

TRIBAL CRIMINAL JURISDICTION

By Grace Carson

Tribal criminal jurisdiction is often described as a “maze” because of the complexity of when a tribe does and does not have criminal jurisdiction over a person and/or crime. The entire complexity of tribal criminal jurisdiction does not need to be explained in order to use this database, but here are a few helpful things to know as you navigate it for context about how these laws apply, and to whom and what crimes they apply to.

When does a tribe have criminal jurisdiction?

When a tribe has criminal jurisdiction—either exclusively or shared—depends on three factors: 1) who committed the crime (Indian or non-Indian*), 2) what crime was committed, and 3) where the crime was committed.

Tribes generally do not have criminal jurisdiction over non-Indians, except for crimes included in the Violence Against Women Act Reauthorization of 2022 (VAWA 2022)**, which states that a tribe may choose to exercise “Special Domestic Violence Criminal Jurisdiction” (SDVCJ) to prosecute non-Indians who commit the following offenses: domestic violence, sexual assault, dating violence, and violation of protection orders. Though, the tribe must meet certain requirements before opting into SDVCJ, so a limited number of tribes have this authority. Currently, there are [31 tribes](#) implementing SDVJC across the United States.

Exercising SDVJC is not the only time a tribe has to consider the crime committed when it comes to determining the boundaries of their criminal jurisdiction. The Major Crimes Act grants federal criminal jurisdiction over Indians who commit any of the crimes listed in the act, namely felony crimes that are considered “violent,” such as murder, manslaughter, aggravated assault, and rape (with the exception of overlapping crimes listed for tribes exercising SDVJC under VAWA 2022). The Act also includes property crimes like arson, burglary, and robbery. This is applicable whether the victim is Indian or non-Indian. Though tribes share concurrent criminal jurisdiction over these crimes with the federal government, many do not pursue these offenses due to the misconception that they do not have any authority to address these crimes, the belief that federal courts will handle these crimes, or a lack of resources to be able to address these crimes.

Lastly, a tribe has criminal jurisdiction of the applicable crimes that take place within the limits of their reservation, such as is defined as “Indian Country.” Indian Country is defined under federal law as Indian reservations (tribal trust lands), Indian allotments (individual trust lands), and “dependent Indian communities.” Up until recently, tribes in Alaska villages were not recognized to meet the definition of being classified as Indian Country, and thus, do not have concurrent criminal jurisdiction. However, in 2023, the United States Department of Justice stated that, in light of the 2022 VAWA reauthorization and as consistent with settled legal precedent, tribes in Alaska retain inherent criminal jurisdiction over Indians in their villages. But because this tribal criminal jurisdiction was not recognized until recently, and because tribal villages are severely under resourced, tribes in Alaska are just now beginning to adopt criminal code.

*The term “Indian” is a legal definition and is only used here as such. Please note that in order for tribes to have criminal jurisdiction over someone, they need only meet the legal definition of Indian. The person need not be a member of the tribe prosecuting the crime.

**SDVCJ was first established when VAWA was reauthorized in 2013, but was re-established when VAWA was most recently reauthorized in 2022.

Public Law 280’s Impact on Tribal Criminal Jurisdiction

Another layer of confusion in determining tribal criminal jurisdiction is Public Law 83-280 (commonly referred to as “Public Law 280” or “PL 280”). Public Law 280 is legislation, among other things, altered tribal criminal jurisdiction in two ways: 1) It transferred the (joint) federal jurisdiction over major crimes in Indian Country (as listed in the Major Crimes Act) to states and non-Indians, and 2) it changed what was exclusive tribal criminal jurisdiction over certain crimes to shared (concurrent) criminal jurisdiction with the state in which the tribe resides. Even more complex, this law only applies to six states: California, Minnesota (except the Red Lake Reservation), Nebraska, Oregon (except the Warm Springs Reservation), Wisconsin, and Alaska (except the Metlakatla Indian Community on the Annette Island Reserve). This was done without consultation with or consent of the affected tribes.

Importantly, Public Law 280 does not take away tribe’s criminal jurisdiction in PL 280 states, but it did add another layer of complexity to tribal criminal jurisdiction—one that has had tangible impacts on affected tribes, though that impact varies from state to state and tribe to tribe. Notably, because states do not have the same legal obligations to tribes that the federal government does, this law has often left tribes under-resourced. Thus, tribes in these states have had to be creative in how they address harm in their communities. Additionally, tribes have had to learn how to advocate for themselves and work to create intentional working relationships with the state in which they reside—relationships that these states are not always open to creating.

Castro-Huerta v. Oklahoma’s Impact on Tribal Criminal Jurisdiction

In the summer of 2022, yet another layer of complexity was added to the picture of tribal criminal jurisdiction. On June 29, 2022, the U.S. Supreme Court overturned the long-held understanding that states do not have authority to prosecute non-Indians who commit crimes against Indians in Indian country (with the exception of the six PL 280 states). The Court, in *Castro-Huerta v. Oklahoma*, held that “the Federal Government and the State have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country.” Though we have yet to see the full consequences of this decision, the Native American Rights Fund keeps a [record of resources](#) to better understand the landscape of state jurisdiction in Indian Country.

What is a Court of Indian Offenses (otherwise known as a Code of Federal Regulations Court, more commonly referred to as a “CFR Court”)?

Courts of Indian Offenses are established throughout the United States under the Code of Federal Regulations (CFR) and are commonly referred to as “CFR Courts.” Until a particular

tribe establishes their own tribal court, a CFR Court will act as a tribe's judicial system. The history of the establishment of CFR Courts is one that is seen as an expansion of settler colonialism by many federal Indian law scholars. One scholar, Alexandra Fay, discusses the impact of CFR Courts in her Law Review Article, 'Court of Indian Offenses, Courts of Indian Resistance.' She writes, "In the late nineteenth century, the Department of the Interior created the Courts of Indian Offenses with the express goal of eliminating elements of Native culture through the coercive power of criminal law. The courts stood on dubious constitutional grounds, were almost universally replaced by tribal courts in the twentieth century, and have been widely derided as crude assimilationist tools." Though there are few CFR Courts left in existence—five across the United States—some tribes rely on them as their judicial system since they lack the resources and financial means to adopt their own tribal codes or develop their own tribal courts.

What is a joint jurisdiction court?

Because resources for tribes are limited, tribes have had to be creative in how they govern their communities and address harm. One of example of this innovation is what is called a joint jurisdiction court (also referred to as a "joint court"). A joint jurisdiction court acknowledges each government's autonomy, while sharing resources for better outcomes for everyone in their shared jurisdiction.

A joint jurisdiction court may be a court of shared jurisdiction between a tribe and a state, or a tribe and a county of a state. While joint courts are primarily in PL 280 states like California and Minnesota, they are also found in other states to combine resources to address issues in their communities. Many tribal/state joint jurisdiction courts are specific to target a certain issue in a community, such as maladaptive substance use. Therefore, we see many joint jurisdiction Healing to Wellness Courts. Though, we have the potential to see more of these courts, and more varieties of these courts, in the aftermath of *Castro-Huerta v. Oklahoma* since tribal/state joint jurisdiction courts have the potential to alleviate jurisdictional uncertainties.

This project's current list of joint jurisdiction courts that are restorative justice focused are:

[Henu Community Wellness Court, Kenaitze Indian Tribe and State of Alaska Joint Jurisdiction Court, Alaska, State/Tribal Healing to Wellness Court](#)

[Yurok Tribal Court and Del Norte County Superior Court Joint Jurisdiction Family Wellness Court, California, County/Tribal Healing to Wellness Court](#)

[Yurok Tribal Court and Humboldt County Superior Court Joint Jurisdiction Family Wellness Court, California, County/Tribal Healing to Wellness Court](#)

[Shingle Springs Band of Miwok Indians and El Dorado County Superior Court Joint Jurisdiction Family Wellness Court, California, County/Tribal Healing to Wellness Court](#)

[Hoopa Valley Tribal Court and Humboldt County Superior Court Joint Jurisdiction Family Wellness Court, County/Tribal Healing to Wellness Court](#)

[White Earth/Becker and Mahnomen Counties DWI Court \(alcohol offenses only\), Minnesota, County/Tribal Driving While Intoxicated \(DWI\) Court](#)

[White Earth/Mahnomen Country Healing to Wellness Drug Court \(drug offenses only\), County/Tribal Driving While Intoxicated \(DWI\) Court](#)

[Leech Lake Band of Ojibwe and Itasca County Joint Jurisdiction Wellness Court, Minnesota, County/Tribal Healing to Wellness Court](#)

[Leech Lake Band of Ojibwe and Cass County Joint Jurisdiction Wellness Court, County/Tribal Healing to Wellness Court](#)

[Saint Regis Mohawk Tribe Healing to Wellness Court, New York, County/Tribal Healing to Wellness Court](#)

What is an intertribal court?

An intertribal court is similar to a joint jurisdiction court, except it is a court that combines resources to serve multiple tribes. An intertribal court functions as a circuit court where judges travel to different reservations to resolve cases based on each tribe's laws, customs, and traditions. Intertribal courts often have their own court rules, in addition to following each tribe's own code.

This project's current list of intertribal courts that include a restorative justice component includes one court:

[Intertribal Court of Southern California, California, Tribal Youth Court](#)

Why does this information about tribal criminal jurisdiction matter for the Tribal Restorative Justice Laws Database?

Tribal criminal jurisdiction informs how restorative justice laws are written in tribal code, and why they apply or function in the ways they do. It also informs why some tribe's restorative justice law can be found in intergovernmental agreements between tribes and a state or county. It explains why some tribes—such as those located in lower-48, non-PL 280 states—have a more robust, expansive selection of restorative justice code than tribes located in PL-280 states like California and Nebraska, or in Alaska, where tribal criminal jurisdiction for tribal villages were only recently recognized in 2023. It also explains why some tribal restorative justice laws can be found as a part of a joint jurisdiction court, or why tribes that are under the jurisdiction of a CFR court may not have their own code. Tribal criminal jurisdiction gives the context to be able to situate the laws found within this Tribal Restorative Justice Laws Database.

Importantly, tribal criminal jurisdiction and its limitations also highlight the reason why tribes have such innovative restorative justice laws. Besides the fact that restorative justice comes from Indigenous peoples and inherently aligns with values found in Indigenous communities, and thus, restorative justice laws work well for these communities—tribes have had to be innovative in their approach for caring for their people and in addressing harm due to the limitations of power afforded to them and in lacking resources that other jurisdictions have.

List of Resources on Tribal Criminal Jurisdiction:

[General Guide to Criminal Jurisdiction in Indian Country](#)

[Tribal Court Jurisdiction](#)

[Who Is An “Indian”?](#)

[The Major Crimes Act](#)

[Indian Country Defined](#)

[Alaska Tribal Criminal Jurisdiction DOJ Memo](#)

[Public Law 280](#)

[An Introduction into Public Law 280](#)

[Tribal Courts](#)

[Understanding Tribal-State Jurisdiction](#)

[Joint Jurisdictional Court](#)

[Intertribal Court Models](#)

[Court of Indian Offenses](#)

[CFR Court History](#)