



Hundredth Legislature - Second Session - 2008
Introducer's Statement of Intent
LR 234

Chairperson: Brad Ashford
Committee: Judiciary
Date of Hearing: February 20, 2008

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

This resolution is intended to simplify criminal and civil jurisdictional determinations within the Omaha Indian Reservation, which overlaps with portions of Burt, Cuming and Thurston counties in northeast Nebraska.

The default rule is that federal law preempts state criminal and civil laws over the affairs of Indians within "Indian country," which includes Indian reservations and certain other lands. However, in 1953 Congress passed Public Law 280, which transferred federal criminal and civil jurisdiction over all Indian country within Nebraska and a few other states to the state governments.

Public Law 280 was passed during the "termination era" when certain people within the federal government were seeking to terminate the sovereignty of tribal governments and the federal government's trust responsibilities. Public Law 280 was amended by the Indian Civil Rights Act of 1968 to allow the United States to accept a retrocession or surrender of any or all of the jurisdiction acquired by a state under Public law 280. This was on the front end of the "self-determination era," which continues today, where the federal government has sought to enable tribal governments to assume responsibility for their own destinies.

At the same time, Nebraska and other states subject to Public Law 280 began to recognize the financial drain that the law's "unfunded mandate" to police Indian country imposed on state and local governments. The federal government merely transferred authority over Indian country; it did not transfer any funding to the states to carry out that authority. In 1970, the Thurston County Attorney stated that the county was spending \$5.47 per capita on law enforcement, compared to less than \$1.00 per capita in neighboring counties.

The Omaha Indian Reservation was the first reservation in the United States where a state retroceded its jurisdiction to the federal government. The Nebraska Legislature offered a retrocession in 1969. The terms of that retrocession, and the federal government's response to it, resulted in a jurisdictional quagmire that, after three decades of failed efforts by those concerned with law and order in the area, compel the Legislature to readdress the issue.

In 1969, the Legislature sought to retrocede its criminal jurisdiction, with the exception of offenses involving motor vehicles, within all of Thurston County, which includes the Winnebago Reservation as well as portions of the Omaha Indian Reservation. After concerns were raised about whether the Winnebago Tribe supported the retrocession, the U.S. Department of Interior only accepted the retrocession as to that portion of Thurston County within the Omaha Indian Reservation.

In 1986, the Nebraska Legislature successfully retroceded its criminal jurisdiction over the Winnebago Reservation to the federal government. This time, there was no exception for motor vehicle offenses, and the retrocession applied within the entire reservation. Fifteen years later, in 2001, the Nebraska Legislature retroceded its criminal and civil jurisdiction over the Santee Sioux Reservation to the federal government with no exceptions.

Today, the Omaha Indian Reservation is the only reservation in Nebraska where the state continues to assert traffic jurisdiction over Indians. It's also the only Indian reservation in Nebraska with different rules for criminal jurisdiction depending on what county you happen to be in. This retroceding its jurisdiction within the Omaha Indian Reservation back to the federal government, with no exception for different counties or for motor vehicle offenses.

This resolution is also intended to address a striking disparity in the treatment of Native Americans during traffic stops. According to the Nebraska Commission on Law Enforcement and Criminal Justice, in 2006, although 1.4% of all stops involved a criminal code violation, 3.8% of all stops involving Native Americans were for criminal violations. Additionally, in 2006, 4.5% of all traffic stops resulted in custodial arrest, yet 9.9% of Native Americans stopped were taken into custodial arrest. Similarly, in 2006, in 3.4% of all traffic stops a search was performed, but Native Americans were searched 7.4% of the time. In Thurston County, the Sheriff's Office took Native American into custody during 18.7% of the traffic stops, compared to 5.6% of the time for whites.

If this resolution is approved by the Legislature, the federal government will reassume its jurisdiction within the exterior boundaries of the Omaha Indian Reservation. The State will continue to have exclusive criminal jurisdiction over matters involving only non-Indians. When an Indian is involved as a defendant or a victim, the federal government will have jurisdiction, with tribal courts having concurrent jurisdiction over minor offenses committed by Indians. Non-Indians cannot be prosecuted in tribal court for any criminal offense and this retrocession will not change that.

On the civil side, state courts will retain exclusive jurisdiction over actions on the Omaha Indian Reservation when both parties are non-Indians and the interest of the tribal government are not implicated. Federal courts will have civil jurisdiction over actions where either party is an Indian. The Omaha Tribe will have exclusive jurisdiction over civil actions on the Omaha Indian reservation affecting the health, safety and welfare of its members.

The Bureau of Indian Affairs will have primary responsibility for enforcement of federal laws, although it may delegate that authority to tribal or state law enforcement officers. Although this resolution does not expand tribal jurisdiction, it will mean that the tribal

government's burden will increase in terms of handling traffic and minor criminal offenses committed by Indians, and civil matters to which Indians are a party.

The Omaha Tribe has petitioned the State to retrocede to the United States its remaining criminal and civil jurisdiction over the Omaha Indian Reservation. The Omaha Tribe has already demonstrated the capability to assume its portion of the associated responsibility by previously establishing a tribal court system, police department, and a tribal code of laws, which incorporates Nebraska motor vehicle and related laws. The infrastructure is already in place to handle any additional burden. The Omaha Tribe has already entered into cooperative agreements with the Nebraska State Patrol, and the Bureau of Indian Affairs of the U.S. Department of the Interior, so that officers of the various law enforcement agencies can work together.

Principal Introducer:

Senator Ernie Chambers