



Criminal cases in Minnesota's Indian Country

By: George W. Soule September 19, 2014

Exercising their sovereignty, Minnesota's 11 Indian tribes each have established a tribal court. The tribes retain jurisdiction for crimes allegedly committed by Indians on reservations. Only two Minnesota tribes, however, currently try criminal cases. The Red Lake and Bois Forte Tribes have adopted criminal codes and their tribal courts hear criminal cases.

The other nine Minnesota tribes do not hear criminal cases. Several of these tribes have codes regulating matters such as traffic, animal control, and hunting and fishing, and their tribal courts administer violations of those codes. Some of the tribal courts also hear juvenile justice matters.

Criminal jurisdiction in Indian Country

Determining which jurisdiction will prosecute and hear cases involving crimes allegedly committed on Indian reservations is a complicated and sometimes imprecise issue. The question is largely governed by federal statutes and principles of sovereignty. Criminal jurisdiction is governed by the following general rules:

- Federal crimes — such as bank robbery, drug trafficking, kidnapping — are prosecuted by the United States in federal courts. The U.S. attorney's recent successful prosecution of Native Mob gang members on RICO charges is an example of this federal case.

- The prosecution of major crimes in Indian country depends where the crime was committed. The Major Crimes Act (18 U.S.C. sec. 1153) grants jurisdiction to federal courts over Indians charged with certain crimes in Indian Country — such as murder, kidnapping, felony child abuse, arson and burglary. Public Law 280, however, later transferred criminal jurisdiction from the federal government to certain states, including Minnesota, for such major crimes. This legislation exempted Red Lake, and Bois Forte later retroceded, or withdrew, from Public Law 280's provisions. Thus, the U.S. attorney will prosecute major crimes committed at Red Lake or Bois Forte in federal court. County attorneys will prosecute such crimes committed at the other nine Minnesota reservations in state courts.
- The Tribal Law and Order Act of 2010 gave authority to the Department of Justice to assume, at a tribe's request, concurrent criminal jurisdiction over crimes committed on a reservation. The department granted White Earth Nation's request for concurrent jurisdiction, so major crimes at White Earth may be prosecuted by federal or state authorities.
- The Violence Against Women Reauthorization Act of 2013 authorizes tribes to prosecute Indians and non-Indians who have sufficient ties to the tribe (such as living or working on the reservation) charged with domestic or dating violence or criminal violations of protective orders.
- Major crimes allegedly committed by non-Indians against Indians in Indian country may be prosecuted by the United States in federal court. The General Crimes Act (18 U.S.C. sec. 1152) grants federal jurisdiction for such crimes.
- Other crimes may be heard in tribal courts if the tribe has established a code and system for handling such cases. Otherwise, they are heard in state court.
- Crimes by a non-Indian against another non-Indian, even if they occur on a reservation, are left to state prosecution.

The Indian Civil Rights Act (25 U.S.C. sec. 1302) places certain limits on the authority of tribal courts. The act makes some provisions of the U.S. Constitution's Bill of Rights applicable to tribes ("No Indian tribe in exercising powers of self-government shall . . ."). The act also provides the right to jury trial in tribal courts "for an offense punishable by imprisonment," and requires tribes to provide defense counsel under certain circumstances.

The act initially restricted the punishment that may be imposed by a tribal court to imprisonment for one year or a fine of \$5,000 or both. The Tribal Law and Order Act of 2010, however, expanded punishment authority to imprisonment of three years and a fine of \$15,000 or both for certain crimes (not to exceed nine years total).

Bois Forte Band of Ojibwe

Bois Forte established a criminal code and its Tribal Court hears criminal matters on the Bois Forte and Lake Vermilion Reservations. For many years, Margaret Treuer presided as Tribal Court Judge; Judge Treuer retired in 2014, succeeded by Judge Tadd Johnson. Judge Johnson says most cases in criminal court stem from alcohol or drug problems. The most frequent cases are disorderly conduct, DWI, domestic assault, and possession of controlled substances. The tribe hired Anishinabe Legal Services to prosecute, and private practitioners, including Indian law firm Swanson, Drobnick & Tousey P.C., to serve as defense counsel. The court meets in Nett Lake, Minnesota, on the second and fourth Wednesdays of each month. Wendy Thompson serves as commissioner of judicial services.

Red Lake Band of Chippewa Indians

Red Lake is the only tribe in Minnesota with a closed reservation; that is, all of the land within reservation boundaries is the property of the tribe. Red Lake has a criminal code. An earlier version is available on the Internet, but the code has since been amended. Two judges preside over criminal cases in Tribal Court. The tribe has a chief prosecutor and assistant prosecutors, has two lay advocates as public defenders, and occasionally hires private counsel to represent defendants.

White Earth Nation

The White Earth Nation has begun to develop a criminal code, according to Chief Judge Robert Blaeser. The tribe expects to hear criminal cases in the future, as funding becomes available to expand tribal court.

White Earth was the first U.S. tribe to implement concurrent criminal jurisdiction for crimes committed on the reservation. In March 2013, the U.S. Department of Justice granted the tribe's request for concurrent jurisdiction under the Tribal Law and Order Act of 2010. Thus, the tribe now has discretion to refer criminal cases to the federal prosecutor or the local county attorney. Typically, the tribe consults with local law enforcement authorities to determine which jurisdiction should handle a case. Since implementation of concurrent jurisdiction, the tribe has referred approximately five cases to the U.S. attorney for prosecution.

Criminal cases in Tribal Courts in neighboring states

Public Law 280 does not apply to North Dakota and South Dakota, so federal authorities have jurisdiction over major crimes committed in Indian Country there. The North and South Dakota tribes also hear criminal cases in tribal courts. For example, the Sisseton Wahpeton Oyate tribal court "was created ... to provide a forum for the prosecution of those persons who commit crimes on the Lake Traverse Indian reservation."

Public Law 280 does apply to Wisconsin, except for the Menominee Indian Tribe of Wisconsin. The Menominee Tribe hears criminal cases in tribal courts, the other 10 tribes do not (except for regulatory matters such as traffic, graffiti, fishing and hunting violations).

The future

In the four states examined, each tribe subject to Public Law 280's reach has so far declined to prosecute criminal cases. Each tribe exempt from Public Law 280 — where federal authorities are responsible for prosecuting major crimes — has adopted a criminal code and hears criminal cases in its tribal court. Some tribes within Public Law 280 coverage are drafting criminal codes or are considering expanding tribal court to hear criminal cases. These steps may be the next manifestation of their sovereignty.

Kevin Washburn, assistant secretary for Indian affairs for U.S. Department of the Interior, aptly stated the future for criminal jurisdiction in tribal courts: "Criminal justice has been one of the last frontiers of tribal self-governance. Long after tribal governments had taken over health care programs, education, natural resources and even police services, tribes lacked felony jurisdiction over their own members and any were blocked from exercising their inherent historical jurisdiction over non-Indians. In the last five years, Congress has helped tribes breach those barriers. Tribal exercise of these sovereign powers will reinforce the importance of tribal courts within tribal governments."

Tribal courts in Minnesota



1. 1854 Treaty Authority Conservation Court, Duluth
2. Bois Forte Tribal Court, Nett Lake
3. Fond du Lac Band of Chippewa Tribal Court, Cloquet
4. Grand Portage Tribal Court, Grand Portage
5. Leech Lake Band of Ojibwe Tribal Court, Cass Lake
6. Lower Sioux Community in Minnesota Tribal Court, Morton
7. Mille Lacs Band of Ojibwe Tribal Court, Onamia
8. Prairie Island Indian Community Tribal Court, Welch
9. Red Lake Nation Tribal Court, Red Lake
10. Shakopee Mdewakanton Sioux Community Tribal Court, St. Paul
11. Upper Sioux Community Tribal Court, Granite Falls
12. White Band of Chippewa, White Earth

George W. Soule is a partner in Soule & Stull LLC in Minneapolis, focusing his practice on civil litigation and trials. Soule is a Member of the White Earth Nation and serves as a judge on its Court of Appeals. He is past president of the Minnesota American Indian Bar Association