

The Tribal Law and Order Act and Minnesota

The Tribal Law and Order Act of 2010 allows reservations in Public Law 280 states, where criminal jurisdiction is handled by the state and county prosecutors, to apply for concurrent federal jurisdiction. The purpose of the law is to increase the resources available to tribes for the investigation and prosecution of crimes in Indian country.

How does the Tribal Law and Order Act (TLOA) affect Minnesota?

The United State Department of Justice has recently accepted requests from two Minnesota tribes providing concurrent federal jurisdiction over crimes on those reservations.

- The White Earth Band was granted concurrent jurisdiction, which took effect on June 1, 2013.
- The Mille Lacs Band of Ojibwe was granted concurrent jurisdiction, and the jurisdiction will become effective January 1, 2017.

How does the law work?

The TLOA allows tribes to request concurrent federal jurisdiction over crimes on reservations, and once that request has been approved, the federal prosecutor can investigate and prosecute crimes on the reservation in the same way those crimes are prosecuted on reservations where Public Law 280 does not apply. (See more about Public Law 280 below.)

On the White Earth Reservation and the Mille Lacs Band Reservation, the Major Crimes Act and the General Crimes Act will apply. The Major Crimes Act allows for federal prosecution of the following crimes: murder, manslaughter, rape, assault with intent to kill, arson, burglary, larceny, kidnapping, incest, assault with a dangerous weapon, assault resulting in serious bodily injury, assault with intent to commit rape, robbery, and felonious sexual molestation of a minor ([18 U.S.C. § 1153](#)). The General Crimes Act includes the general federal criminal laws, including many of the same crimes included in the Major Crimes Act ([18 U.S.C. § 1152](#)).

After a tribe has had concurrent federal jurisdiction granted, the state's criminal jurisdiction will not change, but the federal government will also have jurisdiction over the crimes covered by the Major Crimes Act and the General Crimes Act. It is important to note that the federal government always has jurisdiction over certain crimes that occur anywhere in the United States, including Indian country, pursuant federal laws of general applicability such as the Controlled Substances Act.

Does the TLOA change the state's criminal jurisdiction?

A federal law passed in 1953, commonly called Public Law 280, gave Minnesota criminal jurisdiction over all the reservations located in the state, except the Red Lake Reservation. In 1973, Minnesota approved the retrocession of the Bois Forte Reservation in northeastern Minnesota from Public Law 280. Other than the Red

Lake and Bois Forte (Nett Lake) Reservations, all of the other federally recognized tribes (<http://mn.gov/indianaffairs/tribes.html>) in Minnesota are subject to state criminal jurisdiction (18 U.S.C. § 1162).

The TLOA does not change the state's criminal jurisdiction. Tribal members are still subject to state and tribal criminal laws. The difference is that on the White Earth Reservation and, starting in 2017, on the Mille Lacs Reservation, members of federally recognized tribes may be subject to federal prosecution for certain crimes.

Does the TLOA change the tribe's criminal jurisdiction?

The criminal jurisdiction the tribe has over members of federally recognized American Indian Tribes did not change under the TLOA. Those tribes still have the ability to arrest and prosecute individuals to the extent allowed by the Indian Civil Rights Act of 1968, which allows tribes to impose a fine up to \$5,000 and up to one year in jail. However, the TLOA has now created an opportunity for tribes to implement enhanced sentencing powers.

The TLOA created the potential to enhance criminal sentencing for tribal courts when the courts have met certain requirements (25 U.S.C. § 1302(b)). Under TLOA, a tribal court must: guarantee the right to defense counsel for indigent clients; provide a judge who is licensed to practice law; be a court of record; make the tribal criminal code be publicly available; and have rules of evidence and rules of criminal procedure (25 U.S.C. § 1302).

Currently, no Minnesota tribes have the enhanced criminal sentencing authority provided for under the TLOA. The National Congress of American Indians has a list of tribes that have begun using enhanced sentencing or who are close to implementing programs in other states (<http://tloa.ncai.org/tribesexercisingTLOA.cfm>).

The TLOA does not change the tribe's criminal jurisdiction over non-Indians. Tribes have very limited jurisdiction over non-Indians, however the Violence Against Women's Act (VAWA) provides some exceptions. (See the House Research publication *American Indians, Indian Tribes, and State Government*, February 2014, for more information.)

How is the TLOA funded?

The TLOA provided increased federal funding for a number of programs administered by the Department of Justice and other federal agencies, as well as funding grants for criminal justice related programs for American Indian Tribes.

For more information: Contact legislative analyst Mary Mullen at 651-296-9253. Also see the House Research publication *American Indians, Indian Tribes, and State Government*, February 2014.

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