

PRACTICAL APPLICATIONS OF INDIAN LAW

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I. Introduction. A Guide Through the Thicket

The word “jurisdiction,” conjures up notions of dry, hidebound legalese in a western court system, but it is a fighting word in Indian Country. Others on our panels have described the cases and the legislation that created the checkerboard jurisdictional thicket confronting tribal, state and federal courts and officials.. This short paper will describe certain tools that guide federal prosecutors through the thicket and hopefully, will be as useful to other tribal and local officers who are exercising law enforcement responsibilities in and around Indian Country.

II. Summary Chart

The following Chart sets forth in summary form which government entity has jurisdiction in various types of scenarios.²

A. *Where jurisdiction has not been conferred on the state*

Offender	Victim	Jurisdiction
Non-Indian	Non-Indian	State jurisdiction is exclusive of federal and tribal jurisdiction.
Non-Indian	Indian	Federal jurisdiction under 18 U.S.C. § 1152 is exclusive of state and tribal jurisdiction.
Indian	Non-Indian	If listed in 18 U.S.C. § 1153, there is federal jurisdiction, exclusive of the state, but probably not of the tribe. If the listed offense is not otherwise defined and punished by federal law applicable in the special maritime and territorial jurisdiction of the United States, state law is assimilated. If not listed in 18 U.S.C. § 1153,

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² This Chart and the other information in this outline comes from the “United States Attorneys’ Manual” published by the Executive Office for United States Attorneys and is distributed to each United States Attorney’s Office and Litigating Division of the Department of Justice. Requests for copies should be submitted in writing to the Executive Office for United States Attorneys, Manual Staff, Main Justice Building, Rm. 1627, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530. Copies are available for other federal agencies by calling 202-514-4633. The Manual is made available to the public through the Government Printing Office (GPO). Mail orders should be sent to the following address: Superintendent of Documents Subscription Entry U.S. GPO Washington, D.C. 20402. Telephone orders: (202) 512-1800.

		there is federal jurisdiction, exclusive of the state, but not of the tribe, under 18 U.S.C. § 1152. If the offense is not defined and punished by a statute applicable within the special maritime and territorial jurisdiction of the United States, state law is assimilated under 18 U.S.C. § 13.
Indian	Indian	If the offense is listed in 18 U.S.C. § 1153, there is federal jurisdiction, exclusive of the state, but probably not of the tribe. If the listed offense is not otherwise defined and punished by federal law applicable in the special maritime and territorial jurisdiction of the United States, state law is assimilated. See section 1153(b). If not listed in 18 U.S.C. § 1153, tribal jurisdiction is exclusive.
Non-Indian	Victimless	State jurisdiction is exclusive, although federal jurisdiction may attach if an impact on individual Indian or tribal interest is clear.
Indian	Victimless	There may be both federal and tribal jurisdiction. Under the Indian Gaming Regulatory Act, all state gaming laws, regulatory as well as criminal, are assimilated into federal law and exclusive jurisdiction is vested in the United States.

B. *Where jurisdiction has been conferred by Public Law 280, 18 U.S.C. § 1162*

Offender	Victim	Jurisdiction
Non-Indian	Non-Indian	State jurisdiction is exclusive of federal and tribal jurisdiction.
Non-Indian	Indian	"Mandatory" state has jurisdiction exclusive of federal and tribal jurisdiction. "Option" state and federal government have jurisdiction. There is no tribal jurisdiction.
Indian	Non-Indian	"Mandatory" state has jurisdiction exclusive of federal government but not necessarily of the tribe. "Option" state has concurrent jurisdiction with the federal courts.
Indian	Indian	"Mandatory" state has jurisdiction exclusive of

		federal government but not necessarily of the tribe. "Option" state has concurrent jurisdiction with tribal courts for all offenses, and concurrent jurisdiction with the federal courts for those listed in 18 U.S.C. § 1153.
Non-Indian	Victimless	State jurisdiction is exclusive, although federal jurisdiction may attach in an option state if impact on individual Indian or tribal interest is clear.
Indian	Victimless	There may be concurrent state, tribal, and in an option state, federal jurisdiction. There is no state regulatory jurisdiction.

C. *Where jurisdiction has been conferred by another statute (25 U.S.C § 232, conferring certain criminal jurisdiction on New York State)*

Offender	Victim	Jurisdiction
Non-Indian	Non-Indian	State jurisdiction is exclusive of federal and tribal jurisdiction.
Non-Indian	Indian	Unless otherwise expressly provided, there is concurrent federal and state jurisdiction exclusive of tribal jurisdiction.
Indian	Non-Indian	Unless otherwise expressly provided, state has concurrent jurisdiction with federal and tribal courts.
Indian	Indian	State has concurrent jurisdiction with tribal courts for all offenses, and concurrent jurisdiction with the federal courts for those listed in 18 U.S.C. § 1153.
Non-Indian	Victimless	State jurisdiction is exclusive, although federal jurisdiction may attach if impact on individual Indian or tribal interest is clear.
Indian	Victimless	There may be concurrent state, federal and tribal jurisdiction. There is no state regulatory jurisdiction.

III. The United States Attorneys' Manual (USAM)³

1-1.100 Purpose

The United States Attorneys' Manual is a loose-leaf text designed as a quick and ready reference for United States Attorneys, Assistant United States Attorneys, and Department attorneys responsible for the prosecution of violations of federal law. It contains general policies and some procedures relevant to the work of the United States Attorneys' offices and to their relations with the legal divisions, investigative agencies, and other components within the Department of Justice.

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1-1.200 Authority

The United States Attorneys' Manual was prepared under the general supervision of the Attorney General and under the direction of the Deputy Attorney General, by the United States Attorneys, represented by the Attorney General's Advisory Committee of United States Attorneys, the Litigating Divisions, the Executive Office for United States Attorneys, and the Justice Management Division. *See A.G. Order 665-76.* The Executive Office for United States Attorneys coordinates the periodic revision of the Manual in consultation with the Attorney General, Deputy Attorney General and Associate Attorney General.

IV. Guidance and Explanations of Indian Country Jurisdiction

9-20.100 Introduction

This chapter contains the Department's policy relating to ... Indian jurisdiction. But, in addition to policy matters, the USAM contains a Criminal Reference Manual with useful, down-to-earth explanations and descriptions of the ins and outs of Indian Jurisdiction. The provisions of the Criminal Resource Manual set forth below are included in the CD ROM of the Conference.

Indian Jurisdiction	
Indian Country -- Introduction	Criminal Resource Manual at 674
Investigative Jurisdiction	Criminal Resource Manual at 675

³ See footnote 2.

MOU re Indian Law Enforcement Reform Act	Criminal Resource Manual at 676
Indian Country Defined	Criminal Resource Manual at 677
The General Crimes Act -- 18 U.S.C. § 1152	Criminal Resource Manual at 678
The Major Crimes Act -- 18 U.S.C. § 1153	Criminal Resource Manual at 679
Lesser Included Offenses Under 18 U.S.C. § 1153	Criminal Resource Manual at 680
Indian Jurisdiction -- Tribal Options	Criminal Resource Manual at 681
Successive Prosecutions	Criminal Resource Manual at 682
"Victimless Crimes"	Criminal Resource Manual at 683
Memorandum for Benjamin R. Civiletti Re Jurisdiction Over "Victimless" Crimes Committed by Non-indians on Indian Reservations	Criminal Resource Manual at 684
Exclusive Federal Jurisdiction Over Offenses by Non-Indians Against Indians	Criminal Resource Manual at 685
Who is an "Indian"?	Criminal Resource Manual at 686
Tribal Court Jurisdiction	Criminal Resource Manual at 687
State Jurisdiction	Criminal Resource Manual at 688
Jurisdictional Summary	Criminal Resource Manual at 689
Embezzlement and Theft from Tribal Organization	Criminal Resource Manual at 690
Indian Gaming	Criminal Resource Manual at 691

9-20.229 Investigative Jurisdiction -- Indian Country

In 1993, the Department of Justice and the Department of the Interior entered into a memorandum of understanding (MOU) that established guidelines regarding the respective jurisdictions of the Bureau of Indian Affairs (BIA) and the Federal Bureau of Investigation (FBI). *See the [Criminal Resource Manual at 675](#).*

Part IV of the MOU requires each United States Attorney whose criminal jurisdiction includes Indian country to develop local written guidelines outlining the responsibilities of the BIA, FBI, and the Tribal Criminal Investigators, if applicable. *See the [Criminal Resource Manual at 676](#), for the full text of the MOU.*⁴

⁴ The MOU is also reproduced in the Conference CD ROM.