

DEFAULT RULES OF CRIMINAL JURISDICTION & LAW ENFORCEMENT IN INDIAN COUNTRY

Indian country (IC) includes all lands within the boundaries of an Indian reservation (regardless of fee status or non-Indian ownership) and tribal and tribal-citizen lands held in trust by the United States or restricted fee status. 18 U.S.C. § 1151.

Outside Indian country: Indians are subject to state criminal jurisdiction, absent a treat or statute providing otherwise. Tribes may have concurrent jurisdiction to prosecute their own citizens for crimes occurring outside of Indian country, where the crime substantially implicates matters of internal tribal self-governance.

Inside Indian country: Absent federal law providing otherwise...

GOVERNMENT EXERCISING CRIMINAL JURISDICTION & DEFENDANT'S STATUS	DEFAULT RULE UNDER FEDERAL LAW	STATUS QUO IN MAINE UNDER MICSA/MIA	COMMENTS
State			
Non-Indians	State government has criminal jurisdiction over non-Indians for victimless crimes and crimes against non-Indians in IC. State government lacks jurisdiction over crimes committed by non-Indians against Indians	State government has <i>full</i> criminal jurisdiction over non-Indians in IC	
Indians	State government <i>lacks</i> criminal jurisdiction over Indians in IC	State government has criminal jurisdiction over <i>certain offenses</i> committed by Indians in IC, consistent with 30 M.R.S. §§ 6209-A, B, C, 6210	In the 1940s and 1950s, Congress granted specific states criminal jurisdiction over Indians in IC – several of those states have “retroceded” jurisdiction back to the U.S. and tribes
United States			
Non-Indians	United States has criminal jurisdiction over <i>all federal crimes</i> , and over <i>all other crimes committed by non-Indians against Indians</i> in IC	United States’ criminal jurisdiction is limited to <i>federal crimes only</i>	

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Indians	<p>United States has criminal jurisdiction over <i>all federal crimes</i> and over <i>major crimes</i>¹ committed by <i>Indians</i> in IC, regardless of Indian status of the victim</p> <p>United States has criminal jurisdiction over all other crimes committed by Indians in IC, except offenses committed against other Indians, offenses that have been punished under the law of the Tribe, and offenses which are exempted from federal prosecution pursuant to treaty</p>	United States' criminal jurisdiction is limited to <i>federal crimes only</i>	
Tribal			
Non-Indians	Tribal government <i>lacks</i> criminal jurisdiction over non-Indians in IC, with the exception of certain domestic violence offenses committed against Indians, 25 U.S.C. § 1304 (VAWA)	Tribes in Maine are currently seeking authority under the Violence Against Women Act (VAWA) to prosecute non-Indians for certain DV offenses committed against Indians	States and tribes enter cross-deputization or other cooperative law enforcement agreements so tribal police may arrest non-Indians for violations of state law in IC, and state police may arrest Indians for violations of tribal law in IC
Indians	Tribal government has criminal jurisdiction over Indians inside of IC, including authority to imprison offenders up to three years, 25 U.S.C. § 1302	Tribal government generally has exclusive criminal jurisdiction over offenses committed in IC that carry a maximum penalty of less than one-year imprisonment or a fine of no more than \$5,000, 30 M.R.S. §§ 6209-A, B, C, 6210	

¹ Under the Major Crimes Act (Act of March 3, 1885, ch. 341, 23 Stat. 362), as amended, these crimes include murder, manslaughter, kidnapping, maiming, felony sexual abuse, incest, felony assault, assault of a minor, felony child abuse or neglect, arson, burglary, robbery, and larceny. 18 U.S.C. § 1153.

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