

**Bureau of Indian Affairs  
Office of Justice Services**

**Report to the Congress  
on  
The Budgetary Cost Estimates of Tribal Courts  
in Public Law 83-280 States**

**September 16, 2015**

# **The Budgetary Cost Estimates of Tribal Courts in Public Law 83-280 States**

## **SUMMARY**

Historically, Federal investment in tribal justice for Public Law 83-280 (P.L. 280) states has been more limited than elsewhere in Indian country.<sup>1</sup> Tribes in P.L. 280 states have shown interest in increasing support and capacity for tribal courts. In response, the Congress directed the Bureau of Indian Affairs, in coordination with the Department of Justice, to report to the House and Senate committees of jurisdiction on the budgetary needs of tribal courts in these states.

Tribes located in the six mandatory P.L. 280 states comprise only 29 percent of the estimated Indian Affairs service population. Recognizing the sovereign nature and unique culture of each tribal government presents a set of individual court costs, it was clear a practical assessment would require the use of estimates. In addition, this assessment frames the budgetary costs of tribes in P.L. 280 states in a comparative context with tribes in non-P.L. 280 states.

A budgetary estimate was built around the principle of tribal sovereignty and the assumption each tribe in a P.L. 280 state, no matter how small its service population, would convene at least a part-time court. Budgetary estimates were driven by the number of tribes with consideration for certain other factors such as the size of the service population which is a proxy for the tribal court caseload. Estimates were also adjusted so tribal courts in P.L. 280 states did not receive a greater percent of calculated budget estimate than tribal courts in non-P.L. 280 states. Under these parameters, the budgetary cost estimate of tribal courts in P.L. 280 states at a level consistent with existing BIA-funded Tribal Court programs located in non-P.L. 280 states is \$16.9 million. While \$16.9 million would not be widely viewed as robust or perhaps even adequate, it would match existing levels of funding in non-P.L. 280 states, which reflect a constrained fiscal environment.

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<sup>1</sup> See Indian Law and Order Commission, *A Roadmap for Making Native America Safer* (2013).

# The Budgetary Needs of Tribal Courts in Public Law 83-280 States

## CONGRESSIONAL REQUEST

The Managers' Explanatory Statement, accompanying the 2015 Interior appropriations bill included the following language:

*“The Indian Law and Order Commission’s November 2013 report notes that Federal investment in tribal justice for Public Law 83-280 States has been more limited than elsewhere in Indian country. Within 180 days of enactment of this Act, the Bureau [of Indian Affairs], in coordination with the Department of Justice, is directed to report to the House and Senate committees of jurisdiction on the budgetary needs of tribal courts in these States.”*

## PROFILE OF TRIBES IN PL 280 STATES

The BIA historically prioritized public safety funding to jurisdictions in which federal and tribal authorities are the primary providers of law enforcement and justice services. Budgetary costs for tribal courts in non-P.L. 280 states have increased in recent years in light of passage of the Tribal Law and Order Act of 2010 (extending felony prosecution authority to tribes) and the Violence against Women Reauthorization Act of 2013 (extending jurisdiction over non-Indians for certain offenses). In jurisdictions covered under P.L. 280, state governments are the primary provider of these services. Public Law 83-280 delegated Federal criminal jurisdiction on Indian lands to state governments and approved the enforcement of a state’s criminal code by state and local law enforcement officers in Indian country.<sup>2</sup> The term “mandatory P.L. 280” refers to the six states of Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin to which Congress mandatorily conferred Indian country jurisdiction.<sup>3</sup> Thus, the requested budgetary assessment focuses on tribes in the mandatory P.L. 280 states.

**Table 1. Count and Service Population of Tribes in P.L. 280 States v. Non-P.L. 280 States**

Location of Tribe	Number of Tribes	Service Population	
	Count	Count	Percent
Tribes in PL 280 States 1/	372	575,208	29%
Tribes in non-PL 280 States	194	1,393,959	71%
<b>TOTAL All Tribes</b>	<b>566</b>	<b>1,969,167</b>	<b>100%</b>

1/P.L. 280 states: Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin

In general, tribes located in P.L. 280 states have service populations that are much smaller than the average tribe. As demonstrated in Table 1, tribes located in the six mandatory P.L. 280 states

<sup>2</sup> P.L. 280 altered the criminal jurisdiction between the federal government and states only. It neither reduced nor expanded tribal criminal jurisdiction.

<sup>3</sup> Between 1953 and 1968, a number of states other than the original six, also exercised expanded criminal jurisdiction in Indian Country. These jurisdictions are often referred to as “optional P.L. 280” states. State criminal jurisdiction in “optional P.L. 280” states is often narrower compared to jurisdiction in “mandatory P.L. 280” states. Given the more limited of reach of state criminal jurisdiction in “optional P.L. 280” states, for the purposes of public safety funding, BIA generally has treated tribes in “optional P.L. 280” states as though they are located in non-P.L. 280 states.

comprise only 29 percent of the estimated Indian Affairs service population. Table 2 shows a more detailed breakdown of service populations for tribes in mandatory P.L. 280 states: roughly two-thirds of tribes located in P.L. 280 states have estimated service populations of less than 1,600—and the vast majority of tribes are located in Alaska and California.<sup>4</sup>

<b>Service Population Size</b>	<b>TOTAL Count</b>	<b>Alaska</b>	<b>California</b>	<b>Minnesota</b>	<b>Nebraska</b>	<b>Oregon</b>	<b>Wisconsin</b>
<600	298	204	86	2	0	5	1
601-1,600	44	21	15	3	2	1	2
1,601-6,500	24	2	8	3	2	3	6
6,501-9,750	3	1	0	1	0	0	1
9,751-13,000	2	0	0	2	0	0	0
13,001-16,250	0	0	0	0	0	0	0
16,251-19,500	0	0	0	0	0	0	0
19,501+	1	1	0	0	0	0	0
<b>TOTAL</b>	<b>372</b>	<b>229</b>	<b>109</b>	<b>11</b>	<b>4</b>	<b>9</b>	<b>10</b>

## **METHODOLOGY FOR ASSESSMENT**

In discussing the approach and scope of the budgetary assessment, it was important to recognize the overall budgetary estimates for tribal courts (regardless of P.L. 280 status) are subjective. Furthermore, neither the BIA nor DOJ typically provide direct service of tribal courts as a programmatic function to tribes.<sup>5</sup> Thus, it would be infeasible to evaluate the budget need as we would for direct service programs. To provide the most accurate estimate tribal court costs, we assumed the budget for tribal courts in P.L. 280 states would be consistent with existing BIA-funded Tribal Court programs located in non-P.L. 280 states.

A budgetary cost estimate for the cost of tribal courts in P.L. 280 states was built around the principle of tribal sovereignty and the assumption each tribe in a P.L. 280 state, no matter how small its service population, would convene at least a part-time court. The analysis assumes all tribal courts would have the same composition. Although this most probably would not be true, the analysis uses the basic model as a proxy for the model individual tribes would adopt.

Over the past year, 41 tribal court assessments have been completed by a team of independent contractors. The comprehensive set of tribal court data collected during the assessments was used to produce a scalable court budget model where the size of the tribe’s service population drives the size of the court, and the size of the court drives the cost of the court.

The basic tribal courts budget model displayed in Table 3 shows the components and costs of a “Full Time Court” that would serve tribes with service populations ranging from 1,601-6,500 at a

<sup>4</sup> Several of the tribes located in P.L. 280 states have partially or completely retroceded jurisdiction. However, this report does not address those unique circumstances. In Nebraska, for example, some tribes have retroceded P.L. 280 jurisdiction and thus, effectively, are non-P.L. 280 tribes.

<sup>5</sup> Under the Tribal Priority Allocation (TPA) program, each tribe is provided an overall TPA base funding amount that can be allocated among any TPA program in whatever manner chosen by the tribe. Tribal courts fall under this program. Thus, the funding of tribal courts is an individual tribal decision, taking into consideration the tribal priorities and unique needs of the tribe.

cost of \$2.0 million. Table 4 shows the “Full Time Court” scaled to various levels based on tribal service populations. For example, tribes with a service population of less than 600 could be served by a court that operated for 4.3 months over the course of a year at a cost of \$717,000. Whereas tribes with a service population ranging from 16,251-19,500 would require a tribal justice system three times the size of a “Full Time Court,” at a cost of \$6.0 million.

<b>Position</b>	<b>Cost (\$000)</b>
Judge	172
Appellate Judge	173
Magistrate	148
Court Administrator	148
Chief Clerk of Court	96
Court Clerk	54
Prosecutor	96
Presenting Officer (Civil) and/or ICWA Liaison	58
Guardian ad litem	58
Public defender	104
Children's Defender	58
Probation Officer - Adult	64
Probation Officer - Juvenile	68
Bailiff	54
IT Specialist	71
Data Clerk	66
File Clerk/Receptionist	54
Security Officer	74
Counselor	74
Medical Personnel	83
GAIN Assessments	31
Probation Monitoring Systems	91
Court Management System	50
Contracts - Treatment	55
<b>Total Annual Cost</b>	<b>2,000</b>

<b>Service Population Size</b>	<b>Tribal Court Need</b>	<b>Annual Cost (\$000)</b>
<600	Part Time Court (4.3 Months)	717
601-1,600	Part Time Court (8 Months)	1,333
1,601-6,500	Full Time Court 1/	2,000
6,501-9,750	Full Time Court X 1.5	3,000
9,751-13,000	Full Time Court X 2	4,000
13,001-16,250	Full Time Court X 2.5	5,000
16,251-19,500	Full Time Court X 3	6,000
19,501+	Full Time Court X 3.5	7,000
1/The basic tribal court budget model shown in Table 3 is defined as a "Full Time Court".		

As previously stated, the scalable court budget model in Table 4 was used to estimate overall tribal court budgetary cost for the 178 tribal court systems that currently exist in non-P.L. 280 states. From that amount, the base (recurring annual) Tribal Courts program funding for each tribal court was deducted to determine the percent of annual estimated costs currently funded in the BIA budget. Thus, for the tribal courts located in non-P.L. 280 states, the average percent of estimated budgetary costs funded was 6.14%.<sup>6</sup>

<sup>6</sup> It is important to note that in practice, tribes meet most of their tribal court costs through sources outside BIA.

**Table 5. Estimated Total Tribal Court Costs in Non-P.L. 280 States**

<b>Service Population Size</b>	<b>Cost of Scalable Courts (\$000)</b>	<b>Number of Tribes</b>	<b>Overall Budgetary Need (\$000)</b>
<600	717	22	15,774
601-1,600	1,333	25	33,325
1,601-6,500	2,000	80	160,000
6,501-9,750	3,000	19	57,000
9,751-13,000	4,000	22	88,000
13,001-16,250	5,000	3	15,000
16,251-19,500	6,000	0	0
19,501+	7,000	7	147,000 1/
<b>TOTAL</b>		<b>178</b>	<b>516,099</b>

1/The overall budgetary costs for the largest tribes is more than the estimated \$7.0 million for tribes with a service population of 19,501+. The following adjustments were made to the estimate: Navajo - Largest scalable times 10 (Navajo has 199K people); Oklahoma- Largest scalable times two since courts serve double the population associated with the largest court group (there are 5 courts in OK). \$70.0M (Navajo) +\$42.0M (OK courts) +\$35.0M (five other tribes) = \$147M.

The estimate for tribal court costs in P.L. 280 states was adjusted consistent with the percentage provided to existing BIA-funded Tribal Court programs located in non-P.L. 280 states. Currently, \$4.2 million is identified as funding for Tribal Courts in P.L. 280 states. This amount of funding was subtracted from the total cost estimate to establish the budget estimate.

A number of potential costs were not incorporated into the budget model. For instance, facility improvement and repair and facility operation and maintenance costs are not included because the tribal facility-specific data necessary for a reasonable estimate of such costs is not currently available.

Tribal service population data was drawn from the 2013 American Indian Population and Labor Force (AIPLF) Report prepared by the Office of the Assistant Secretary – Indian Affairs using 2010 Census data. The report accounts for total service population by state; however, the more detailed table of service population by tribe includes data for only 182 of the 566 federally recognized tribes in the United States. An average service population by state was used to bridge the report’s gap at the tribal level for the 384 tribes not listed individually in the AIPLF Report, 295 of which are tribes located in P.L. 280 states.

## **ANALYSIS**

The scalable court budget model was used to construct an overall budgetary estimate for the 372 tribes located in P.L. 280 states and adjusted to reflect the same 6.14% percentage of estimated costs provided to tribal courts in non-P.L. 280 states. The overall amount was adjusted for funding in P.L. 280 states that is already directed to tribal courts (\$4.2 million). The results are displayed in Table 6 by tribal population size and in Table 7 by State.

Calculations indicate the total estimated cost of operating tribal courts in 280 states is \$344.3 million. When the estimate is adjusted to match the percentage of tribal court costs funded in non-P.L. 280 states (6.14%), the budgetary cost of funding tribal courts in P.L. 280 states is \$21.1 million. When adjusted for existing BIA-funded Tribal Court programs located in P.L. 280 states (\$4.2 million), the budgetary estimate is \$16.9 million.

**Table 6. Estimated Tribal Court Costs in P.L. 280 States**

Service Population Size	Cost of scalable court	TOTAL P.L. 280 States		
		Number of tribes	Total Calculated need (\$000)	Funding at same 6.14% as non-P.L. 280 States Programs (\$000)
<600	717	298	213,666	13,121
601-1,600	1,333	44	58,652	3,602
1,601-6,500	2,000	24	48,000	2,948
6,501-9,750	3,000	3	9,000	553
9,751-13,000	4,000	2	8,000	491
13,001-16,250	5,000	0	0	0
16,251-19,500	6,000	0	0	0
19,501+	7,000	1	7,000	430
<b>TOTAL</b>		<b>372</b>	<b>344,318</b>	<b>21,145</b>
Less current TPA base funding for Tribal courts in P.L. 280 states				-4,224
Estimated Tribal Courts budget shortfall in P.L. 280 states.				<b>16,920</b>

**Table 7. Estimated Tribal Court Costs in P.L. 280 States by State**

Service Population Size	TOTAL P.L. 280 States		
	Number of tribes	Total Calculated need (\$000)	Funding at same 6.14% as non-P.L. 280 States Programs (\$000)
Alaska	229	188,261	11,561
California	109	97,657	5,997
Minnesota	11	22,433	1,378
Nebraska	4	6,666	409
Oregon	9	10,918	670
Wisconsin	10	18,383	1,129
<b>TOTAL P.L. 280 States</b>	<b>372</b>	<b>344,318</b>	<b>21,145</b>
Less current TPA base funding for Tribal courts in P.L. 280 states			-4,224
Estimated Tribal Courts budget shortfall in P.L. 280 states.			<b>16,920</b>

The number of tribes was the primary driver of cost rather than the size of the service population because the budget estimate was built around the principle of tribal sovereignty and the assumption each P.L. 280 tribe, no matter how small its service population, would be budgeted at least a part-time court.<sup>7</sup>

## CONCLUSION

The estimated cost to fund tribal courts in P.L. 280 states at a level consistent with existing BIA-funded Tribal Court programs located in non-P.L. 280 states is \$16.9 million. The budget estimate was built on the principle of tribal sovereignty and the assumption each P.L. 280 tribe, no matter how small its service population, would stand up at least a part-time court. In practice however, some tribes may choose to share tribal courts and others may choose not to exercise this sovereign right which may or may not result in a change in total estimated costs. All options are subject to tribal self-determination and fiscal priorities of the 372 federally recognized tribes located within the six mandatory P.L. 280 states.

<sup>7</sup> While the service population of a tribe is an important element of the equation, a tribal court's caseload drives its overall budgetary costs because caseloads more accurately represent the workload of a tribal court and the personnel needed to carry it out. Thus, while a service population may provide a general idea of tribal court budgetary estimates, the overall caseload could drive the projected budgetary costs for any particular court higher or lower.