

HOW JURISDICTION WORKS

Jurisdiction refers to the authority of a government to regulate conduct and enforce those regulations through a court system (i.e. enacting rules, making legal decisions, issuing judgments, and administering justice). Jurisdiction is generally tied to territory and the power of a government over its territory. Criminal jurisdiction is a subset of jurisdiction that refers to the power of a governmental authority to investigate a crime, bring criminal charges, and impose punishment.

As sovereign nations, Indian tribes have historically had inherent, exclusive jurisdiction over everything occurring within their territory. However, jurisdiction in Indian country¹ does not follow a strictly territorial approach. Through a series of statutes and court decisions, four types of jurisdiction have developed for criminal acts occurring in Indian country:

- exclusive tribal jurisdiction
- concurrent (i.e., shared) tribal and federal jurisdiction
- concurrent tribal and state jurisdiction, and
- exclusive state jurisdiction

Whether authority is exclusive to the tribal authority, exclusive to the state, or shared between the tribe and federal or state authorities is determined by the type of crime, the status of the perpetrator and victim, and the location where the crime took place. Importantly, in cases where authority is shared, a perpetrator may be charged by both a tribal court and the federal or state government. The laws against double jeopardy do not apply because a tribe is considered an independent sovereign.

¹ "Indian country" is the legal term for the area over which the federal government and tribes exercise primary jurisdiction. "Indian Country" (both words capitalized) is more broadly used to refer to tribal governments, Native communities, cultures, and peoples. National Congress of American Indians (2020). Tribal Nations and the United States: An Introduction. Washington, D.C., February 2020.

KNOW YOUR RIGHTS

Crime victims have certain legal rights depending on which jurisdiction they are in. The term "crime victim" is defined by federal statute and state laws and may include family members of MMIW.

Tribal protections

Unique to each tribe as the tribal government defines, including protections based in specific customs and traditions.

Federal protections

Under the federal definition, which applies to federal cases and cases in Washington, D.C., a "crime victim" is a person "directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia."

If the victim is deceased, family members qualify as "crime victims" under the law.¹ Likewise, a missing person falls under the "incapacitated or deceased" section of the definition, which allows family members or another person designated by court to be covered by the relevant law.²

The Crime Victims' Rights Act of 2004 (CVRA) applies to victims in federal cases and in Washington, D.C. It provides ten basic rights:

- 1. Reasonable protection:** This includes protection from threats, intimidation, or retaliation during criminal proceedings. Some examples of ways to enforce this right include police escorts, witness protection, relocation, and restraining orders.
- 2. Notice:** Victims have the right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or any release or escape of the accused." Victims generally have the right to receive information about their rights; available compensation, services, and resources; how to contact criminal justice officials; and what to expect in the criminal justice system. Victims also usually have the right to receive notification of important events in their cases.
- 3. Right to not be excluded:** Victims have the "right not to be excluded from any such public court proceedings, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding." Some jurisdictions provide a victim advocate to help you through proceedings.
- 4. To be reasonably heard:** Victims have the "right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding." This may include delivering a victim impact statement during sentencing or parole hearings to describe the impact of the crime on their lives.
- 5. To confer with the attorney for the government**
- 6. Full and timely restitution:** Crime victims can seek reimbursement for some of the out-of-pocket expenses that resulted from the crime, such as: (i) medical and counseling expenses, (ii) lost wages, and (iii) funeral and burial expenses.
- 7. Proceedings free from unreasonable delay**
- 8. Fairness and respect for their dignity and privacy**
- 9. To be informed of any plea agreement**
- 10. To be informed of all of their rights under the CVRA³**

State protections

All states have passed some form of legislation that protects the rights of victims of crime, with most states adopting constitutional amendments that afford protection to crime victims. The scope of many mirrors the rights provided under the CVRA.

This poster is part of our MMIW Toolkit for Understanding and Responding to Missing and Murdered Indigenous Women for Families and Communities. Access the expanded toolkit online at niwrc.org/mmiwtoolkit.

¹ 18 U.S.C. § 3771(e).
² See Attorney General Guidelines for Victim and Witness Assistance (Article III (B)(3)): "... An incapacitated victim is any victim who is unable to interact with Department personnel for the purpose of receiving services as a result of a cognitive impairment or other physical limitation, or because of physical restraint or disappearance."
³ 18 U.S.C. § 3771(a).

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TRIBAL JURISDICTION	FEDERAL JURISDICTION	STATE JURISDICTION	SHARED JURISDICTION
<p>Tribes maintain jurisdiction over their own member-citizens, but have degrees of jurisdiction over non-Indians and non-member Indians (persons who meet the legal definition of "Indian" but are not a registered member of the tribe seeking prosecution). For example, tribes have criminal jurisdiction over non-member Indians, but generally do not have criminal jurisdiction to prosecute non-Indians unless the tribe has chosen to exercise Special Domestic Violence Criminal Jurisdiction (SDVCJ) and related requirements under the Violence Against Women Act Reauthorization of 2013 (VAWA). If the tribe does choose to exercise SDVCJ, it may prosecute non-Indians who commit domestic violence, and dating violence, or violate protective orders.</p>	<p>Congress has plenary authority over Indian Affairs under the U.S. Constitution and has granted limited jurisdictional authority to the federal courts under the General Crimes Act¹ and the Major Crimes Act.²</p> <p>The General Crimes Act provides that the federal courts have jurisdiction over crimes by non-Indians against Indians and of non-major crimes by Indians against non-Indians through the application of federal law.³ There are three exceptions to the GCA: crimes by Indians against Indians; crimes by Indians that received punishment through the tribe; and crimes in which a treaty gives exclusive jurisdiction to the tribe.⁴</p> <p>The Major Crimes Act⁵ establishes federal jurisdiction in the prosecution of the following serious crimes committed by Indians in Indian country:</p> <ul style="list-style-type: none"> • Murder • Manslaughter • Kidnapping • Maiming • Felonies under Chapter 109A (includes sex crimes) • Incest • Assault with intent to commit murder • Assault with a dangerous weapon • Assault resulting in serious bodily injury • Assault of a person under the age of 16 • Felony child abuse or neglect • Arson • Burglary • Robbery • Felonies under §661 (stealing property worth more than \$1,000) 	<p>States have no authority over tribal governments unless expressly authorized by Congress. In 1953, Congress transferred extensive criminal jurisdiction and certain civil jurisdiction from the federal government to five states (CA, MN, NE, OR, WI) and to Alaska upon statehood. It also granted the authority to other states to acquire jurisdiction at their option. Utilizing PL 280 many states with Indian country opted to exercise transferred federal criminal jurisdiction fully or partially to certain tribes.¹ Congress has passed other laws like PL 280.</p>	<p>As a result of these measures and others, both federal and state authorities frequently share jurisdiction with tribal authorities. This fractured jurisdiction creates a great deal of confusion and requires extensive coordination between law enforcement agencies, prosecutors' offices, court systems, probation/parole officers, and victim service providers.</p>

¹ 18 U.S.C. § 1152.
² 18 U.S.C. § 1153.
³ 18 U.S.C. § 1152.
⁴ *Id.*
⁵ 18 U.S.C. § 1153.

¹ 18 U.S.C. § 1162; 28 U.S.C. § 1360; 25 U.S.C. § 1321-26.

Criminal jurisdiction in PL 280 states¹

If you are on a reservation in which the state still exercises full criminal jurisdiction under PL 280 or similar acts, refer to the chart below to determine who has jurisdiction:

Indian Status	Major crime (under MCA)	All other crimes
Indian perpetrator, Indian victim ²	Tribal and state jurisdiction	State and Tribal jurisdiction
Indian perpetrator, non-Indian victim ³	State and Tribal jurisdiction	State and Tribal jurisdiction
Non-Indian perpetrator, Indian victim ⁴	State jurisdiction ⁵	State jurisdiction ⁶
Non-Indian perpetrator, non-Indian victim	State jurisdiction	State jurisdiction

Note: There is federal jurisdiction in Indian country for crimes of general applicability.

¹ As noted above, PL 280 states are California, Minnesota, Nebraska, Oregon, Wisconsin, and Alaska.
² Under the Tribal Law and Order Act (TLOA) Section 221, a tribal government may request federal concurrent jurisdiction over crimes in PL 280 states, subject to approval of the U.S. Attorney General.
³ *Id.*
⁴ *Id.*
⁵ Tribal jurisdiction exists for crimes under VAWA of 2013, when a tribe with Indian country has chosen to exercise Title IX, Sec. 904, SDVCJ.
⁶ *Id.*

Criminal jurisdiction outside of PL 280 states

If you are NOT located in a PL 280 states refer to the chart below to determine who has jurisdiction.

Indian Status	Major crime (under MCA)	All other crimes
Indian perpetrator, Indian victim ¹	Tribal and Federal (under MCA) jurisdiction	Tribal jurisdiction
Indian perpetrator, non-Indian victim ²	Tribal and Federal (under MCA) jurisdiction	Tribal and Federal (under GCA) jurisdiction
Non-Indian perpetrator, Indian victim	Federal jurisdiction (under GCA) ³	Federal (under GCA) jurisdiction ⁴
Non-Indian perpetrator, non-Indian victim	State jurisdiction	State jurisdiction

Note: There is federal jurisdiction in Indian country for crimes of general applicability.

¹ If the offense is listed in the MCA, there is federal jurisdiction, exclusive of the state, but not 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 used in federal courts. See Section 1153(b). If not listed in MCA, the tribal jurisdiction is exclusive.
² If listed in the MCA, 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 used in federal courts. If not listed in the MCA, there is federal jurisdiction, exclusive of the state, but not of the tribe, under the GCA. 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 used in federal courts under 18 U.S.C. § 13. The United States can prosecute an Indian for a non-MCA crime, provided the tribe has not prosecuted.
³ Tribal jurisdiction exists for crimes under VAWA of 2013, when a tribe has chosen to exercise Title IX, Sec. 904, SDVCJ.
⁴ *Id.*

Remember, the moment you realize that a loved one is missing, contact local law enforcement.
 If 911 emergency services are not available in your location, call the law enforcement agency you would contact for any other type of life-threatening emergency.