



Tribal Court Funding in Pub. L. 280 States

June 4, 2018

TRIBAL COURTS IN PUB. L. 280 STATES

- The BIA estimates that prior to 2015 it spent approximately \$4.2 million annually supporting tribal courts in Pub. L. 280 states. See “Report to the Congress on The Budgetary Cost Estimates of Tribal Courts in Public-Law 83-280 States” (Sept. 16, 2015).
- There are 372 tribal nations located in the six mandatory Pub. L. 280 states, which breaks down to \$11,290.32/tribal nation.
- In reality the vast majority of tribal nations in Pub. L. 280 states were not receiving anything.
- This means that most tribal courts that did exist in Pub. L. 280 states subsisted mainly through the hard work of volunteer judges and court staff.

LOS COYOTES BAND V. JEWELL 729 F.3D 1025 (9TH CIR., 2013)

- The the Los Coyotes Band of Cahuilla and Cupeño Indians brought a lawsuit challenging the BIA's denial of a 638 contract it submitted for law enforcement. The Los Coyotes Reservation is located in California.
- The Los Coyotes Band asserted that the BIA's denial violated:
 - The ISDEAA
 - The APA
 - The BIA's trust duty to provide law enforcement
 - The Fifth Amendment's equal protection

LOS COYOTES BAND V. JEWELL 729 F.3D 1025 (9TH CIR., 2013)

- The BIA argued its denial of the 638 contract was permissible because:
 - The BIA only has to approve contracts for funds it *would have otherwise provided* to the Band or its citizens. 25 U.S.C. 450b(j)
 - The government has broad discretion to allocate funds for programs such as law enforcement among federally recognized tribal nations. See *Dandridge v. Williams*, 379 U.S. 471, 485 (1970)
 - The BIA favoring non-Pub. L. 280 tribal nations for funding over Pub. L. 280 tribal nations is a rational allocation of limited law enforcement resources.

LOS COYOTES BAND V. JEWELL 729 F.3D 1025 (9TH CIR., 2013)

- The Ninth Circuit overturned the District Court's decision and sided with the BIA.
- It found the BIA's actions were permissible.
- (1) The BIA “denied the Tribe’s request because the Tribe requested a contract for a program that was not currently being funded by the BIA [at the Tribe].” at 1035.
- (2) The BIA has a “rational basis for prioritizing law enforcement funding in non-Public Law 280 states.” at 1040.

(A BIG PART OF) THE PROBLEM IS LACK OF FUNDS

- The courts have sided with the BIA's reasonable discretion in its allocation of limited public safety funding between tribal nations in Pub. L. 280 states and non-Pub. L. 280 states.
- The Indian Law and Order Commission published its report "A Roadmap for Making Native America Safer" in 2013. The report called out the BIA for its lack of investment in tribal justice for tribal nations in Pub. L. 280 states.
- However, the BIA cannot create money so tribal nations had to go to Congress to build a case for increased funding.
- *The problem was that there was little data on the true cost of providing funding for tribal courts in Pub. L. 280 states.*

WE NEEDED A HERO - SENATOR MURKOWSKI



THE CONSOLIDATED AND FURTHER CONTINUING APPROPRIATIONS ACT OF 2015

- **The CR required that:**
 - “Within 180 days of enactment of this Act, the Bureau [of Indian Affairs], in coordination with the Department of Justice, is directed to report to the House and Senate committees of jurisdiction on the budgetary needs of tribal courts in [Public Law 83-280] States.” See 160 Cong. Rec. H976405 (Dec. 11, 2014) (*Explanatory Statement*)

THE BIA'S REPORT TO CONGRESS SEPTEMBER 16, 2015

- The BIA sent its report to Congress on September 16, 2015.
- The report and its analysis was based on the six “mandatory Pub. L. 280” states: Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin.
- The BIA has generally treated tribal nations in “optional” Pub. L. 280 states as if they were in non-Pub. L. 280 states.

PUB. L. 280 V NON-280 BREAKDOWN

Count and Service Population of Tribes in P.L. 280 States v. Non-P.L. 280 States

Location of Tribe	Number of Tribes		Service Population	
	Count		Count	Percent
Tribes in PL 280 States 1/	372		575,208	29%
Tribes in non-PL 280 States	194		1,393,959	71%
TOTAL All Tribes	566		1,969,167	100%

1/P.L. 280 states: Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin

Source: Sept. 2015 BIA Report to Congress

PUB. L. 280 TRIBAL NATION DEMOGRAPHICS

P.L. 280 Tribes by State by Population							
Service	TOTAL						
Population Size	Count	Alaska	California	Minnesota	Nebraska	Oregon	Wisconsin
< 600	298	204	86	2	0	5	1
601-1,600	44	21	15	3	2	1	2
1,601- 6,500	24	2	8	3	2	3	6
6,501- 9,750	3	1	0	1	0	0	1
9,751- 13,000	2	0	0	2	0	0	0
13,001- 16,250	0	0	0	0	0	0	0
16,251- 19,500	0	0	0	0	0	0	0
19,501+	1	1	0	0	0	0	0
TOTAL	372	229	109	11	4	9	10

Source: Sept. 2015 BIA Report to Congress

FUNDING AT 6.14% OF TRUST COST

Estimated Tribal Court Costs in P.L. 280 States by State

Service Population Size	TOTAL P.L. 280 States		
	Number of tribes	Total Calculated need (\$000)	Funding at same 6.14% as non-P.L. 280 States Programs (\$000)
Alaska	229	188,261	11,561
California	109	97,657	5,997
Minnesota	11	22,433	1,378
Nebraska	4	6,666	409
Oregon	9	10,918	670
Wisconsin	10	18,383	1,129
TOTAL P.L. 280 States	372	344,318	21,145
Less current TPA base funding for Tribal courts in P.L. 280 states			-4,224
Estimated Tribal Courts budget shortfall in P.L. 280 states.			16,920

Source: Sept. 2015 BIA Report to Congress

CONSOLIDATED APPROPRIATIONS ACT OF 2016
PUB. L. 114-113 (DEC. 18, 2015)

The legislation provided \$10 million to among other things:

“Work with Indian tribes and tribal organizations to assess needs, consider options, and design, develop, and pilot tribal court systems for tribal communities ***including those communities subject to full or partial State Jurisdiction under Public Law 83-280.***”

CONSOLIDATED APPROPRIATIONS ACT OF 2017 PUB. L. 115-31 (MAY 5, 2017)

Funding for Tribal justice support is restored to \$17,250,000, ***of which not less than \$10,000,000 is to address the needs of Tribes affected by Public Law 83-280.*** The Committees remain concerned about Tribal court needs as identified in the Indian Law and Order Commission's November 2013 report, which notes Federal investment in Tribal justice in "P.L.280" States has been more limited than elsewhere in Indian Country. The Committees expect the Bureau to work with Tribes and Tribal organizations in these States to fund plans that design, promote, sustain, or pilot courts systems subject to jurisdiction under Public Law 83-280. The Bureau is also directed to formally consult and maintain open communications throughout the process with Tribes and Tribal organizations on how this funding supports the technical infrastructure and future Tribal court needs for these jurisdictions.

BIA CONSULTATIONS ON '16 & '17 FUNDS

The BIA held its FY16 tribal consultations on the funding in April of 2016.

- BIA had the difficult task of creating a rollout plan for potentially one-time funding. Many of the tribal nations that were eligible to receive this funding had never received tribal court funding before.
- The BIA is currently in the final phases of funding these tribal nations.

The BIA held its FY17 tribal consultations on funding in August of 2017.

General Funding/ Assessment Process

FY '18 FUNDING – CONSOLIDATED APPROPRIATIONS ACT OF 2018

“Within Tribal Justice Support... **\$13,000,000** to address the needs of Tribes affected by Public Law 83-280...The Committees remain concerned about Tribal courts’ needs as identified in the Indian Law and Order Commission’s November 2013 report, which notes that Federal investment in Tribal justice in ‘P.L. 280’ States has been more limited than elsewhere in Indian Country. The Committees expect the Bureau to continue to work with Tribes and Tribal organizations in these States to consider options that promote, design, or pilot Tribal court systems for Tribal communities subject to full or partial State jurisdiction under Public Law 83-280.”

Pub. L. 115-141 (Mar. 23, 2018)

BIA'S RECENT REPORT TO CONGRESS

State	Number of Tribes	Annual Program Cost Estimate
Alaska	229	\$174,853
California	109	\$205,741
Minnesota	11	\$18,683
Nebraska	4	\$8,640
Oregon	9	\$410
Wisconsin	11	\$23,999
Totals	373	\$452,958

Source: BIA Report to Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country (Sept. 12, 2017)

BIA'S RECENT REPORT TO CONGRESS

- **Tribal Courts TPA** – In 2014, BIA funding for the Tribal Courts program was \$29.3 million and reached \$29.4 million in 2015. In both years, over 80 percent of the funding was allotted to tribes and the rest went to BIA offices administering the Tribal Court funding and providing technical assistance. *There is a minimal amount of funding for Tribal Court operations in P.L. 280 states either because a tribe receives funding for historical reasons, or because tribes operate courts to address their civil matters in those states.*
- BIA funding supported 196 tribal courts (mainly in non-Pub. L. 280 states).

Source: BIA Report to Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country (Sept. 12, 2017)



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