

## PUBLIC LAW 280 AND MONTANA

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Enacted in 1953, Public Law 280 (PL-280) transferred federal criminal and civil jurisdictions over reservations to six states. Other states, such as Montana, had the option to transfer jurisdiction through PL-280. Some states adopted PL-280 for all reservations, while others, such as Montana, did so in part. The only reservation in Montana under PL-280 is the Flathead Reservation. However, not all jurisdiction lies with the state. In the 1990s, the Flathead reservation assumed jurisdiction of criminal misdemeanors. Though the Flathead Reservation area intersects with different counties, Lake County has the largest amount of overlap. An ongoing issue of contention exists between Lake County and the state related to the law enforcement costs for the county's activities on the reservation and whether the state has a role in reimbursing or funding those expenses.

## PL-280 IN MONTANA: KEY EVENTS

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- 1953: PL-280 was first enacted in the United States.
- 1963: With House Bill 55, Montana opted to assumed criminal jurisdiction of the Flathead reservation if impacted counties and the tribe agreed. *All consented. [Today the tribal governing body of the Flathead Reservation is known as the Confederated Salish and Kootenai Tribes (CSKT)]*
- 1965: PL-280 went into effect on the Flathead reservation.
- 1993: Senate Bill 368 allowed the CSKT to assume criminal misdemeanor jurisdiction within reservation boundaries. That began in 1994 and was renewed in 2015. The county system handles felony crimes and the tribal system handles misdemeanors.
- 2021: With the passage of [House Bill 656](#), the Montana legislature gave Lake County the option to withdraw from the PL-280 agreement. The bill appropriated a \$1 per year reimbursement to the county for assuming criminal jurisdiction.
- July 2022: Lake County filed a lawsuit against the state for reimbursement of past and present law enforcement costs carried out on the Flathead Reservation.
- Jan. 2023: Lake County commissioners passed a resolution to withdraw from PL-280.
- Feb.-June 2023: [House Bill 479](#) passed both houses. It authorized the state to pay 2.5 million dollars annually for two years to reimburse Lake County for law enforcement activities on the Flathead Reservation. Governor Gianforte vetoed the bill in May. A vote by the legislature to override the veto in June did not pass.

- May 2023: Following the governor's veto, Lake County commissioners voted to remain in PL-280 until the 2022 lawsuit was settled.
- November 2023: 11<sup>th</sup> District Court (Flathead County) Judge Amy Eddy denied Lake County's [request for reimbursement](#) of past and present law enforcement costs. Judge Eddy expressed her disagreement with the 2021 \$1 appropriation but said the state is not required to appropriate a particular dollar amount to the county and that if the financial burden is too much for the county it can withdraw.
- Lake County sent a letter to Governor Gianforte, informing him that the county would no longer provide felony law enforcement on the reservation after May 20, 2024. Governor Gianforte was required by law to respond within 6 months, releasing the county of its duties.
- March 2024: Governor Gianforte [sent a response letter](#) to Lake County Commissioners, saying that the state would not assume law enforcement duties or provide funding to the county. The governor wrote that "the only potential tool available to me is to initiate retrocession of felony criminal jurisdiction to the United States."
- The CSKT issued a [press release](#) following the governor's letter, expressing continued commitment to its exclusive and concurrent jurisdictional responsibilities and its desire to continue to work collaboratively with other jurisdictions.
- May 20, 2024: Lake County officially withdrew from PL-280, though the county opted to continue to exercise jurisdiction for the time being. In a letter, Governor Gianforte [expressed the possibility](#) of the state providing temporary financial assistance to Lake County during a three-year transition period. The Governor's Office and Lake County Commissioners will meet on May 21 to discuss the transition away from the PL-280 agreement.

## WHAT IS RETROCESSION?

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In the case of PL-280, retrocession means **returning jurisdiction from the state to the federal government**.

If retrocession occurs in Montana, there is no guaranteed outcome or process. However, the experiences of other states can provide some perspective. Below are a few important informational considerations as well as selected state examples of retrocession from PL-280.<sup>1</sup>

- The Indian Civil Rights Act of 1968 included amendments to PL-280 related to retrocession. The changes authorized the U.S. Secretary of the Interior "to accept a retrocession by any State of all or any measure of

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<sup>1</sup> Information from this section comes from William B. Canby, Jr., *American Indian Law in a Nutshell* (7<sup>th</sup> Ed., West Academic Publishing, 2020) pp: 310-313.

the criminal or civil jurisdiction" acquired by the state pursuant to mandatory or optional provisions of PL-280.

- Retrocession is not effective until the Secretary of the Interior accepts it, though the Secretary can choose to reject.
- There is no legal mechanism requiring tribal consent or permitting tribal initiative for retrocession.
- In Washington state, the governor retroceded from PL-280 (Suquamish Port Madison Reservation) by proclamation, without any action by the state legislature. The Secretary of the Interior accepted the retrocession. Courts held the action to be valid, ruling that the validity of the retrocession was a question of federal law, and that validity was established by the Secretary's acceptance. (*Oliphant v. Schlie*, 9<sup>th</sup> Circ., 1976).
- In Nebraska, the state legislature initiated retrocession from PL-280 with two reservations: Omaha and Winnebago. The Secretary of the Interior accepted the Omaha retrocession but rejected the Winnebago. Nebraska argued that this partial acceptance negated both retrocessions, as it was not the state's intention to retrocede from one. However, courts upheld the validity of the Omaha retrocession. (*Omaha Tribe v. Village of Walthill*, 8<sup>th</sup> Circ., 1972).
- In Minnesota, a question arose over whether the state needed to retrocede from PL-280 in order to enter into cooperative agreements with a tribe (i.e. allowing tribal officers to enforce state laws on reservations). Courts ruled that the state did not need to retrocede to enter into agreements.