

January 2018

Law and Justice Interim Committee
Rachel Weiss, Research Analyst

SUMMARY OF PL 280 BILLS IN THE 2017 SESSION

BACKGROUND

The 2017-2018 Law and Justice Interim Committee (LJIC) selected the topic of criminal jurisdiction in Indian Country as an issue about which the members would like to learn more. Specifically, the LJIC was interested in the U.S. treaty obligations to provide law enforcement on Indian reservations. Speakers with expertise in Indian Country jurisdiction will speak to the LJIC at the January meeting, including an overview of a particular legal structure created under federal law (called Public Law 83-280 or PL 280). This paper provides background on two bills introduced in the 2017 Legislature that related to PL 280 jurisdiction.

PL 280 required six states to assume criminal jurisdiction on reservations and allowed the other states to choose whether to assume criminal jurisdiction. In Montana, PL 280 was not mandatory, but the state legislature enacted legislation in 1963 to assume criminal jurisdiction over the Confederated Salish and Kootenai Tribes (CSKT) on the Flathead Reservation. Later revisions to PL 280 jurisdiction allowed the CSKT to withdraw from state jurisdiction for most misdemeanor crimes. The CSKT is the only Montana tribe covered by PL 280.¹

SENATE BILL NO. 310

Sen. Lea Whitford (D-Cut Bank) introduced SB 310 at the request of the CSKT Tribal Council. The bill allows the CSKT to withdraw consent to be subject to the felony criminal jurisdiction of the state of Montana. Consent is withdrawn by passage of a tribal resolution after consulting with local government officials. The bill does not require the state to cede jurisdiction, but instead creates a mechanism for the process to occur should the CSKT Tribal Council withdraw consent to the current arrangement. The bill was enacted by the 2017 Legislature and signed by the governor.

HOUSE BILL NO. 450

Rep. Greg Hertz (R-Polson) introduced HB 450. The bill would have required the state of Montana to reimburse counties for the costs incurred to enforce criminal jurisdiction on the Flathead Reservation. (The reservation encompasses parts of four counties – Missoula, Sanders, Flathead, and Lake – but most of the reservation lies in Lake County.) The bill specified the costs for which the state would be required to reimburse the counties, including for “detection, prevention, and suppression of crime,” detaining individuals in a county detention center, and enforcement of criminal and traffic laws such as the costs of prosecutions. If the state failed to provide the reimbursements, it would be required by the bill to seek retrocession of the criminal jurisdiction that it had assumed under PL 280. A county that did not receive the requested reimbursement would also have the option of

¹ *Tribal Nations in Montana: A Handbook for Legislators*, pgs 62-64.

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declining to enforce the state's criminal jurisdiction. The bill failed on second reading in the House after the bill sponsor made a "Do Not Pass" motion.

HB 450 was accompanied by a fiscal note, which estimated the general fund cost to reimburse Lake County for law enforcement costs would be approximately \$4 million each fiscal year. That estimate did not include other payments that might be due to other counties or towns that incur law enforcement costs, but those costs would likely increase the cost of implementing the bill.

SOURCES USED

- House Bill No. 450 and related testimony, 2017 Legislature, www.leg.mt.gov/bills/2017/billhtml/HB0450.htm
- Senate Bill No. 310 and related testimony, 2017 Legislature, www.leg.mt.gov/bills/2017/billhtml/SB0310.htm
- *Tribal Nations in Montana: A Handbook for Legislators*, Montana Legislative Services Division and the Margery Hunter Brown Indian Law Clinic, Oct. 2016, available from www.leg.mt.gov/content/For-Legislators/Publications/tribal-nations-handbook-october2016.pdf

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