-BIA law enforcement is perceived as more accountable to tribal communities within existing resource constraints; and we suggest that the potential for tribal contracting of BIA law enforcement services may be pressuring BIA police to be more responsive.

The particular types of funding problems identified in Public Law 280 and non-Public Law 280 jurisdictions also vary. Regarding law enforcement, in the Public Law 280 jurisdictions, all respondents emphasize insufficient numbers of police, with the reservation residents expressing concern about lack of police training as well. In contrast, the respondents under federal-BIA and tribal law enforcement authority more often mention problems with physical facilities, such as police department buildings and jails. The criminal justice personnel who responded from Public Law 280 jurisdictions indicate that tribally specific facilities and programs are as serious a need as general increases in county funding. In contrast, the non-Public Law 280 criminal justice personnel respondents do not think federal Indian country resources are inadequate at all.

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<sup>1</sup> "Non-straddler" refers to tribes whose territory lies entirely within a Public Law 280 state.

<sup>2</sup> Another exception was the response from criminal justice personnel in the federal-BIA system, who said that funding was adequate to address crimes in Indian country.



Underfunding is clearly affecting the quality of law enforcement and criminal justice in Public Law 280 jurisdictions. For reservation residents in those jurisdictions, however, increased funding won't be sufficient to improve the level of services. Some of the problems are inherent in the jurisdictional structure and lack of accountability of county law enforcement and criminal justice.

**Quality of Law Enforcement and Criminal Justice:** We asked respondents general questions about the quality of law enforcement and criminal justice on Public Law 280 and non-Public Law 280 reservations. Going further, we examined several characteristics of law enforcement and criminal justice related to quality of services, including knowledge of Public Law 280, cultural awareness and sensitivity, communication with community members, fairness of treatment, thoroughness of investigations, community willingness to report crimes to police, and responsiveness to community priorities. Our aim was to compare Public Law 280 and non-Public Law 280 jurisdictions, but also to determine how different types of police and court services (tribal, federal-BIA, and state/county) are rated within each type of jurisdiction, and determine any similarities or differences in evaluations among different groups of respondents.

Comparing law enforcement services in Public Law 280 and non-Public Law 280 jurisdictions, we found either that reservation residents in Public Law 280 jurisdictions rate police lower than their counterparts in non-Public Law 280 jurisdictions, or that reservation residents and police in Public Law 280 jurisdictions diverge more in their assessments of services quality than reservation residents and police in non-Public Law 280 jurisdictions. One striking finding about Public Law 280 jurisdictions is that the reservation residents typically rate the quality of county/state law enforcement services much lower than the county/state police rate themselves. By contrast, in the non-Public Law 280 jurisdictions, the reservation residents, and BIA and tribal police provide closer rankings, both of which approximate the rankings of the reservation residents in Public Law 280 jurisdictions. This interaction effect is evident for a variety of measures of quality of law enforcement, including thoroughness of investigations, knowledge of tribal cultures, respect for tribal authorities, and communication with tribal communities.

These findings suggest that reservation residents in Public Law 280 jurisdictions may not be providing unreasonably low evaluations of the quality of policing they receive. Further evidence to support that view comes from reservation residents' and police rankings of law enforcement communication with tribal members in Public Law 280 jurisdictions. The low rankings suggest that state or county police in Public Law 280 jurisdictions may not be aware of how reservation residents evaluate their services. We also found that within each type of jurisdiction, tribal police generally received higher evaluations from reservation residents than either state/county or federal-BIA police.

On the question of knowledge of Public Law 280, we found that most respondents from Public Law 280 jurisdictions in all categories rank themselves as having only a modest or midlevel understanding of Public Law 280. However, law enforcement personnel believe they have significantly better understanding of Public Law 280 than reservation residents and criminal justice workers. Most of the Public Law 280 respondents in all categories learned about Public Law 280 through direct experience and work with a tribal community; criminal justice and police professionals, as a rule, do not receive formal training about Public Law 280 and its implementation. Few of the respondents who understand Public Law 280 as the assertion of state/county jurisdiction over reservations are also aware of concurrent tribal criminal jurisdiction under Public Law 280. This incomplete understanding of Public Law 280 may lead to jurisdictional disputes and may inhibit tribal communities from gaining funding and support for managing criminal jurisdiction.

In the case of criminal justice, we found far more agreement between reservation residents in Public Law 280 and non-Public Law 280 jurisdictions. Most notably, both sets of respondents view their respective state/county and federal-BIA systems as unfair; for example, all reservation residents believe that judges and juries treat Indian defendants and victims less favorably in matters such as sentencing and speed of processing cases. Furthermore, approximately two-thirds of reservation residents in both Public Law 280 and non-Public Law 280 jurisdictions rate their respective state/county and federal-BIA courts as having a poor understanding of tribal cultures. Both sets of reservation residents agree that tribal courts have a better understanding of tribal cultures.

However, there are some differences in the specific concerns that reservation residents from Public Law 280 jurisdictions raise about the state/county criminal justice system as compared with concerns of reservation residents from non-Public Law 280 jurisdictions about the federal-BIA system. In Public Law 280 jurisdictions, reservation residents say court and legal workers are not providing good court services. Reservation residents say state/county courts do not provide sufficient protection, are not fair, use adversarial methods rather than nurturing and recovering community members in trouble, and lack cultural understanding of Indian communities. Reservation residents in non-Public Law 280 federal-BIA court jurisdictions say that federal courts do not communicate well with tribal communities, lack knowledge about Indian reservation cultures, and have difficulties with large caseloads, reliability, speed, and prioritization of cases. Criminal justice personnel in both types of jurisdictions give significantly higher evaluations of their systems than given by reservation residents.

It was rare for a Public Law 280 site in our study to be exercising criminal jurisdiction (see below). However, every non-Public Law 280 site had a tribal court exercising criminal jurisdiction over Indians, subject to sentencing limitations in the Indian Civil Rights Act. Reservation residents from the non-Public Law 280 jurisdictions did express concerns about tribal as well as federal courts. Most reservation respondents

believe current federal-BIA, state/county, or county courts are not providing adequate services to reservation communities. While most reservation residents in our sample believe tribal courts are delivering good services to tribal communities. The main reasons non-Public Law 280 reservation residents give for saying that non-Public Law 280 reservation courts do not provide stronger services are: favoritism, family connections and related politics, lack of staff training, and insufficient resources.

One indicator of the quality and effectiveness of law enforcement and criminal justice is whether community members trust the system sufficiently to use it when problems arise. Significantly, about half of reservation-resident respondents say tribal members often seek to avoid non-tribal police and possible criminal prosecution by working through several, often overlapping, community-based informal methods: traditional mediation, entering social service programs, soliciting help and protection from tribal leaders, and working out issues within families. Moreover, most law enforcement and criminal justice respondents from both Public Law 280 and non-Public Law 280 jurisdictions say significant crimes go unreported on Indian reservations. The most frequently unreported crimes are the most serious law-and-order problems — drug offenses, alcohol abuse, domestic violence, and related issues and crimes. The single most unreported crime is domestic violence; about one-third of total responses mentioned domestic violence situations as underreported. Physical and sexual abuse crimes are underreported, but at much lower rates than the most serious law-and-order problems. Community norms, preferences for community mediation, family obligations and dependencies, as well as fear of retaliation from other community members, and fear and distrust of non-Indian police and court institutions all contribute to inhibit tribal members from reporting crimes to non-Indian police. Although criminal justice personnel disagree, about one-third of respondents believe that when crimes are reported, prosecutions are not followed through.

There are significant differences between Public Law 280 and non-Public Law 280 jurisdictions when tribal members are reporting crime to police. Reservation residents say that tribal members in Public Law 280 jurisdictions report homicides and general crimes less frequently to state/county police than tribal members in non-Public Law 280 jurisdictions report such crimes to federal-BIA police. Public Law 280 tribal members prefer to report domestic violence and general crimes to tribal police, while non-Public Law 280 tribal members report domestic violence and general crimes about the same to non-Public Law 280 tribal police and federal-BIA police.

A further measure of quality of law enforcement and criminal justice services is the match between community priorities, and the priorities of police and court personnel. We asked all respondents to rank the highest frequency crimes on their reservations, and then also to rank the crimes to which police give the highest priority. Collectively, they ranked domestic violence, drug offenses, and driving under the influence (DUI) as the most frequent crimes, and homicide, rape, arson, and robbery as the least frequent crimes.

Focusing specifically on Public Law 280 jurisdictions, reservation residents and criminal justice personnel there indicate that state or county police tend to give too little attention to high frequency domestic abuse crimes, while concentrating too much time and too many resources on violent crimes that occur relatively infrequently within Public Law 280 reservation communities, such as homicide and rape. Tribal communities and criminal justice personnel indicate that Public Law 280 police should give more focus, attention, and develop more user-friendly tactics to address the high-crime issues that confront Public Law 280 reservation communities. Domestic violence, substance abuse and trafficking crimes, and related issues of domestic and child abuse and property crimes need more attention, and perhaps initiatives that address the rehabilitation of substance abusers; closing down of substance abuse trafficking; protection of property; and protection and support to abused children, spouses, elders, and other extended family members. Public Law 280 police appear less interested in addressing the more social, economic, and psychological issues associated with high rates of substance abuse and attendant patterns of domestic and child abuse, as well as property crimes, in favor of concentrating on arrests and investigations for violent, but relatively infrequent crimes.

We speculate that the Public Law 280 police may be giving less attention to the crimes that reservation residents and criminal justice personnel view as most frequent because the police have greater difficulty in detecting these particular higher frequency crimes, achieving cooperation in investigations, and managing the criminal conduct that is involved. Such difficulties may be particularly acute where police are perceived as alien to, or outside, the community, and particularly acute for crimes for which proof is difficult absent community cooperation. If these speculations can be upheld, reservation residents and criminal justice workers suggest Public Law 280 police give more focus to higher frequency crimes on Public Law 280 reservations. According to reservation residents, Public Law 280 tribal police are significantly better at meeting reservation policing expectations than Public Law 280 state or county police, while non-Public Law 280 federal-BIA and tribal police meet tribal member policing expectations about the same.

**Inhibition of Tribal Legal Development under Public Law 280:** Evidently, Public Law 280 has restrained the development of tribal police and justice systems. As discussed above, our research has shown that tribes in Public Law 280 jurisdictions are substantially underfunded compared with tribes in non-Public Law 280 jurisdictions, especially from the Department of the Interior, which provides much of the base funding for tribal law enforcement and criminal justice systems. This finding confirms previous research, focused on California alone, which documented denial of BIA funding for tribal police and courts because of Public Law 280.

One would expect that the underfunding of tribal police and justice systems in Public Law 280 jurisdictions would inhibit the development of such institutions. Of the 11 non-straddler Public Law 280 sites included in this study, only one had an adult

criminal code and was maintaining general, adult, criminal jurisdiction. Tribal police departments were more common, often as a result of financial support from gaming, other tribal economic development, or funding through the COPS program of the US Department of Justice. Of the 11 non-straddler Public Law 280 sites, 8 maintained their own police departments or “ranger” forces, 1 operated a tribal department under contract with the local county, and 2 had no tribal police department. The tribal police departments found in these Public Law 280 jurisdictions may be cross-deputized to enforce state/county law, or may enforce non-criminal tribal laws, such as hunting and fishing regulations, exclusion ordinances, environmental rules, or juvenile codes.

There are no national data available on the prevalence of tribal criminal jurisdiction among Public Law 280 tribes; and the inaccessibility of some tribal legal codes made it impossible for us to construct such data. We could, however, locate national data indicating the prevalence of tribal police departments in Public Law 280 jurisdictions, and we were able to determine that our sample group had an overrepresentation of tribal police departments. Reviewing a variety of federal data sources, we found that only 35% of all Public Law 280 tribes with reservation populations greater than 100 in mandatory states other than Alaska have tribal police departments. By comparison, 80% of all other tribes in the lower 48 states with reservation populations greater than 100 have tribal police departments.

**Effects of Cooperative Agreements, Concurrent Jurisdiction, and Retrocession:** Concurrent adult criminal jurisdiction appears to be rarely exercised on Public Law 280 reservations. Thus, although we examined several legal issues associated with the exercise of such jurisdiction, including double jeopardy and sequencing of prosecutions (see Chapter 1), we focused our attention on cooperative agreements and retrocession. Our overall findings are that cooperative agreements ameliorate, but do not solve, underlying problems of accountability and resources associated with Public Law 280, and that retrocession has been successful for tribes that have managed to achieve it, and is a desired goal for most reservation residents questioned in Public Law 280 states.

We asked questions about cooperative agreements at all the sites we visited. Seven of the 11 non-straddler Public Law 280 tribes (64%) had such agreements, as compared with a little more than half of the Public Law 280 tribes responding to the Bureau of Justice Statistics 2002 survey. To supplement the data from our sites, we examined cooperative agreements available from other published sources.

We found that two distinct types of tribal-state cooperative law enforcement agreements operate in Public Law 280 jurisdictions — deputization agreements (some of which involve cross-deputization) and law enforcement services agreements. One type deploys tribal police to enforce state law against tribal members and nonmembers, and the other pays county police to provide enhanced services on the reservation. In different ways, these agreements address some of the accountability and resources concerns that

trouble reservation residents in Public Law 280 jurisdictions, but not all of them. Specifically, neither type solves the problem of an alien system of law being applied on the reservation through a state/county court judicial system that is perceived as discriminatory and not sharing the values of the community. Furthermore, neither is fully capable of producing policing that conforms to community cultures; and while police services agreements generally benefit from the resources available to tribes from gaming and other forms of economic development, the deputization agreements place extra burdens on tribes to enforce another government's law.

It's not surprising then, that state/county law enforcement personnel, who are major beneficiaries of tribal-state cooperative law enforcement agreements, embrace them more enthusiastically than reservation residents. A consistent pattern from our interview data is that state/county law enforcement officers see greater benefits from the agreements, find fewer problems and areas for improvement, and more unconditionally support renewal. Reservation residents are especially grateful for the enhanced policing services that cooperative agreements make possible. They, however, are uneasy about the impact on tribal sovereignty and respect for tribal governments, and see a much greater need for coordination of the two sets of law enforcement authorities and cultural sensitivity-awareness by county police.

We also posed questions about retrocession at each of our research sites (which included three retroceded tribes), and supplemented the resulting data with case studies from published sources. We found that tribes that have experienced retrocession of Public Law 280 jurisdiction, both those in our case studies from published sources and those responding to our research questions, sought the removal of state/county criminal jurisdiction to improve law enforcement services and to enhance tribal sovereignty. Reservation residents deemed law enforcement services deficient because of inadequate patrolling or response time, cultural insensitivity, discrimination against tribal members, or some combination of these problems. For those tribes still subject to state/county jurisdiction under Public Law 280, there is a significant disparity between the views of state/county law enforcement personnel and reservation residents regarding the desirability of retrocession, with the latter far more inclined to think retrocession is a good idea, either immediately or conditionally. Those reservation residents in Public Law 280 jurisdictions who approve of retrocession generally do so for the same reasons that retroceded tribes sought retrocession: to achieve enhanced services and sovereignty.

Retroceded tribes generally prepared for retrocession by building up their law enforcement and criminal justice capabilities, and, especially in recent years, by arranging for funding independent of the federal government. Correspondingly, tribes that have not retroceded generally view inadequate tribal law enforcement and criminal justice infrastructure, together with inadequate funding sources, as the greatest obstacles to retrocession. Interestingly, state resistance was not listed as a major factor, even though the retroceded tribes we have studied invariably met with serious resistance from

state and local governments. Either the reservation residents from Public Law 280 tribes view the infrastructure and funding issues as before the issue of possible state resistance, or they perceive that they can overcome such resistance if they can only resolve the infrastructure and funding problems.

To enlist state support for retrocession, the retroceded tribes often had to limit the scope of retroceded jurisdiction and make cooperative agreements with county law enforcement agencies. Interestingly, when the reservation residents in Public Law 280 jurisdictions were asked about the kind of law enforcement arrangement they would like post-retrocession, they overwhelmingly preferred an exclusively tribal arrangement, though many also supported cooperative agreements with state and county officials. Thus, the preferences of reservation residents in Public Law 280 jurisdictions may already be conducive to successful negotiations over retrocession.

For the retroceded tribes, retrocession has been a positive experience. As indicated by the case studies and the reservation residents we interviewed, public safety has been improved, and community well-being has grown due to enhanced sovereignty. Most striking were the statements indicating that retrocession brought the ability for tribes to create justice systems that matched community values and conceptions of justice, and thereby achieved legitimacy in the eyes of tribal members. Greater community confidence in the criminal justice system translated into increased reporting of crime, greater cooperation with criminal investigations, and greater compliance with community-imposed sanctions. We would expect such results, given the greater accountability of tribal law enforcement and criminal justice to reservation communities.

Since the retroceded tribes needed to amass sufficient resources, either from the federal government or other sources, to achieve retrocession, funding problems did not appear to plague these tribes. However, most reservation residents in the Public Law 280 tribes were acutely aware that unless they could put together sufficient funds to develop their infrastructure and maintain services to their community, retrocession would not be a realistic possibility. At present, funding for that purpose does not seem to be available from the federal government.

#### Toward a Better Understanding of Problems Underlying Public Law 280

As a general matter, without regard to Public Law 280, tribal justice systems are hampered in their efforts to provide safety and justice to the reservations they serve. Federal Indian law has denied them authority to prosecute non-Indians, and has limited their sentencing power to one year in jail and a \$5,000 fine per offense. In addition, they must deal with outside governments — federal in the non-Public Law 280 jurisdictions, state/county in the Public Law 280 jurisdictions — that assert authority over criminal acts within their territory.

In some respects, tribes affected by Public Law 280 labor under more difficult conditions than other tribes. First, under Public Law 280 state/county governments have comprehensive criminal jurisdiction, while in non-Public Law 280 jurisdictions, the federal government's jurisdiction is limited to serious felonies between Indians and crimes committed between Indians and non-Indians. Second, although tribes in Public Law 280 jurisdictions theoretically hold concurrent or shared jurisdiction with the states, just as their non-Public Law 280 counterparts share jurisdiction with the federal government, the Public Law 280 tribes have received far less federal financial support for their tribal police and courts, making it far more difficult for them to exercise their concurrent jurisdiction. In practice, the only way they can maintain any influence over the conduct of law enforcement and criminal justice within their territories is by making agreements with state or county governments for cross-deputization, law enforcement services, or deferred prosecution.

Thus, tribes in Public Law 280 jurisdictions are more often left subject to law enforcement and criminal justice systems that manage cases along U.S. adversarial methods. The courts are off-reservation, tribal members often have to travel substantial distances to participate in hearings, and often the selection of jury panels is from non-Indian samples. They are typically more accountable to off-reservation non-Indian constituencies than to tribal communities. As our study indicates, many reservation residents consider these state or county systems to be biased against them, and unfamiliar with their cultures or their understandings of justice. Many reservation residents also believe that the state or county police who enforce these laws do not share their priorities and are unfamiliar with their cultures and views of justice, leading to underreporting of crime and lack of cooperation in investigations.

Most court systems, including the U.S. courts, assume common culture and understanding with the general public about the purpose, roles, and procedures of courts. The assumption of common cultural grounding for justice, court procedures, and goals and purposes of courts generally is not found in contemporary Indian country. One way of envisioning the multicultural, multi-jurisdictional, multi-institutional legal landscape that operates or can operate in Indian country with concurrent jurisdiction is depicted in Figure 14.1.



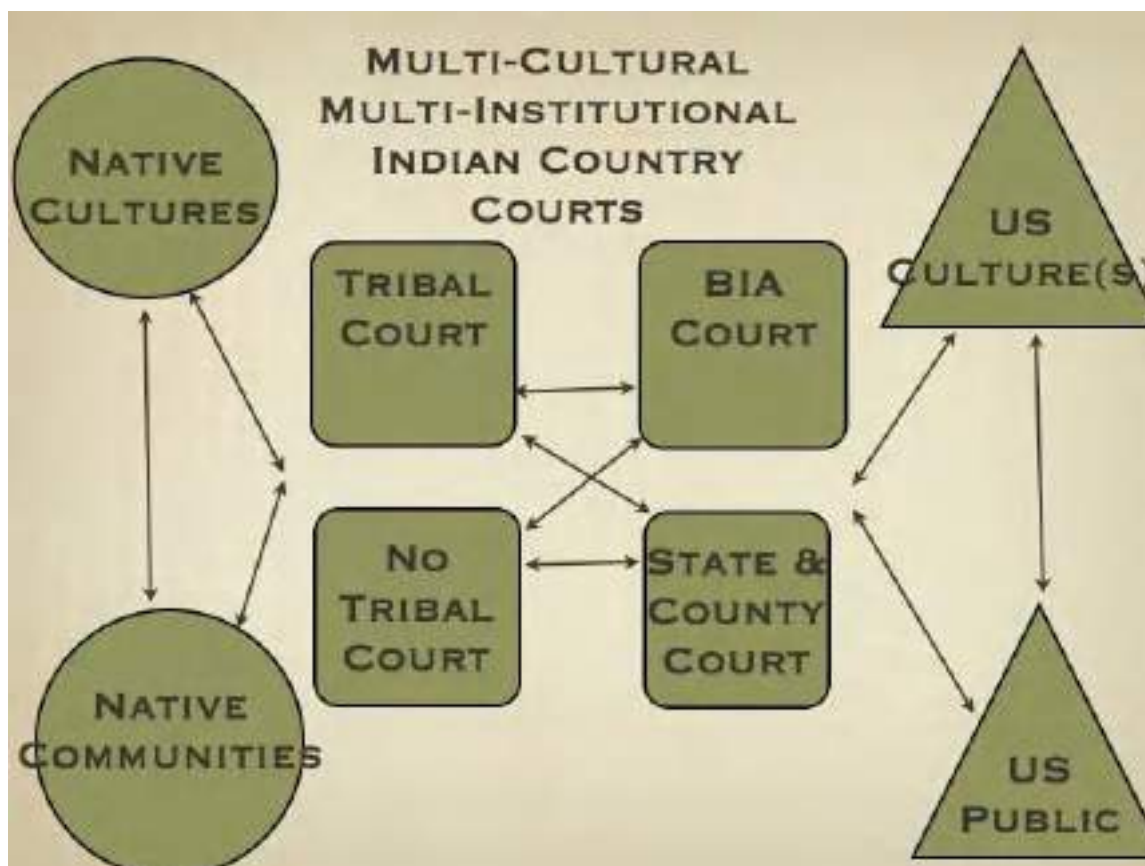


Figure 14.1

As this system operates, American courts, rules, and culture often clash with the history and culture of American Indian communities over foundational ways to administer courts, law enforcement, and court rules. Tribal courts often have informal rules that conform more closely to norms and values of the tribal community providing greater emphasis on restorative justice, negotiated arrangements, and, often, less emphasis on punishment but reclamation of tribal members instead. Justice in Indian country has become multi-institutional and multicultural, but the great emphasis remains with American court procedures and cultural understandings, leaving Indian governments, tribal courts, and reservation communities powerless and unsatisfied with courts, police, and justice.

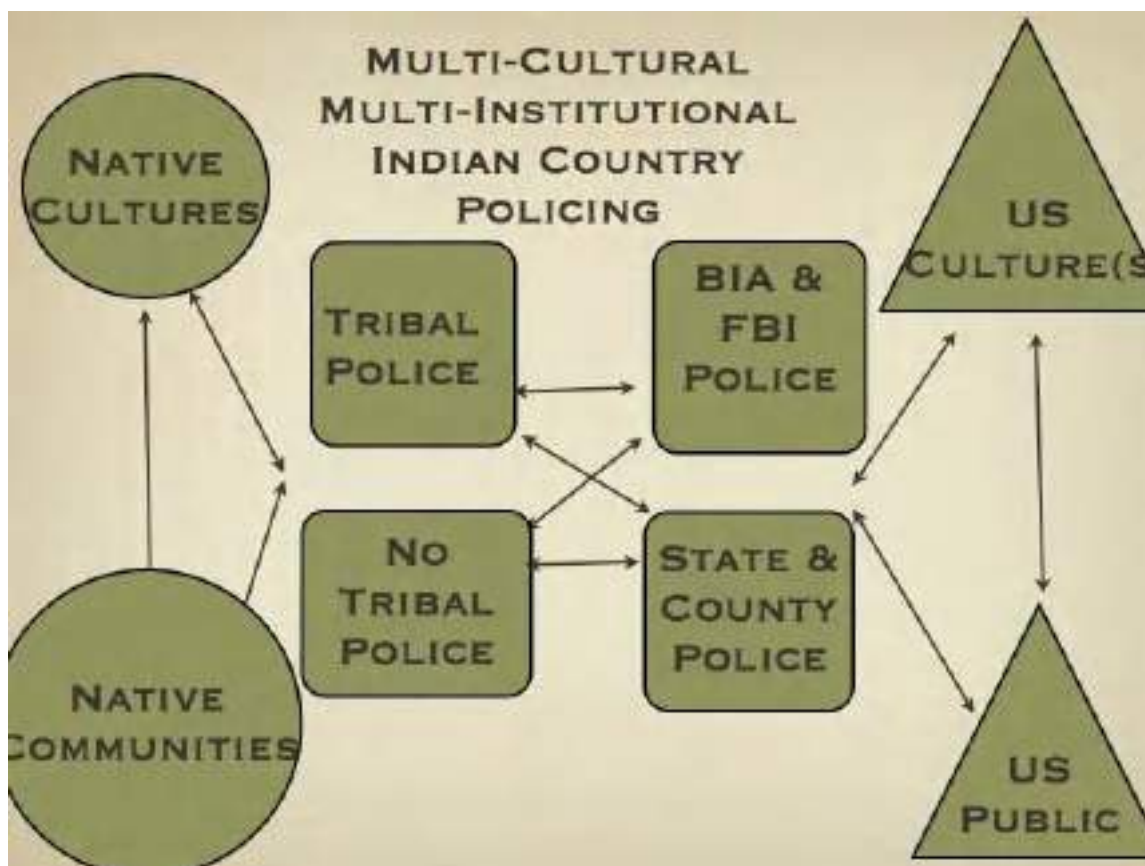


Figure 14.2

State/county and federal-BIA court personnel and police are not well informed about reservation histories, cultures, or traditional understandings of justice and restorative preferences. The adversarial forms of court procedure and American common law are culturally and procedurally alien to traditional and contemporary tribal understandings of justice. Federal courts are seen as distant, impersonal, and lacking cultural understanding. In Public Law 280 jurisdictions, county and state courts give little attention to tribal culture and history, and tribal members feel they have few protections. Indian community members are often reluctant to report crimes, often will not bear witness, and many wish to avoid federal-BIA, state, and county courts and police. Many tribal members do want to participate in non-tribal courts and police systems, fear them, perceive them as biased against them, do not trust them, and would prefer to work out many criminal and civil issues by reservation community methods. See Figure 14.2 for a general schematic of culture and institutional relations for Indian country policing.

Our research has demonstrated that reservation residents in Public Law 280, as well as non-Public Law 280, jurisdictions see tribal law enforcement and court systems as more aligned with their priorities and values than state/county or federal-BIA courts. Tribal courts nonetheless receive criticism from reservation residents, mainly because of

a lack of checks and balances that give protection against family, community, and tribal government politics. These criticisms of tribal courts are very different from the concerns that reservation residents raise about state/county or federal-BIA courts. Many reservation residents say that tribal courts are fairer and more culturally appropriate, although not yet providing the court services reservation residents want. Under Public Law 280, there is less room for these tribal police and court systems to function and to improve, both because of jurisdictional conflicts and lower amounts of federal-BIA financial support.

Both a culturally compatible legal arrangement and a sense that justice is served is a prerequisite for stable and effective institutional change for tribal communities and governments. Restoring institutions of justice that are agreeable, culturally informed, effective, and supported by reservation communities and governments is a necessary part of reclaiming and maintaining tribal governments, and recovering cultural and community well-being. Governments that do not manage courts, police and justice in ways that are supported by their constituents run the risk of disaffection, non-legitimacy, and lack of support. Achieving tribal self-government and greater cultural well-being will be difficult if reservation communities do not believe they can gain fairness, efficiency, accountability, and realize culturally understood procedures and understandings of justice. Public Law 280 does not seem to be delivering the type of efficient, fair, or culturally agreeable justice that tribal communities want. One task is to reconsider the present state of courts and justice in Indian country with an eye toward improving compatibility and communication among current multi-institutional and multicultural court and policing arrangements. Just realizing that tribal courts are not extensions of American law and procedures and court systems would be a major step in the right direction.

## Recommendations

### **1) Training for Police and Court Personnel Serving Public Law 280**

**Jurisdictions:** Given the very modest levels of understanding of Public Law 280, information about Public Law 280 and tribal cultures should be incorporated as a substantial unit in every state police academy preparing officers who will be certified to work on reservations affected by Public Law 280. State-sponsored or approved training for judges and other state justice system personnel should also include such training. These trainings should include, among other things, information about the origins, policy purposes, and legislative history of Public Law 280, the scope of state jurisdiction, and the existence of concurrent tribal jurisdiction under Public Law 280.

### **2) Public Information for Tribal Community Members in Public Law 280**

**Jurisdictions:** Reservation residents believe that to increase tribal members' understanding of Public Law 280, distribution of information about Public Law 280 in public media, public meetings, and education is preferable to formal training sessions. A

program of Public Law 280 information in a tribal community requires motivation, presentation, community networks, and public media to effectively inform the reservation public.

**3) Enhanced Communication between State Law Enforcement Agencies and Courts with Tribal Communities:** County sheriffs, district attorneys, and other court personnel in Public Law 280 jurisdictions should be encouraged, through state legislation or federal funding incentives, to communicate more regularly with tribal communities to better understand their priorities, cultures, and concerns about the administration of justice in their communities. Such communication should include regular meetings with tribal governments, general community meetings, and publications in tribal community newspapers and other media. The goal of this communication should be to increase trust and cooperation between tribal communities and the state criminal justice system.

**4) Bringing State/County Law Enforcement and Criminal Justice Closer to Tribal Communities:** To make the state criminal justice system more accessible to tribal communities, state and county agencies responsible for policing and criminal justice functions in Indian country should be located close to tribal communities. For example, police substations should be located in close proximity to reservations, and state/county courts should hold regular sessions on or near reservations. In one jurisdiction, for example, the county court sits on a monthly basis in the tribal courthouse.

**5) Designated Mechanisms for Increased Accountability to Tribal Communities:** Public Law 280 states should direct counties that include affected Indian country to establish mechanisms for ensuring accountability of county police and justice systems to tribal communities. Those mechanisms should include special complaint agencies, including some representation from tribal governments, where tribal members can register complaints of excessive force or discrimination against Indian defendants or victims. State audits of service levels (patrols, response time to calls for service) would also facilitate accountability.

**6) Federal Crime-Data Collection Standards Specifying Indian Country Location of Reported Offenses:** FBI and other federal crime-data reporting requirements applicable to state/county law enforcement agencies should include location in Indian country as one of the items of data to be recorded about each reported offense. It's impossible for the United States and Indian nations to hold state and local law enforcement agencies accountable for discharge of their obligations under Public Law 280 unless such data are maintained, reported, and made publicly available.

**7) Greater Attention to Community Based Policing and Responsiveness to the Most Serious and Frequently Occurring Crimes in Indian Country:** Reservation residents believe that state/county law enforcement is giving too little time and attention to the most frequently occurring and serious crimes in their communities: domestic violence, drug-related offenses, and driving under the influence. County sheriffs in

Public Law 280 jurisdictions should refocus their priorities to respond to these concerns, maximizing resources through cooperative endeavors such as tribal/federal/state/county task forces. Reservation residents in all jurisdictions expressed preference for community-based policing methods that are understanding, responsive, and respectful toward reservation culture, community and institutions. Respondents want police officers to be friendly, interactive, participant and supportive of the reservation community, and to serve and protect the community and community members.

**8) Funding and Other Support for Concurrent Tribal Criminal Jurisdiction under Public Law 280:** Additional funds, not dollars redistributed from currently funded tribes, should be made available through the budget of the Department of the Interior to support the development and ongoing operation of tribal law enforcement and justice systems in Public Law 280 jurisdictions, where tribal governments indicate their desire to operate such institutions. For very small tribes, these funds may be tied to intertribal cooperation.

**9) Incentives for Tribal-State Cooperative Law Enforcement Agreements:** Following the model of Wisconsin, states should make funds available to counties that have established cooperative law enforcement agreements with local tribes. These agreements seem to ameliorate many problems that reservation residents associate with Public Law 280, and have expanded the resources available to address crime in Indian country.

**10) Greater Access for Tribal Law Enforcement to State Peace Officer Status:** State laws should be revised, where necessary, to make it easier for tribal police to qualify for state peace officer status. Such statutes will create more stable opportunities for tribal police to enforce state law, by making tribes less dependent on political will at the county level. Federal support may be necessary to help address state-level concerns about training and liability.

**11) Tribally-Initiated Retrocession:** Congress should enact legislation similar to the provision of the Indian Child Welfare Act, 25 U.S.C. § 1918, which enables tribes to initiate the retrocession of Public Law 280 jurisdiction over child welfare matters. Under § 1918, tribes petition the Secretary of the Interior, presenting a plan for the exercise of jurisdiction. The Secretary then considers the feasibility of the plan, and in doing so may take a variety of factors into account, including the size of the reservation and the tribe's population. If the Secretary rejects the petition, the Secretary must provide technical assistance to the tribe to assist in the correction of any deficiencies in the petition. This procedure should be made available for criminal jurisdiction, enabling tribes that are dissatisfied with state/county jurisdiction to return to the tribal/federal-BIA arrangement. The Secretary's review process should include assessment of the overall effect on public safety; technical assistance should include support for expansion and greater training for tribal police, as well as support for crime investigation capability and culturally congruent justice.

**12) Further Research:** The research results for the present study are based on a limited and nonrandom sample, and therefore the results are not generalizable to all Public Law 280 and non-Public Law 280 jurisdictions. The present findings present many interesting results that need further investigation and elaboration. Future research strategies should include many ethnographic case studies of policing and justice administration in Indian country, development and investigation of models of justice and policing within Public Law 280 and non-Public Law 280 jurisdictions, and national random samples for comparative study of Public Law 280 and non-Public Law 280 patterns of policing and justice administration. Comparisons of policing and justice with local non-Indian communities may also contribute to our knowledge and understanding of the administration of justice and policing in both Indian and non-Indian jurisdictions.

## Appendices

**SAMPLE LETTER – PLEASE PUT ON LETTERHEAD**

Heather Valdez Singleton  
Native Nations Law and Policy Center  
UCLA School of Law  
2354 Law  
Box 951476  
Los Angeles, CA 90095-1476

Re: IRB # G011-11-043-01  
Law Enforcement and Criminal Justice Under Public Law 280  
Professor Carole Goldberg

Dear UCLA Institutional Review Board,  
This letter is to inform you that the \_\_\_\_\_ Tribe has reviewed the proposed research project on Public Law 280. We agree to abide and comply with the UCLA Institutional Review Board requirements for the protections of human research subjects.

Thank you,

[Tribal Chairperson's signature]

[Printed name, and title]



Carole Goldberg, Professor of Law  
UCLA School of Law

Dear Prof. Goldberg,

The \_\_\_\_\_ State Sheriffs' and Deputy Sheriffs' Association finds your proposed research project on law enforcement in Public Law 280 states, responding to a request from the National Institute of Justice, US Department of Justice, to be an important one. We understand that your proposed research will produce valuable statistical and qualitative information regarding law enforcement in Public Law 280 states, information regarding funding levels and disparities for law enforcement and criminal justice across Indian Country, and policy recommendations regarding funding equity and mechanisms for tribal-state cooperation.

We are pleased to assist your research by demonstrating our support for your efforts to secure limited reservation-based crime statistics from local sheriffs throughout the state. We are also willing to help you by providing contacts in local law enforcement in selected counties who may be willing to be interviewed. As you have indicated, the research itself will not require any participation by our staff. You have also informed us that the research results will be provided to all cooperating sheriffs, both in written form and via teleconference. It is our pleasure to support research that can benefit the law enforcement efforts on Wisconsin's reservations.

Sincerely,

University of California, Los Angeles and University of Wisconsin, Milwaukee

Page Number: Page 1 of 4

## **CONSENT TO PARTICIPATE IN RESEARCH**

### **Law Enforcement and Criminal Justice Under Public Law 280**

PL-280 Reservation Resident

You are asked to participate in a research study conducted by Carole Goldberg, J.D. and Duane Champagne, Ph.D., from the Native Nations Law and Policy Center at the University of California, Los Angeles, School of Law. You were selected as a possible participant in this study because you live on a reservation subject to Public Law 280 jurisdiction.

- **PURPOSE OF THE STUDY**

In 1953, Congress enacted Public Law 280, transferring federal criminal jurisdiction in Indian Country to the state government in six states, allowing other states to join in at a later date. Very little research has been done on the experiences of tribes or local and state law enforcement with Public Law 280. This study is designed to gain a better understanding of law enforcement under Public Law 280. The objectives of this project are to compile data for selected Public Law 280 tribes on the following: crime rates; availability and quality of law enforcement and criminal justice; funding and other support for tribal legal systems; and tribal/state relations in the area of law enforcement and criminal justice.

- **PROCEDURES**

This study is a two year study. We hope to conduct 355 interviews. If you volunteer to participate in this study, we would ask you to participate in a one to three hour interview to take place at the location of your choice. We will ask you questions about your knowledge of PL-280, the availability of law enforcement, and the responsiveness, quality and sensitivity of law enforcement on your reservation. Samples of the types of questions we will ask are: What are the most serious problems areas in law and order in your community? Is the availability of law enforcement satisfactory? Does law enforcement respect your community's culture?

We may ask you for a follow up interview for the purpose of collecting missing information or to follow another line of questioning but for most participants, this interview will be the only participation we ask of you.

- **POTENTIAL RISKS AND DISCOMFORTS**

Some questions asked during the interview may remind you of personal stories that may cause you some embarrassment or unpleasant memories.

In addition, this interview may lead to a discussion of illegal behavior. We will protect your confidentiality by separating your name from all interview data. Your name will be kept on file, but this file will be secured and accessible only by the principal investigators. Court order or other legal processes may break this confidentiality.

If at any time you feel too uncomfortable to continue the interview, please say so and the interview will be stopped.

- **POTENTIAL BENEFITS TO SUBJECTS AND/OR TO SOCIETY**

Because of your participation in this study you may gain a better understanding of Public Law 280. Pamphlets on Public Law 280 and information about what other tribes have done successfully to solve problems related to Public Law 280 will be available to you at the end of this study. In addition, the final report will be made available to participating tribes.

This study may contribute to legal reform of law enforcement in Public Law 280 states.

- **PAYMENT FOR PARTICIPATION**

There will be no payment for participation in this study. You will be given your choice of several books or journals published at the UCLA American Indian Studies Center as a gift in appreciation of your time.

- **CONFIDENTIALITY**

Any information that is obtained in connection with this study and that can be identified with you will remain confidential and will be disclosed only with your permission or as required by law. All data will be reported in the aggregate (by tribe or group), no individual data will be reported.

This interview will be audio taped. This tape will be used for transcription purposes and will be accessible only to the project personnel. You have the right to review, edit or erase the tape of your interview in whole or in part. This tape will be erased at the end of the study. The transcription will be separated from any information that connects it back to you. No names, or information that could connect your statements with you will be used in the final report.

- **PARTICIPATION AND WITHDRAWAL**

You can choose whether to be in this study or not. If you volunteer to be in this study, you may withdraw at any time without consequences of any kind. You may also refuse to answer any questions you don't want to answer and still remain in the study. The investigator may withdraw you from this research if you become abusive. If you withdraw from this study, all data already collected from you will be destroyed and will not be used in any final analysis.

- **IDENTIFICATION OF INVESTIGATORS**

If you have any questions or concerns about the research, please feel free to contact:

Carole Goldberg  
2437 Law Building  
Box 951476  
Los Angeles, CA 90095-1476  
(310) 825-4429

Duane Champagne  
Sociology Department  
Box 951551  
Los Angeles, CA 90095-1551  
(310) 475-6475

Heather Singleton  
2354 Law Building  
Box 951476  
Los Angeles, CA 90095-1476  
(310) 206-2584

- **RIGHTS OF RESEARCH SUBJECTS**

You may withdraw your consent at any time and discontinue participation without penalty. You are not waiving any legal claims, rights or remedies because of your participation in this research study. If you have questions regarding your rights as a research subject, or if you have complaints about your treatment please call or write:

Office for Protection of Research Subjects  
University of California, Los Angeles  
2107 Ueberroth Building  
Box 951694  
Los Angeles, CA 90095-1694  
(310) 825-8714

Or  
Jeanne M. Kreuser, JD  
Human Protections Administrator  
UWM Institutional Review Board  
Graduate School, MIT 273  
P.O. Box 340  
Milwaukee, WI 53201  
(414) 229-3173  
jmkreuse@uwm.edu

<b>SIGNATURE OF RESEARCH SUBJECT</b>
--------------------------------------

I understand the procedures described above. I am at least 18 years old. My questions have been answered to my satisfaction, and I agree to participate in this study. I have been given a copy of this form.

\_\_\_\_\_  
Name of Subject

\_\_\_\_\_  
Signature of Subject

\_\_\_\_\_  
Date

<b>SIGNATURE OF INVESTIGATOR</b>
----------------------------------

In my judgment the subject is voluntarily and knowingly giving informed consent and possesses the legal capacity to give informed consent to participate in this research study.

\_\_\_\_\_  
Signature of Investigator

\_\_\_\_\_  
Date

**Public Law 280 Reservation Residents  
Questionnaire  
Public Law 280**

**Qualitative**

*Please say something about yourself. For example: What do you do for a living? How long have you lived on the reservation?*

Knowledge of Public Law 280

1. Do you understand that your reservation is subject to Public Law 280?

Yes/no

If yes:

- 1A. How did you learn about Public Law 280?

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If no:

- 1B. Do you know that your reservation is subject to state criminal jurisdiction?  
Yes/no

2. What does Public Law 280 mean to you?

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3. Do you think community members on the reservation have a good understanding of Public Law 280?

Yes/no

- 3A. What do you think is necessary for community members to gain a better understanding of Public Law 280?

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4. Do you feel that law enforcement officers have a good understanding of Public Law 280 and the extent of state jurisdiction?

Yes/no

4A. Can you give an example?

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Availability

5. Does county/city or other state authorized law enforcement patrol your reservation?

Yes/no

If yes:

5A. How does your community benefit from the patrolling?

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If no:

5B. Did the tribe request that they patrol?

Yes/no

5C. Why?

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6. How far is the law enforcement station that serves your community located from the reservation?

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7. Does the county/city or other state authorized law enforcement respond to calls from the community in a timely manner?

Yes/no

- 7A. Is there a difference in response time for calls reporting serious offenses and minor offenses?

Yes/no

- 7B. Can you think of any examples?

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8. In general, is the availability of law enforcement satisfactory?

Yes/no

Responsiveness

9. What are the most serious problem areas in law and order in your community (give examples)?

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10. What should be the priorities for county/city or other state authorized law enforcement?

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11. What does county/city or other state authorized law enforcement actually focus on in your community?

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11A. Do you think this is what they should focus on?

12. Does county/city or other state authorized law enforcement ever communicate with community members about their law enforcement needs?

Yes/no

12A. If so, what do they communicate? Give examples.

12B. If not, how could this be improved?

Quality

13. Do you think a lack of funding may affect the law enforcement services provided to your community?

14. When investigating crimes does county/city or other state authorized law enforcement do a thorough job?

Yes/no

14A. Can you give an example?

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15. In your opinion, are cases solved in a reasonable amount of time?  
Yes/no

15A. Can you give an example?

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16. Does county/city or other state authorized law enforcement ever refuse to act because of any of the following reasons?

16A. Lack authority?

16B. Your community is too remote?

16C. They lack resources?

17. Do they attribute any of these problems to Public Law 280?

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18. Do you think that the quality of county/city or other state authorized law enforcement provided on your reservation is equal to that provided to the rest of the county?

Yes/no

If yes:

18A. Please give examples:

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Sensitivity

19. Does county/city or other state authorized law enforcement have any understanding of your culture?

Yes/no

- 19A. Can you give examples?

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20. Does county/city or other state authorized law enforcement respect your community's culture?

Yes/no

- 20A. Can you give examples?

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21. Does county/city or other state authorized law enforcement show respect for tribal authorities?

Yes/no

- 21A. Can you give examples?

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22. Does county/city or other state authorized law enforcement ever overstep its authority?

Yes/no

22A. Can you give examples?

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23. Do you think county/city or other state authorized court and legal personnel have an understanding of your culture?

Yes/no

23A. Can you give examples?

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### Reporting

24. Do community members have a way of working out potential criminal cases with tribal authorities before they get reported to county/city or other state authorized law enforcement?

Yes/no

If yes:

24A. Please describe.

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25. When crimes get committed do tribal members report to county/city or other state authorized law enforcement? Explain.

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26. When homicides get committed do tribal members report to county/city or other state authorized law enforcement? Explain.

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- 
- 
- 
27. When domestic violence crimes get committed do tribal members report to county/city or other state authorized law enforcement? Explain.

- 
- 
- 
- 
28. Do prosecution charges get carried through? Explain.

Court and Legal Specifics

29. Do you think that county/city or other state authorized court and legal personnel have a good understanding of Public Law 280 and the limits of state jurisdiction?

- 
- 
- 
- 
30. Do community members have a way of working out potential criminal cases with tribal authorities before they enter the county/state criminal justice system?

Yes/no

If yes:

30A. Please describe.

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31. Do you think that legal cases involving an Indian victim or defendant move through the county/city or other state authorized criminal justice system slower, faster or at the same rate as non-Indian cases?

Faster/slower/same

31A. Please explain if faster or slower.

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32. Do county/city or other state authorized court and legal personnel communicate with community members regarding court and legal needs?

[Example: Meeting between Humboldt County juvenile court judge, prosecutors, and probation department with Hoopa tribal court personnel regarding establishment of a diversion program for Hoopa juvenile offenders.]

Yes/no

If yes:

32A. In what ways?

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In no:

32B. How could this improve?

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33. Do you think county/city or other state authorized court and legal personnel provide quality service to your community?

33A. Please explain.

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34. Are there some cases you feel are very important that are not prosecuted because of a lack of jurisdiction?

Yes/no

34A. Can you give an example?

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35. Do you think jury selection is conducted differently if the victim or the defendant is Indian?

Yes/no

If yes:

35A. Please explain.

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36. Is there a difference in judge and jury responses if the defendant or victim is Indian?

Yes/no

If yes:

36A. Can you explain?

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37. Do you think there is a difference in sentencing when the victim or defendant is Indian?

37A. Can you explain?

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Tribal Information

38. Has your tribe received any federal grants for criminal justice or law enforcement programs?

Yes/no

38A. If yes, please explain.

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39. Does your tribe have its own tribal police force or a deputized force?

**If yes, go to concurrent jurisdiction questions 40-60.**

**If no:**

39A. Have you ever considered tribal control of law enforcement?

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39B. Do you think the existence of state jurisdiction has deterred your tribe from creating your own system of criminal justice?

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39C. Do you think tribally based justice systems would do a better job?

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**If no concurrent jurisdiction, go to question 61.**

Concurrent Jurisdiction

Law Enforcement

40. Is tribal law enforcement made up of mostly tribal members of your tribe, members of another tribe or are they mostly non-Indian?

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41. Do tribal members report crimes to the tribal law enforcement?

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42. Do they report crimes to tribal law enforcement first, before reporting to outside law enforcement?

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43. Is there a difference in the reporting of minor offenses and more serious crimes to the tribal law enforcement?

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44. When homicides are committed, do tribal members report to tribal law enforcement? Explain.

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45. When domestic violence crimes are committed, do tribal members report to tribal law enforcement? Explain.

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46. Do the tribal police respond to calls from the community in a timely manner?  
Yes/no

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47. In general, is the availability of tribal law enforcement satisfactory?  
Yes/no

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48. Does tribal law enforcement do a thorough job investigating crimes?

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49. What kind of relationship/cooperation does tribal law enforcement have with county/city or other state authorized law enforcement?

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50. Does tribal law enforcement communicate with community members about your law enforcement needs?

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51. Does tribal law enforcement have any understanding of your culture?  
Yes/no

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52. Does tribal law enforcement ever overstep its authority?

Yes/no

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53. What are the priorities for tribal law enforcement?

[Compare with answer to question 10.]

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54. What should be the priorities of tribal law enforcement?

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55. Does your tribe have a tribal court?

Yes/no

**If no go to question 61.**

**If yes:**

56. To what extent does the tribe exercise concurrent criminal jurisdiction?

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57. To what extent do you cooperate with county/state officials (tribal officials) in determining the nature and sequence of prosecution?

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58. Do you ever encounter double jeopardy issues?  
For example, does tribal prosecution preclude state prosecution for the same offenses or vice versa?

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59. Are there any pre or post trial diversion programs that send cases from state to tribal court or vice versa?

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60. To what extent, if any, do Indian Civil Rights Act sentencing limits affect your need to work with state courts?

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**Continue to question 61**

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61. Do you have a cooperative agreement with local law enforcement?  
Yes/no

**If yes, go to cooperative agreement questions 62-66.**

If no:

- 61A. Do you think a cooperative agreement might alleviate any of the law enforcement problems that might exist?

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**If no cooperative agreement, go to question 67.**

Cooperative Agreement

62. What were the reasons the cooperative agreement developed?

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63. What are the benefits of having a cooperative agreement?

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64. What are the problems, if any, of having a cooperative agreement?

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65. Are there any ways in which the agreement could be improved?

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66. Do you think the agreement should be renewed?

Yes/no

**Continue to question 67.**

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67. Has your tribe attempted to secure state initiated retrocession?

Yes/no

If yes:

67A. Why do you think it was unsuccessful?

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68. Do you think retrocession from Public Law 280 is a good idea?

Yes/no

68A. Please explain why or why not?

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69. What sort of law enforcement arrangement would you prefer if your tribe retroceded from Public Law 280?

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69A. If you could have one question answered about Public Law 280 to increase your knowledge and/or understanding what would that be?

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## **Quantitative**

### Availability

70. How would you rank the level of availability of county/city or other state authorized law enforcement?  
(1= excellent, 5 = poor)  
\_\_\_\_\_
71. How well does county/city or other state authorized law enforcement communicate with community members?  
(1= excellent, 5 = poor)  
\_\_\_\_\_
72. How would you rank your satisfaction with county/city or other state authorized law enforcement in your community? (1= excellent, 5 = poor)  
\_\_\_\_\_

### Knowledge of Public Law 280

73. How would you rank the level of your knowledge about Public Law 280?  
(1 = very knowledgeable, 5 = not knowledgeable)  
\_\_\_\_\_

### Quality

74. When investigating crimes does county/city or other state authorized law enforcement do a thorough job?  
(1= excellent, 5 = poor)  
\_\_\_\_\_
75. Please rank how well you feel county/city or other state authorized law enforcement officers understand Public Law 280 and the limits of state jurisdiction?  
(1= excellent, 5 = poor)  
\_\_\_\_\_

### Sensitivity

76. Please rank how well you feel county/city or other state authorized law enforcement understands your culture.  
(1= excellent, 5 = poor)  
\_\_\_\_\_
77. Does county/city or other state authorized law enforcement respect your community's culture?  
(1= excellent, 5 = poor)  
\_\_\_\_\_
78. Does county/city or other state authorized law enforcement show respect for tribal authorities?  
(1= excellent, 5 = poor)  
\_\_\_\_\_

**TEAR OFF LAST PAGE AND ASK INTERVIEWEE TO FILL OUT**

### **Optional Question:**

**Do you have any parting thoughts on Public Law 280? Is there anything I didn't ask that you would like to talk about or anything you might want us to know about your experiences with Public Law 280?**



Responsiveness

79. What crimes occur most often in your community?

(Rank in order of occurrence; 1 = most often, 12 = least often)

\_\_\_\_\_ Homicide

\_\_\_\_\_ Rape

\_\_\_\_\_ Robbery

\_\_\_\_\_ Aggravated Assault

\_\_\_\_\_ Domestic Violence

\_\_\_\_\_ Burglary

\_\_\_\_\_ Larceny/Theft

\_\_\_\_\_ Auto Theft

\_\_\_\_\_ Arson

\_\_\_\_\_ Driving Under the Influence

\_\_\_\_\_ Drug Offenses

\_\_\_\_\_ Child Abuse

80. What does local law enforcement actually focus on in your community?

(Rank in order of priority; 1= high priority, 12 = low priority)

\_\_\_\_\_ Homicide

\_\_\_\_\_ Rape

\_\_\_\_\_ Robbery

\_\_\_\_\_ Aggravated Assault

\_\_\_\_\_ Domestic Violence

\_\_\_\_\_ Burglary

\_\_\_\_\_ Larceny/Theft

\_\_\_\_\_ Auto Theft

\_\_\_\_\_ Arson

\_\_\_\_\_ Driving Under the Influence

\_\_\_\_\_ Drug Offenses

\_\_\_\_\_ Child Abuse

**City/County or Other State Authorized Law Enforcement**  
**Questionnaire**  
**Public Law 280**

**Qualitative**

Please say something about yourself. For example: How long have you worked in law enforcement? How long have you had your current position? Did you grow up in this area?

**Knowledge of Public Law 280**

1. Do you understand that the reservation in your county is subject to Public Law 280?

Yes/no

If yes:

- 1A. How did you learn about Public Law 280?

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If no:

- 1B. Do you know without Public Law 280 the state would have no jurisdiction in Indian Country?

Yes/no

2. What does Public Law 280 mean to you?

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3. Do you think law enforcement officers have a good understanding of Public Law 280?

Yes/no

- 3A. What do you think is necessary for law enforcement to gain a better understanding of Public Law 280?

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4. Do you think tribal members on the reservation in your county have a good understanding of Public Law 280?

Yes/no

4A. Can you give an example?

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#### Availability

5. How many reservations are within your county?

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6. Do you patrol these reservations  
daily?  
weekly?  
monthly?  
no regular patrol schedule?

7. How many hours per patrol day is the patrol available? \_\_\_\_\_

8. When reservation patrols occur, is back-up available?

Yes/no

9. Is the response time to a call from the reservation generally longer than the time it takes to respond to a call from a non-reservation community?  
shorter?  
equal?  
If the time is shorter or longer, please explain why.

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Responsiveness

10. What are the most serious law and order problems on the reservation?

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11. Are these areas currently a priority for law enforcement on the reservation?

Yes/no

If no:

- 11A. Why?

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12. Do officers communicate with community members regarding law enforcement needs?

Yes/no

If yes:

- 12A. In what ways?

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If no:

- 12B. Why not?

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12C. How could this improve?

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13. Based on your experience with reservation residents, what would you suppose to be the law enforcement priorities for reservation residents?

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Quality

14. In what ways does any lack of funding affect the law enforcement services provided to reservation communities?

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15. Do you ever refuse to act because of a lack of jurisdiction?

Yes/no

If yes:

15A. Can you give an example?

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15B. Who within your organization has the authority to make such judgments?

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Sensitivity

16. Do law enforcement officers have an understanding of Indian cultures?

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17. Can you name a few aspects of tribal cultures that you have become aware of since working with reservation communities?

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- 17A. How did you acquire this knowledge?

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18. Do the reservation communities you serve have a positive or negative view of law enforcement?

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- 18A. Can you provide accounts of specific incidents that make you believe this?

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Reporting

19. Do you think crimes on the reservation go unreported?  
Yes/no

If yes:

- 19A. Are there specific crimes that may go unreported, more than others?

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- 19B. What are they?

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- 19C. Why do you think these crimes go unreported?

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19D. Do tribal members have a way of working out potential criminal cases with tribal authorities before they get reported to county/city or other state authorized law enforcement?

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20. Do prosecution charges get carried through?

Yes/no

20A. Can you give examples?

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Miscellaneous Information:

21. Do you know that it is possible for states to retrocede, to return jurisdiction to the federal government?

Yes/no

21A. Under what circumstances, might you support retrocession?

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21B. If you could have one question answered about Public Law 280 to increase your knowledge and/or understanding what would that be?

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22. Does the tribe in your county exercise concurrent jurisdiction?

Yes/no

If yes:

22A. Please explain/elaborate?

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23. Do you have a cooperative agreement with the tribe in your area?

Yes/no

**If yes go to cooperative agreement questions, 24-29.**

**If no, skip to question 30.**

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### **Cooperative Agreement**

24. What were the reasons the cooperative agreement developed?

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25. What are the benefits of having a cooperative agreement?

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26. What are the problems, if any, of having a cooperative agreement?

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27. Are there any ways in which the agreement could be improved?

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28. Do you think the agreement should be renewed?  
Yes/no

29. Can we get a copy of the cooperative agreement?  
Yes/no

**Continue to question 30.**

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## **Quantitative**

### Responsiveness

30. How well do you feel law enforcement communicates with tribal members?  
(1= excellent, 5 - poor)

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31. How would you rank the effectiveness of law enforcement on the reservations in your county? (1= excellent, 5 - poor)

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### Knowledge of Public Law 280

32. How would you rank the level of your knowledge about Public Law 280?  
(1 = very knowledgeable, 5 = not knowledgeable)

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### Quality

33. When investigating crimes does local law enforcement do a thorough job?  
(1= excellent, 5 - poor)

- \_\_\_\_\_
34. Please rank how well you feel law enforcement officers understand Public Law 280 and the limits of state jurisdiction?  
(1= excellent, 5 - poor)
- \_\_\_\_\_

Sensitivity

35. Please rank how well you feel local law enforcement understand Indian culture.  
(1= excellent, 5 - poor)
- \_\_\_\_\_
36. Do tribal members show respect for law enforcement?  
(1= excellent, 5 - poor)
- \_\_\_\_\_
37. Does local law enforcement show respect for tribal authorities?  
(1= excellent, 5 - poor)
- \_\_\_\_\_
38. Do the reservation communities you serve have a positive or negative view of law enforcement?  
(1 = very positive, 5 = very negative)
- \_\_\_\_\_

**TEAR OFF LAST PAGE AND ASK INTERVIEWEE TO FILL OUT**

**Optional Question:**

**Do you have any parting thoughts on PL-280? Is there anything I didn't ask that you that you would like to talk about, or anything you might want us to know about your experiences with PL-280?**

Responsiveness

40. What crimes occur most often on the reservation?  
(Rank in order of occurrence; 1 = most often, 12 = least often)

\_\_\_\_\_ Homicide  
\_\_\_\_\_ Rape  
\_\_\_\_\_ Robbery  
\_\_\_\_\_ Aggravated Assault  
\_\_\_\_\_ Domestic Violence  
\_\_\_\_\_ Burglary  
\_\_\_\_\_ Larceny/Theft  
\_\_\_\_\_ Auto Theft  
\_\_\_\_\_ Arson  
\_\_\_\_\_ Driving Under the Influence  
\_\_\_\_\_ Drug Offenses  
\_\_\_\_\_ Child Abuse

41. What are the law enforcement priorities on the reservation?  
(Rank in order of priority; 1= high priority, 12 = low priority)

\_\_\_\_\_ Homicide  
\_\_\_\_\_ Rape  
\_\_\_\_\_ Robbery  
\_\_\_\_\_ Aggravated Assault  
\_\_\_\_\_ Domestic Violence  
\_\_\_\_\_ Burglary  
\_\_\_\_\_ Larceny/Theft  
\_\_\_\_\_ Auto Theft  
\_\_\_\_\_ Arson  
\_\_\_\_\_ Driving Under the Influence  
\_\_\_\_\_ Drug Offenses  
\_\_\_\_\_ Child Abuse

**Criminal Justice Personnel  
Questionnaire  
Public Law 280**

**Qualitative**

*Please say something about yourself. For example: What is your current position and how long have you had this position? Did you grow up in this area?*

Knowledge of Public Law 280

1. Do you understand that the reservation in your county is subject to Public Law 280?

Yes/no

If yes:

- 1A. How did you learn about Public Law 280?

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If no:

- 1B. Do you know without Public Law 280 the state would have no jurisdiction in Indian Country?

Yes/no

2. What does Public Law 280 mean to you?

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3. Do you think criminal justice personnel have an understanding of Public Law 280?

Yes/no

- 3A. What do you think is necessary for criminal justice personnel to gain a better understanding of Public Law 280?

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4. Do you think tribal members on the reservation in your county have a good understanding of Public Law 280?

Yes/no

- 4A. Can you give an example?

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Availability

5. Can you estimate the number of cases per year that you deal with that involve Indian defendants/victims?

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- 5A. What types of cases require more time and resources?

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6. Do you think that you have sufficient administrative resources to deal with these cases?

Yes/no

If no:

- 6A. What would you need to adequately deal with these cases?

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7. In your experience, do you feel that Indian cases (Indian defendant or Indian victim) move through the system slower, faster, or at the same rate as non-Indian cases?

Faster/slower/same pace

7A. Please explain, if faster or slower.

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### Responsiveness

8. In your experience, what are the most serious law and order problems on the reservation?

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9. Do you think these areas are currently a priority for law enforcement on the reservation?

Yes/no

If no:

9A. Why?

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10. Do court and legal personnel communicate with community members regarding court and legal needs?

[Example: Meeting between Humboldt County juvenile court judge, prosecutors, and probation department with Hoopa tribal court personnel regarding establishment of a diversion program for Hoopa juvenile offenders.]

Yes/no

If yes:

10A. In what ways?

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If no:

10B. Why not?

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10C. How could this improve?

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11. Based on your experience with reservation residents, what would you suppose to be the court and legal priorities for reservation residents?

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11A. Do you think there is a difference between the priorities of tribal members and non-Indian reservation residents? (Please explain.)

yes/no

11B. If yes, please explain

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### Quality

12. In what ways does any lack of funding affect the court and legal services provided to reservation communities?  
[Emphasize that we are comparing with non-280 states – get absolute assessment.]

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13. Do you believe you are providing quality and effective service to Indian clients?  
Yes/no

If no:

13A. Can you explain?

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If yes:

13B. Can you elaborate?

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### Sensitivity

14. Do court and legal personnel have an understanding of Indian cultures?  
Yes/no

15. Can you name a few aspects of tribal cultures that you have become aware of since working with Indian people?

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- 15A. How did you acquire this knowledge?

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- 15B. Does this knowledge ever influence decisions to prosecute/defend cases?

Yes/no

If yes:

Please explain:

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16. Do the reservation communities you serve have a positive or negative view of the court and legal system?

Positive/negative

- 16A. Can you provide accounts of specific incidents that make you believe this?

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### Reporting

17. Do you think crimes on the reservation go unreported?

Yes/no

If yes:

17A. Are there specific crimes that may go unreported, more than others?

Yes/no

17B. What are they?

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17C. Why do you think these crimes go unreported?

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18. Could/would these cases be prosecuted if they were reported?

Yes/no

18A. Can you give examples?

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18B. What factors (cultural/legal) influence decisions to prosecute a case?

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#### Miscellaneous Information

19. If you could have one question answered about Public Law 280 to increase your knowledge and/or understanding what would it be?

19A Does the tribe within your county exercise concurrent jurisdiction?

Yes/no

If yes, go to concurrent jurisdiction questions, 20-25.

If no: For prosecutors, go to questions 26-34

For defense attorneys, go to questions 35-42

For probation officers, go to questions 43-46

\*\*\*\*\*

20. Does the tribe in your jurisdiction have a tribal court?

Yes/no

21. To what extent does the tribe exercise concurrent criminal jurisdiction?

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22. To what extent do you cooperate with tribal officials in determining the nature and sequence of prosecution?

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23. Do you ever encounter double jeopardy issues?

For example, does tribal prosecution preclude state prosecution for the same offenses or vice versa?

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24. Are there any pre or post trial diversion programs that send cases from state to tribal court or vice versa?

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25. To what extent, if any, do Indian Civil Rights Act sentencing limits affect your interaction with tribal courts?

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For prosecutors, go to questions 26-34.

For defense attorneys, go to questions 35-42.

For probation officers, go to questions 43-46.

\*\*\*\*\*

Prosecutors

**When prosecuting tribal members:**

26. Do you have difficulty getting information to prosecute?

Yes/No

If yes:

26A. Please explain

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27. Do you encounter legal problems in trying to prosecute?

Yes/no

If yes:

27A. Can you give examples?

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28. Do you drop cases due to legal uncertainties?  
Yes/no

28A. Can you give an example?

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29. Are there some cases you feel are very important that are not prosecuted because of a lack of jurisdiction?  
Yes/no

29A. Can you give an example?

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30. Do you have difficulty getting cooperation from witnesses?  
Yes/no

If yes:

30A. Can you give an example?

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31. Do you find it to be logistically more difficult to prosecute tribal members?  
Yes/no

If yes:

31A. Can you give an example?

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32. Do you think jury selection is conducted differently if the victim or the defendant is Indian?

Yes/no

If yes:

32A. Please explain.

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32B. Do you have any ideas how this might improve?

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33. Is there a difference in judge and jury responses if the defendant or victim is Indian?

Yes/no

If yes:

33A. Can you explain?

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34. Do you think there is a difference in sentencing when the victim or defendant is Indian?

34A. Can you explain?

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Go to question 47.

\*\*\*\*\*

Public Defenders

**When defending tribal members:**

35. Do you have difficulty getting information to defend your client?

Yes/no

If yes:

35A. Please explain

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36. Do you encounter legal problems in trying to defend your client?

Yes/no

If yes:

36A. Can you give examples?

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37. Was a case ever dropped against your client because of legal uncertainties?



Yes/no

If yes:

37A. Can you explain?

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38. Do you have difficulty getting cooperation from witnesses?

Yes/no

If yes:

38A. Can you give an example?

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39. Do you find it to be logistically more difficult to defend Indian clients?

Yes/no

If yes:

39A. Can you give an example?

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---

40. Is there a difference in judge and jury responses if the defendant or victim is Indian?

Yes/no

If yes:

40A. Can you give an example?

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41. Do you think jury selection is conducted differently if the victim or the defendant is Indian?

Yes/no

If yes:

41A. Please explain.

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42. Do you think there is a difference in sentencing when the victim or defendant is Indian?

42A. Can you explain?

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Go to question 47.

\*\*\*\*\*

**Probation Officers**

When serving Indian clients:

43. Do you have difficulty managing the cases of Indian clients?

Yes/no

If yes:

43A. Can you explain?

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44. What are the greatest problems you face when working with Indian clients?  
Are there legal problems?  
Are there programmatic problems?  
Are there cultural problems?

44A. Please explain with examples.

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45. In what ways could service improve?

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46. What strategies or approaches would you recommend to other Probation Officers to better serve Indian clients?

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Go to question 47.

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### **Quantitative**

47. How well do you feel court and legal personnel communicate with tribal members?  
(1= excellent, 5 - poor)

- \_\_\_\_\_
48. To what degree do you think Indian people are satisfied with court and legal services provided for their community? (1= excellent, 5 - poor)
- \_\_\_\_\_

Knowledge of Public Law 280

49. How would you rank the level of your knowledge about Public Law 280?  
(1 = very knowledgeable, 5 = not knowledgeable)
- \_\_\_\_\_

Quality

50. When prosecuting/defending cases, do legal services do a thorough job?  
(1= excellent, 5 - poor)
- \_\_\_\_\_
51. Please rank how well you feel court and legal personnel understand Public Law 280 and the limits of state jurisdiction?  
(1= excellent, 5 - poor)
- \_\_\_\_\_

Sensitivity

52. Please rank how well you feel court and legal personnel understand Indian culture.  
(1= excellent, 5 - poor)
- \_\_\_\_\_
53. Do tribal members show respect for court and legal personnel?  
(1= excellent, 5 - poor)
- \_\_\_\_\_
54. Do court and legal personnel show respect for tribal authorities?  
(1= excellent, 5 - poor)
- \_\_\_\_\_
55. Do the reservation communities you serve have a positive or negative view of court and legal services?  
(1 = very positive, 5 = very negative)
- \_\_\_\_\_

**TEAR OFF LAST PAGE AND ASK INTERVIEWEE TO FILL OUT**

**Optional Question:**

*Do you have any parting thoughts on Public Law 280? Is there anything I didn't ask you that you would like to talk about, or anything you might want us to know about your experiences with Public Law 280?*

### Responsiveness

56. What crimes occur most often on the reservation?  
(Rank in order of occurrence; 1 = most often, 12 = least often)

\_\_\_\_\_ Homicide  
\_\_\_\_\_ Rape  
\_\_\_\_\_ Robbery  
\_\_\_\_\_ Aggravated Assault  
\_\_\_\_\_ Domestic Violence  
\_\_\_\_\_ Burglary  
\_\_\_\_\_ Larceny/Theft  
\_\_\_\_\_ Auto Theft  
\_\_\_\_\_ Arson  
\_\_\_\_\_ Driving Under the Influence  
\_\_\_\_\_ Drug Offenses  
\_\_\_\_\_ Child Abuse

57. What are the law enforcement priorities on the reservation?  
(Rank in order of priority; 1= high priority, 12 = low priority)

\_\_\_\_\_ Homicide  
\_\_\_\_\_ Rape  
\_\_\_\_\_ Robbery  
\_\_\_\_\_ Aggravated Assault  
\_\_\_\_\_ Domestic Violence  
\_\_\_\_\_ Burglary  
\_\_\_\_\_ Larceny/Theft  
\_\_\_\_\_ Auto Theft  
\_\_\_\_\_ Arson  
\_\_\_\_\_ Driving Under the Influence  
\_\_\_\_\_ Drug Offenses  
\_\_\_\_\_ Child Abuse



# Appendix G. Comparisons of Crime Frequency Rankings

Crime	PL280	Mean	SD	N	Mean	SD	N	Mean	SD	N
domestic violence	yes	7.70	1.9	113	8.50	1.7	22	8.24	1.7	34
	no	7.66	1.9	59	8.71	1.2	17	8.14	1.9	21
DUI	yes	8.02	2.1	113	7.73	2.4	22	8.38	2.3	34
	no	7.73	2.5	59	8.06	2.1	17	8.29	2.4	21
drug offenses	yes	8.28	1.8	113	7.23	2.3	22	7.53	2.3	34
	no	7.71	2.3	59	8.24	1.3	17	7.38	2.4	21
aggravated assault	yes	5.36	2.2	113	5.68	2.4	22	5.18	2.4	34
	no	6.34	2.5	59	5.94	2.1	17	5.90	2.7	21
larceny, theft	yes	5.58	2.6	113	7.18	2.1	22	6.29	1.9	34
	no	5.07	2.4	59	4.88	1.9	17	5.14	2.1	21
child abuse	yes	5.42	2.4	113	5.09	1.7	22	4.94	2.5	34
	no	5.73	2.4	59	6.12	2.7	17	6.14	2.4	21
burglary	yes	5.27	2.5	113	5.59	2.2	22	4.94	1.8	34
	no	5.22	2.5	59	4.24	2.0	17	4.52	2.3	21
auto theft	yes	3.36	2.1	113	3.73	1.9	22	4.65	2.0	34
	no	2.97	2.1	59	3.47	2.3	17	2.81	1.4	21
robbery	yes	2.96	2.1	113	1.77	1.3	22	2.06	1.8	34
	no	3.31	2.3	59	2.29	1.5	17	2.67	1.8	21
rape	yes	2.19	1.9	113	1.95	1.2	22	2.21	1.8	34
	no	2.54	2.0	59	2.41	1.9	17	2.48	2.1	21
arson	yes	1.72	1.3	113	1.55	1.1	22	1.56	1.3	34
	no	1.42	1.0	59	1.65	1.2	17	1.86	1.3	21
homicide	yes	1.18	1.0	113	1.00	0.0	22	1.03	0.2	34
	no	1.31	1.0	59	1.00	0.0	17	1.67	2.1	21



#### Appendix H. Comparisons of Law Enforcement Priority Rankings

Crime	PL280	Reservation Resident			Law Enforcement			Criminal Justice		
		Mean	SD	N	Mean	SD	N	Mean	SD	N
domestic violence	yes	6.55	2.8	105	8.38	1.4	21	5.96	3.1	28
	no	7.09	2.1	57	8.47	1.4	15	8.05	2.2	21
DUI	yes	7.50	2.8	105	6.86	3.0	21	6.79	3.3	28
	no	7.58	2.7	57	6.47	2.5	15	7.14	2.5	21
drug offenses	yes	7.04	3.1	105	6.81	3.0	21	5.93	3.0	28
	no	7.37	2.4	57	6.93	2.6	15	7.10	1.9	21
aggravated assault	yes	5.69	2.2	105	5.76	2.4	21	5.00	2.6	28
	no	6.33	2.4	57	5.60	2.8	15	6.19	2.9	21
larceny, theft	yes	4.39	2.7	105	4.19	2.3	21	3.57	2.4	28
	no	4.54	2.5	57	4.67	2.6	15	4.38	2.2	21
child abuse	yes	5.29	2.7	105	6.62	2.7	21	5.93	2.5	28
	no	6.21	2.7	57	7.47	2.9	15	6.62	2.6	21
burglary	yes	4.90	2.6	105	4.14	2.2	21	4.50	2.8	28
	no	4.51	2.2	57	3.93	2.3	15	4.05	2.4	21
auto theft	yes	3.89	2.7	105	3.00	2.1	21	3.64	2.5	28
	no	2.86	2.1	57	2.33	1.5	15	2.43	1.6	21
robbery	yes	3.71	2.2	105	2.62	1.9	21	3.86	2.7	28
	no	3.49	2.3	57	3.13	2.2	15	2.81	1.6	21
rape	yes	2.97	2.6	105	4.05	2.9	21	4.75	2.9	28
	no	3.14	2.7	57	3.53	2.4	15	3.57	3.1	21
arson	yes	2.09	1.9	105	1.76	1.3	21	2.04	2.1	28
	no	1.61	1.4	57	2.13	2.4	15	1.76	1.3	21
homicide	yes	2.99	3.3	105	2.81	3.2	21	5.04	4.3	28
	no	2.26	2.9	57	2.33	2.5	15	2.90	3.4	21

APPENDIX I. Comparisons of Discrepancies Between Crime Frequencies  
and Police Priorities Rankings

Crime	PL280	Reservation Resident			Law Enforcement			Criminal Justice		
		Mean	SD	N	Mean	SD	N	Mean	SD	N
domestic violence	yes	-1.23	2.8	105	-0.19	1.8	21	-2.37	3.2	27
	no	-0.54	2.3	57	-0.40	2.0	15	-0.10	1.8	21
DUI	yes	-0.49	3.1	105	-0.86	2.3	21	-1.74	3.4	27
	no	-0.23	3.3	57	-1.87	2.9	15	-1.14	2.2	21
drug offenses	yes	-1.21	3.3	105	-0.48	2.7	21	-1.44	2.7	27
	no	-0.28	2.7	57	-1.27	2.7	15	-0.29	1.8	21
aggravated assault	yes	0.28	2.7	105	0.29	2.1	21	0.19	2.4	27
	no	-0.11	3.1	57	-0.33	1.9	15	0.29	2.4	21
larceny, theft	yes	-1.23	3.3	105	-2.90	2.5	21	-2.85	3.4	27
	no	-0.49	2.7	57	-0.07	2.7	15	-0.76	2.0	21
child abuse	yes	-0.13	3.2	105	1.43	2.7	21	1.04	3.4	27
	no	0.58	3.1	57	1.53	2.7	15	0.48	1.4	21
burglary	yes	-0.28	3.3	105	-1.52	2.2	21	-0.33	3.1	27
	no	-0.70	3.4	57	-0.13	2.4	15	-0.48	1.8	21
auto theft	yes	0.50	2.4	105	-0.67	2.0	21	-1.22	2.6	27
	no	-0.12	2.3	57	-1.00	2.1	15	-0.38	1.1	21
robbery	yes	0.80	2.8	105	0.81	1.8	21	1.96	2.9	27
	no	0.14	2.9	57	0.73	2.5	15	0.14	1.7	21
rape	yes	0.78	3.2	105	2.10	2.5	21	2.59	3.2	27
	no	0.63	2.6	57	1.07	2.2	15	1.10	2.3	21
arson	yes	0.33	2.0	105	0.19	0.9	21	0.37	1.7	27
	no	0.18	1.4	57	0.40	2.4	15	-0.10	1.1	21
homicide	yes	1.82	3.4	105	1.81	3.2	21	3.81	4.2	27
	no	0.95	3.1	57	1.33	2.5	15	1.24	3.3	21

## Appendix J: Public Law 280 (18 U.S.C. section 1162, U.S.C. section 1360)

### Public Law 83-280 (18 U.S.C. § 1162, 28 U.S.C. § 1360)

#### 18 U.S.C. § 1162. STATE JURISDICTION OVER OFFENSES COMMITTED BY OR AGAINST INDIANS IN THE INDIAN COUNTRY

(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

<i>State or Territory of</i>	<i>Indian country affected</i>
Alaska	All Indian country within the State, except that on Annette Islands, the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended.
California	All Indian country within the State.
Minnesota	All Indian country within the State, except the Red Lake Reservation.
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation.
Wisconsin	All Indian country within the State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction.

#### 28 U.S.C. § 1360. STATE CIVIL JURISDICTION IN ACTIONS TO WHICH INDIANS ARE PARTIES

(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

<i>State of</i>	<i>Indian country affected</i>
Alaska	All Indian country within the State.
California	All Indian country within the State.
Minnesota	All Indian country within the State, except the Red Lake Reservation.
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation.
Wisconsin	All Indian country within the State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

#### 25 U.S.C. § 1321. ASSUMPTION BY STATE OF CRIMINAL JURISDICTION

##### (a) *Consent of United States; force and effect of criminal laws*

The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian country or part thereof which could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

##### (b) *Alienation, encumbrance, taxation, and use of property; hunting, trapping, or fishing*

Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

## Appendix K. Questions and Answers About Public Law 280

### Questions and Answers about Public Law 280

by Carole Goldberg

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How did Public Law 280 change the rules of jurisdiction for reservations and others in Indian Country?

Before Public law 280 was enacted, the federal government and the tribal courts shared jurisdiction exclusive of the states, over almost all civil and criminal matters involving Indians on the reservations. With the enactment Public Law 280, affected states received Criminal jurisdiction over reservation Indians. In addition, Public law 280 opened state courts to civil litigation that previously had been possible only in tribal or federal courts. In the six states actually named in Public Law 280, the federal government gave up all of its special criminal jurisdiction over involving Indian perpetrators or victims.

Did Public Law, 280 change the trust status of Indian land or exclude Indian land or exclude Indians in affected states from receiving benefits under federal Indian programs?

Public Law 280 did not affect the trust status of Indian Lands. Neither did it exclude Indians in affected states from receiving benefits under federal Indian programs, such as the Indian Health Service or Indian education grants. However, the Bureau of Indian Affairs has sometimes used Public Law 280 as an excuse for reducing or eliminating funding for federal Indian programs in affected states. For example, when California came under Public law 280, the Bureau eliminated funding for certain education programs. This response by the Bureau cannot be justified by the language of Public Law 280, and the Bureau has begun restoring the benefits that were withdrawn after enactment of Public Law 280.

Which states are affected by Public Law 280?

The "mandatory" states, required by Public Law 280 to assume jurisdiction, are Alaska, California, Minnesota (except Red Lake), Nebraska, Oregon (except Warm Springs), and Wisconsin. The "optional" states, which elected to assume full or partial state jurisdiction, are Arizona (1967), Florida (1961), Idaho (1963, subject to tribal consent), Iowa (1967), Montana (1963), Nevada (1955), North Dakota (1963, subject to tribal consent), South Dakota (1957-61), Utah (1971), and Washington (1957-63).

Did tribes have to give their consent before Public Law 280 would take effect?

For the six states named in Public Law 280, state jurisdiction was put into effect without securing prior consent of the affected tribes. Some of the "optional" states voluntarily chose to assume jurisdiction only over tribes that consented. In 1968 Public Law 280 was amended to require consent for any future state jurisdiction under Public Law 280. However, tribes could not undo state jurisdiction established between 1953 and 1968.

What is retrocession? How can retrocession be initiated under Public Law 280?

Initially, Public Law 280 did not contain a provision permitting the states and the tribes to demand the return or "retrocession of state Public Law 280 jurisdiction to the federal government. However, in order to relieve the states' financial difficulties with Public Law 280, the 1968 Civil Rights Act enabled the states that had assumed Public Law 280 to offer the return of all or any measure of the jurisdiction to the federal government. The federal government would have the final say on whether to accept the retrocession. Not only were the Indians given no veto power over state-initiated retrocession, they had no way of imposing retrocession on an unwilling state that had acquired jurisdiction.

Are there any limits to state authority under Public Law 280?

States may not apply laws related to such matters as environmental control, land use, gambling, and licenses if those laws are part of a general state regulatory scheme. Public Law 280 gave states only law enforcement and civil judicial authority, not regulatory power. It also denied states power to legislate concerning certain matters, particularly property held in trust by the United States and federally guaranteed hunting, trapping, and fishing rights. The state cannot tax on the reservations. The United States Supreme Court has interpreted Public law 280 as a statute designed to open state courts to civil and criminal actions involving reservation Indians, not to subject reservations to the full range of state regulation. Finally, there are some matters so central to the very definition of the tribe, such as enrollment and certain domestic relations matters, that even state courts may be excluded from hearing such matters.

Are municipal and county laws applicable under Public Law 280?

Public law 280 may have rendered only statewide law applicable to reservation Indians, excluding municipal and county laws. There are some judicial decisions that reject the application of local law to Indian reservations under P.L. 280. The rationale that courts have used to justify excluding local laws is that Public Law 280 was not intended to deny tribes their basic governmental functions.

Have any federal laws enacted after Public Law 280 reduced state authority on reservations?

Certain federal statutes enacted after Public Law 280 have reduced the amount of jurisdiction available to states under the 1953 law, simultaneously increasing tribal sovereignty or federal power. In 1978, Congress enacted the Indian Child Welfare Act, which gives tribes exclusive jurisdiction over certain child custody proceedings involving Indian children. The act also regulates some other aspects of child custody. The Indian Gaming Regulatory Act of 1988 is another federal statute that supersedes or preempts P.L. 280. It makes enforcement of state gambling laws a federal rather than a state responsibility.

Can tribes have their own courts and systems of laws in Public Law 280 states?

Indian tribes have inherent sovereign authority. Most courts and attorneys general have found that under Public Law 280, the tribes have retained civil jurisdiction over activities within Indian Country as well as criminal jurisdiction over Indians. A few states, such as California, dissent from this view.

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