

INDIAN LAW - ON LINE

PRESENTED BY:

DPS - Law Enforcement Academy
Santa Fe, New Mexico

Date: _____

GOALS

- Students will gain an understanding of the unique status of laws affecting Indian Country and how they apply to law enforcement.

OBJECTIVES

Upon completion of this course, students will be able to:

- Explain the unique nature of reservations in the United States.
- Explain how a person's status as a native or non-native can affect which court will hear a criminal case.
- Know what kind of agreement (verbal or written) is needed for non-tribal police officers to do enforcement on tribal lands.
- Discuss whether the Liquor Control Act applies to Indian casinos.
- Describe training required, state and federal, to become a tribal police officer.
- Understand the valuable and important role of tribal police officers.

SOURCES

- New Mexico Criminal and Traffic Manual.
- New Mexico Statutes Annotated.
- State and federal case law.

ESTIMATED TIME One hour.

PREPARED BY

Legal Instructor
Department of Public Safety
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Santa Fe, New Mexico

DATE APPROVED _____

ACCREDITATION NUMBER _____

BACKGROUND AND INTRODUCTION

Law enforcement officers trying to understand Indian Law often find it confusing. This may be a result of the tendency to view Indian Law in isolation, without getting the “big picture.” To better understand Indian Law, it’s helpful to first review the unique status of Native Americans and reservations in our society.

Some things we will discuss include:

- A background review of Native Americans and reservation policy.
- Determining which court hears a case when a crime is committed on tribal land.
- Legal issues relating to law enforcement and tribal lands.
- Policy regarding Indian children in the state court system.
- The valuable and important role of tribal police officers.

BACKGROUND REVIEW OF NATIVE AMERICANS

NATIVE AMERICAN POPULATION

Approximately 2.5 million Native Americans are found in over 500 groups known as tribes, nations, pueblos or native villages.

- Around 10% of the two million people who live in New Mexico are Native Americans.
- Reservations in New Mexico include:
 - 1) Mescalero Apaches,
 - 2) Jicarilla Apaches,
 - 3) Part of the Navajo reservation, and
 - 4) Nineteen Pueblos.
- Each of the nineteen New Mexico pueblos is a federally recognized Indian tribe.
- The Navajo tribe is the largest in the United States.

In 2011, a new reservation for New Mexico

News item: Fort Sill Apaches Win Claim

The Chiricahua and Warm Springs Apache tribes lived in southern New Mexico for at least a thousand years. When war chief Geronimo surrendered in the late 1800’s,

they eventually were relocated to Fort Sill, Oklahoma. In 1998 the tribe purchased 30 acres of land near Deming, New Mexico. A reservation proclamation by the federal government gave the tribe, which has approximately 685 members, reservation status in 2011. Albuquerque Journal, November 23, 2011.

News item: Tribe Moves Forward on Gaming Plans

The Fort Sill Apache tribe is moving forward with efforts to develop their reservation near Deming, New Mexico for gaming and other activities. Albuquerque Journal, November 26, 2011.

DIFFERENT TERMS ARE USED: NATIVE AMERICANS, NATIVES, INDIANS

- The word “Indian” came about when Columbus landed on islands (the Bahamas) off the east coast of North America. He thought he was off the coast of India and referred to the people he encountered as Indians.
- The term “Indian” is widely used: Indian jewelry, Gallup: Indian Capitol of the United States, etc.
- Other terms include Native Americans, Natives, American Indians.

WHO IS AN INDIAN?

- The legal term “Indian” usually means an enrolled member of a federally recognized tribe or one who is eligible to be enrolled in such a tribe.
- Each tribe has the authority to define their members. Normally a person must have at least a certain degree of tribal ancestry – such as one-fourth. This is normally decided by tribal law.

RESERVATIONS

- Reservations arose when Congress “reserved” or set aside certain lands for Native Americans. Canada has a similar program but refers to reservations as “reserves.”
- American Indian tribes are not, as some think, “foreign nations.” For example, they can’t make treaties with foreign governments.
- The federal government has exclusive power to deal with federal and tribal matters, unless it delegates that power to the states – which it rarely does.
- Upon becoming a state, New Mexico adopted a constitutional provision (Article XXI, Section 2) giving up taxing jurisdiction and other authority on Indian reservations.
- Legally, a pueblo and a reservation is the same thing. “Pueblo” is a Spanish word for village.

HISTORY OF U.S. INDIAN POLICY

- For many years federal policy sought to assimilate Native Americans. It was felt that Native Americans should become like everyone else.
- Since the 1960's, however, federal policy has changed. Preserving the heritage of Native Americans is encouraged.

UNDERSTANDING DUAL CITIZENSHIP

- Native Americans, in addition to being citizens of the United States and the state they live in, are also citizens of the tribes of which they are enrolled as members. Each tribe has the authority to determine who is eligible to be a member.
- Dual citizenship means that Native Americans are entitled to vote in all elections plus tribal elections.
- Native Americans have become active in state and national politics. They are represented in the state legislature. Indian casinos have become a significant source of campaign funds.

THE MEANING OF DUAL ENTITLEMENT

- When Congress created the reservations, the federal government assumed responsibility for providing certain needs such as health and education benefits.
- But Native Americans do not receive individual payments, as some people think.
- Just as it does for state and local governments, the federal government makes grants and loans to tribes and tribal programs.
- For example, when a Native American attends a public school, the federal government makes a contribution for this purpose to the local school district. This is similar to a federal contribution for children who live on military bases and attend public schools.

INDIAN CRIMINAL LAW

Many people are confused as to how crimes are prosecuted on an Indian reservation.

- Which court will hear the case? (**Federal, tribal, state**)
- Does it matter if a person is a native or non native? (**yes**)

The following summary will hopefully clarify some of these questions.

OFF-RESERVATION

- If a native or non native commits a crime off-reservation, the case will be heard in state court. If a federal law has been broken, the case will be heard in federal court.

ON-RESERVATION

ON-RESERVATION: FELONY CRIMES

- Congress, which created reservations in the first place, continues to provide law enforcement and legal guidance. This means that felony crimes – depending upon your status as a native or non-native – will generally go to federal court.

INDIAN AS DEFENDANT

- Will be heard in federal court. This will happen even though the victim is a non Indian.

INDIAN AS VICTIM

- Will be heard in federal court. This will happen even though the offender is a non Indian.

NON INDIAN AGAINST NON INDIAN

- Offenses committed by a non Indian against another non Indian will be heard in state court. Since each reservation is located within one of New Mexico's thirty three counties, it will be heard in the county where the offense occurred.
- It may go to federal court, however, if a federal law has been violated.

ON- RESERVATION: MISDEMEANOR CRIMES

- The most interesting development here is a court found only on the reservation – tribal court. Until a new law in 2010, the following applied to tribal court:
- Tribal courts have jurisdiction over misdemeanors.
- A tribal court will hear a case where an Indian is a defendant. The idea is that for misdemeanors, which involve the great majority of cases, a member of the tribe will have his or her case heard by a tribal judge.
- A tribal court cannot try a non native on a criminal charge.

The Tribal Law and Order Act of 2010

- This Act expands the authority of tribal courts. Before 2010, tribal courts could sentence a criminal to a maximum of one year in jail. Now, tribal courts can sentence someone for up to three years and can tack on more than one sentence.
- Because those convictions are considered felonies (more than one year), criminals lose voting and gun rights.
- Allows tribal courts to prosecute minor crimes they haven't been able to in the past, such as when a non-native commits a crime on a reservation.
- Authorize tribal police officers who have been granted federal authority to cite, arrest or search both natives and non-natives suspected of breaking a federal law.
- Gives tribal police access to federal crime databases they previously had minimal access or no access to.

DO TRIBAL MEMBERS HAVE THE SAME CONSTITUTIONAL RIGHTS AS THE REST OF THE COUNTRY?

- Almost. The Bill of Rights acts a restraint on federal officers. The Fourteenth Amendment acts as restraint on state and local officers. But these amendments do not apply to tribal officials.
- To remedy this, Congress passed the Indian Civil Rights Act in 1968 to put similar restraints on tribal officers. But there are exceptions. For example, an Indian tribe can establish a religion, of whatever kind, although it cannot prohibit other religions. A Pueblo may choose to have a Catholic priest "bless the canes" (a traditional symbol of authority) for an inauguration of tribal officials.
- Nor is a tribe required to elect its officials. In fact, the majority of pueblos choose their leaders in the traditional (non-elective) way.

LEGAL ISSUES ON TRIBAL LANDS

FRESH PURSUIT OF VEHICLE INTO RESERVATION

FACTS:

Defendant was speeding when a San Juan County Sheriff's deputy saw him. He turned on his emergency equipment but Defendant drove one-third of a mile into the Navajo reservation. Because Defendant was a member of the reservation, tribal police were called, but they were unavailable. The deputy wasn't cross-commissioned. He gave the Defendant field tests and let him walk home. State v. Harrison (2010).

- What, if anything, can the deputy do?
- What if the Defendant is DWI?

Answer:

It has been long standing legal doctrine that state and local law enforcement have no authority over tribal members on Indian lands. But in a departure from this principle, under circumstances like these, and as long as it doesn't infringe on tribal procedure, an officer can do a limited investigation of an Indian. Results of the field tests were admissible.

The officer can make an arrest if the subject is non-Indian. If the subject is an Indian, no arrest can be made.

STATUS OF A CRIME THAT OCCURS ON NON-INDIAN LAND LOCATED WITHIN TRIBAL BOUNDARIES

- Non-natives are permitted title to private property within a reservation. But an interesting question arises: who has jurisdiction if a Native American commits a criminal act on private property located within a reservation?

FACTS:

A Native American committed an aggravated battery against another Native American on the privately owned Pueblo-Alegre Mall which, although in the town of Taos, is located within the exterior boundaries of Taos Pueblo. Similarly, a Native American is arrested for stabbing a non-native on privately owned lands located on Pojoaque Pueblo. State v. Romero (2006).

- Does this go tribal/federal or to state court?

Answer:

Indian country is land reserved by Congress and can only be reduced by Congress, not individual land sales. Non-Indians may have title to certain parcels but an Indian reservation is still an Indian reservation.

Supreme Court held that the state does **not** have jurisdiction to prosecute crimes committed by Defendant Indians on private property within the exterior boundaries of a Pueblo or reservation. These cases should go to federal court.

WHAT KIND OF AGREEMENT IS NEEDED FOR NON-TRIBAL POLICE OFFICERS TO DO ENFORCEMENT ON TRIBAL LAND?

Due to a shortage of officers, the Chief of the Mescalero Apache Tribe **verbally** asked state police for assistance to help enforce traffic laws on the reservation. Under the agreement, a Native American traffic offender was to be cited into tribal court; a non-native offender was to be cited into state court.

FACTS:

A state police officer observed Defendant going 45 in a 35 on Mescalero 6, a road on tribal lands. After investigation, Defendant, a non native, was booked in Otero County for DWI. The defendant argued that the agreement had to be in writing and that an informal, verbal agreement was not enough. State v. Branham (2004).

- Does defendant have a valid point? (yes)

Answer:

Court of Appeals held that the agreement has to be in writing. Since there was no written agreement, charges against the Defendant were dismissed.

INDIAN CASINOS AND THE LIQUOR CONTROL ACT

INTRODUCTION TO CASINOS

- Congress created the legal framework for casinos in 1988 with passage of the Indian Gaming Regulatory Act. This lets Indian tribes, with the consent of state government, run slot machines and other profitable games on reservations that may not be allowed elsewhere in the state.

POLICY OF THE LIQUOR CONTROL ACT

- The Liquor Control Act seeks to ensure that the sale, service and public consumption of alcohol shall be licensed, regulated and controlled so as to protect the public health and safety of every community in the state.
NMSA 1978, Section 60-3A-2(A).
- One mission of the Special Investigation Division of the Department of Public Safety is to enforce the sale of alcohol to minors and to intoxicated persons.

DOES THE LIQUOR CONTROL ACT APPLY TO INDIAN CASINOS? (No)

- One of the exemptions of the Liquor Control Act includes the sale, service, possession or public consumption of alcohol by any person within the boundaries of lands over which an Indian nation, tribe or pueblo has jurisdiction.
NMSA 1978, Section 60-3A-5(D).

INDIAN CHILDREN IN STATE COURT SYSTEM

- The desire of the state legislature to preserve Indian culture becomes evident when reviewing the Children's Code. The following statutes note responsibilities of agencies closely related with law enforcement.

Definition of Indian Child

- An Indian child is defined as one less than eighteen years old who is a member of an Indian tribe or eligible for membership and is also the biological child of a member of an Indian tribe. NMSA 1978, Section 32A-1-4 (J).

Notice to Indian tribes

- In a case involving a family in need of court-ordered services, and in abuse, neglect or adoption proceedings, if the child is an Indian child, the Indian child's tribe shall be notified. NMSA 1978, Section 32A-1-14.

Role of juvenile probation and parole services

- Juvenile probation and parole services have a duty to identify an Indian child for the purpose of contacting the Indian child's tribe in delinquency cases, and
- to contact an Indian child's tribe to exchange information for the purpose of preparing a predisposition report when commitment or placement of an Indian child is contemplated or has been ordered. NMSA 1978, Section 32A-2-5 (8) (9).

When protective custody involves an Indian child

- When a child is taken into protective custody, CYFD (Children, Youth and Families Department) shall make a reasonable effort to determine whether the child is an Indian child. NMSA 1978, Section 32A-3B-3 (C).

Indian child placement

- When CYFD seeks placement of an Indian child, preference shall be given to a member of the Indian child's extended family or a foster home or institution that will meet the Indian child's needs.
- If these preferences cannot be followed or an Indian child is placed in an institution, a plan shall be developed to ensure that the Indian child's cultural ties are protected and fostered. NMSA 1978, Section 32A-3B-6.1

THE ROLE OF TRIBAL POLICE OFFICERS

- Tribal police officers are highly qualified. In addition to attending the prestigious and nationally recognized Law Enforcement Academy in Santa Fe, they must also attend the BIA/federal law enforcement academy.
- Tribal police enforce state, federal, and tribal laws.
- Tribal police are in a unique position to "bridge the gap" between the reservation and nearby communities. Leadership by tribal police can improve life for both natives and non natives.

CONCLUSION

Once on a reservation, police officers need to follow tribal or federal laws. If your agency has an agreement to assist tribal officials, it is important to understand that differences exist when working with natives or non-natives. A close working relationship with tribal officials can be beneficial for all parties involved.

Sources: Governing New Mexico, Edited by Paul Garcia (2006).

Article: American Indians and Tribal Governments by Fred and Laura Harris.
New Mexico case law.