

THE FEDERAL REASSUMPTION OF CONCURRENT JURISDICTION

REQUEST PROCESS: WHITE EARTH'S EXPERIENCE

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Following are general considerations for any Tribe considering a Section 221 Request for Concurrent Jurisdiction. White Earth's experience will be used as an example. This should not be considered a template.

- I. Making the Decision to Request Concurrent Jurisdiction Under Section 221
 - A. Historical Relationships – Consider the geographical and demographic circumstances. Every Reservation is different.
 - B. Current State of Crime and Law Enforcement on the Reservation – Is there an event or crisis that is giving impetus?
 - C. Status of Federal Law Enforcement – Is there support in the current federal system? How involved is/ has been federal law enforcement on the Reservation?
 - D. Internal Tribal Political Considerations
 1. Will there be additional Tribal expense? Where will the funding come from?
 2. Where is membership on bringing in yet another player in the criminal justice system? This exposes Tribal members and their families to fed time.
- II. Preliminary Steps – Notifications and Consultations
 - A. Federal
 1. U.S. Attorney for the Judicial District
 2. U.S. Attorney General / Office of Tribal Justice
 3. FBI
 4. BIA Office of Justice Services/ Regional Office
 5. United States District Court

B. State

1. State Bureau of Criminal Administration
2. Attorney General

C. County and Municipal

1. Sheriff and Local Police
2. District Attorney

III. Tribal Law Enforcement Planning and Determinations

A. Law Enforcement

1. Cross Deputization Agreements
2. Regional Federal Presence, (or lack thereof), and Tribal Expense
3. Special Federal Commissions for Tribal Officers under 25 U.S.C. § 2804(a)

B. Prosecution

1. Tribal / federal coordination for data collection/ evidence
2. Appointment of Tribal Attorneys as Special Prosecutors under 28 U.S.C. § 543(a)

C. Adjudication

1. Consider the Distance
2. Operational Concerns for Federal Courts

IV. Structure and Drafting of A Request

A. Basic Geographic and Demographic Information

B. Governmental Structure and Resources

C. Current Conditions of Law and Order on the Reservation - There is value in both statistical and anecdotal evidence. Include the state jurisdictional background under P.L. 280.

D. Law and Order Needs on the Reservation – Include Indian and non-Indian situations. Include any specific incidences or precipitating events.

E. Anticipated Improvements and Conditions Under Concurrent Jurisdiction – Include general contours of the anticipated system for each area, understanding they cannot be finalized until after the Request is accepted. Tie the” Improvements” directly to the “Needs”.

1. Law Enforcement

2. Prosecution

3. Adjudication

4. Incarceration

F. Further Plans for Improvement of Law Enforcement on the Reservation