

NO. 34926-8-III

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**COURT OF APPEALS, DIVISION III**  
**OF THE STATE OF WASHINGTON**

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STATE OF WASHINGTON,

Respondent,

v.

DONALD ZACK,

Appellant.

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**BRIEF OF RESPONDENT**

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## I. INTRODUCTION

The state has jurisdiction over criminal offenses committed by or against Indians in Indian country under RCW 37.12.010 and 37.12.030. Under Governor's Proclamation 14-01, which took effect in April 2016, the state retroceded to the United States some of that jurisdiction within the Yakama Reservation. But it "retain[ed] jurisdiction over criminal offenses involving non-Indian defendants and non-Indian victims" on fee land. This case involves an offense within the state's retained jurisdiction.

Donald Zack, who identifies as Indian, assaulted a non-Indian city corrections officer on fee land (land not held by the United States in trust) within the Yakama Reservation. The assault occurred after retrocession took effect. The state charged Mr. Zack with third degree assault. The Yakima County Superior Court correctly ruled that the state had jurisdiction over the offense under RCW 37.12.010 because Proclamation 14-01 did not retrocede jurisdiction over assaults committed by Indians against non-Indians on fee land. The court correctly interpreted Proclamation 14-01 as retaining jurisdiction over offenses involving non-Indian defendants, and over offenses involving non-Indian victims.

Mr. Zack's other issues lack merit. The Court should not consider his legal arguments about the meaning of "employee of a law enforcement agency" that he raises for the first time on appeal. If it does, it should

conclude that the trial court properly convicted Zack of third degree assault because the corrections officer he assaulted was an “employee of a law enforcement agency who was performing his or her official duties at the time of the assault.” RCW 9A.36.031(1)(g).

Finally, Mr. Zack waived any objection to the imposition of legal financial obligations because he failed to object to them in the trial court. The Court should affirm the conviction in all respects.

## **II. RESTATEMENT OF ISSUES**

1. Did Paragraph 3 of Governor’s Proclamation 14-01 retain jurisdiction over criminal offenses involving either non-Indian defendants or non-Indian victims on fee lands within the Yakama Reservation, when no other reading would give effect to the language of the Proclamation as a whole and its statutory context?

2. Did Donald Zack meet his burden to produce evidence that, if believed, would establish that he is Indian for purposes of defeating state criminal jurisdiction?

3. Is a corrections officer employed by the Toppenish Jail an “employee of a law enforcement agency,” when the Toppenish Chief of Police supervises the Toppenish Jail, and should this Court address that issue when it was not raised below?

4. Should this Court consider Donald Zack's challenge to discretionary legal financial obligations, when he did not object at the time of sentencing?

### III. STATEMENT OF THE CASE

#### A. The September 2016 Assault at Toppenish Hospital

In September 2016, Marcus Weible, a Corrections Officer with the City of Toppenish, booked Donald Zack into Toppenish City Jail. Officer Weible noticed wounds on Mr. Zack's ankles and took him to Toppenish Hospital for treatment. CP 25, 81. While he was at the hospital, Mr. Zack spat on Officer Weible's face. CP 69-71, 81.

Toppenish Hospital is on "fee land" within the Yakama Reservation—land that is not held in trust by the United States for the Yakama Nation or its members. *See* CP 27-28, CP 87 (Finding 1.5); RP 7. Donald Zack has Indian ancestry and lives within the Yakama Reservation, but he is not an enrolled member of any Indian Tribe. CP 48; RP 12. Officer Weible is non-Indian. CP 87 (Finding 1.2).

The State charged Donald Zack with third degree assault under RCW 9A.36.031(1)(g) in Yakima County Superior Court. CP 2. He moved to dismiss, contending that he is an Indian and that the State lacked jurisdiction over the alleged offense because it occurred within the Yakama Reservation. The court denied the motion, ruling that, under

Governor's Proclamation 14-01 and RCW 37.12.010, the state has jurisdiction over an offense committed by an Indian against a non-Indian on fee land within the Yakama Reservation. RP 35-39; *see* RP 63-64.

Mr. Zack stipulated to the police records and was convicted at a bench trial. CP 72, 80-82; RP 42-48. The court found Mr. Zack guilty of third degree assault and ordered a sentence that included legal financial obligations. CP 61-67, RP 55-56. Zack did not argue that the victim of the assault was not an employee of a law enforcement agency, nor did he challenge his legal financial obligations. This appeal followed.

**B. Criminal Jurisdiction Within the Yakama Reservation Under RCW 37.12.010 Before April 2016**

The Yakama Reservation was established in the 1850s by the Treaty between the United States and the Yakama Nation. At first, all of the land was held in trust by the United States for the benefit of the Yakama Nation. Later, the United States conveyed to individual owners the fee title of some parcels. Today, some of the land within the Yakama Reservation is still held in trust by the United States for the Yakama Nation or its members, and some is held in fee by non-Indian and Indian owners. *See generally Washington v. Confederated Bands & Tribes of the Yakima Indian Nation*, 439 U.S. 463, 469, 99 S. Ct. 740, 58 L. Ed. 2d 740 (1979) (hereinafter "*Yakima Indian Nation*"). The fee land and the non-

Indian population of the reservation are concentrated in its northeastern portion and in its incorporated towns, including Toppenish. *Id.* at 470.

Before the Legislature enacted RCW 37.12.030 in 1963, the Yakama Reservation was subject to the general criminal jurisdiction principles that apply in Indian country in the absence of federal legislation to the contrary. *Id.* at 470. Under those principles, state courts have jurisdiction over offenses committed in Indian country where neither the perpetrator nor the victim is Indian. *E.g.*, *Draper v. United States*, 164 U.S. 240, 17 S. Ct. 107, 41 L. Ed. 419 (1896); *State v. Lindsey*, 133 Wash. 140, 233 P. 327 (1925). Under 18 U.S.C. §§ 1152 and 1153, the federal courts have jurisdiction over certain major offenses committed by Indians within Indian country, and over other offenses where either the perpetrator or the victim, but not both, is Indian.<sup>1</sup> Because these federal statutes preempt state law, state courts lack jurisdiction over offenses committed by or against Indians in Indian country in the absence of federal legislation to the contrary. *E.g.*, *In re White v. Schneckloth*, 56 Wn.2d 173, 351 P.2d 919 (1960); *State v. Condon*, 79 Wash. 97, 139 P. 871 (1914); AGO 1955 No. 63.

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<sup>1</sup> Indian tribes generally have exclusive jurisdiction over misdemeanor offenses involving only Indians in Indian country. *See Keeble v. United States*, 412 U.S. 205, 93 S. Ct. 1993, 36 L. Ed. 2d 844 (1973).

Before 1948, courts disagreed about the places where these jurisdictional principles applied, in part because there was no statutory definition of “Indian country.” In Washington and other western states, fee land within Indian reservations was not viewed as “Indian country,” and case law held that state courts had jurisdiction over offenses committed by or against Indians on such land. *See Eugene Sol Louie v. United States*, 274 F. 47 (9th Cir. 1921) (state court, not federal court, had jurisdiction over murder committed on fee land within Coeur d’Alene Reservation); *State v. Big Sheep*, 243 P. 1067, 1071, 75 Mont. 219 (1926) (“Lands to which the United States has parted with title, and over which it no longer exercises control, even if within the exterior boundaries of the reservation, are not deemed a part of the reservation.”); *Rider v. LaClair*, 77 Wash. 488, 493, 138 P. 3 (1914) (fee land in Yakama Reservation was not “Indian country”). In 1948, Congress enacted 18 U.S.C. § 1151, which defines “Indian country” as including “all land within the limits of any Indian reservation.” Under this new definition, courts in Washington and other states lost some of the jurisdiction they had previously exercised over offenses committed on fee lands within Indian reservations. *See Seymour v. Superintendent*, 368 U.S. 351, 357, 82 S. Ct. 424, 7 L. Ed. 2d 346 (1962) (noting that the enactment of 18 U.S.C. § 1151 had “put to rest” the issue of whether land owned in fee by non-Indians within Indian

reservation boundaries is “Indian country,” and holding that Washington state court lacked jurisdiction over offense committed by Indian on fee land in Colville Reservation); *State ex rel. Irvine v. Dist. Court*, 239 P.2d 272, 125 Mont. 398 (1951) (state court lacked jurisdiction over offense committed by Indian on fee land in Flathead Reservation); *In re Andy*, 49 Wn.2d 449, 302 P.2d 963 (1956) (state court lacked jurisdiction over offense committed by Indian on fee land in Yakama Reservation).

Congress addressed this situation in 1953 by enacting Public Law 83-280, commonly called “Public Law 280.” The law authorized states to assume jurisdiction over criminal offenses committed by or against Indians in Indian country. Pub. L. No. 83-280, 67 Stat. 588 (1953).<sup>2</sup> Washington assumed partial Public Law 280 jurisdiction over the Yakama Reservation and most other Indian country in the state in 1963. Laws of 1963, ch. 36 (codified in ch. 37.12 RCW). Pursuant to RCW 37.12.030, the state assumed jurisdiction over offenses “committed by or against Indians” in the manner set forth in RCW 37.12.010.<sup>3</sup>

The assumption of jurisdiction under RCW 37.12.010 depended on the place of the offense and persons involved. For offenses committed by

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<sup>2</sup> Public Law 83-280 is set out in full at *Yakima Indian Nation*, 439 U.S. at 471-74 n.9.

<sup>3</sup> Chapter 37.12 of the Revised Code of Washington is attached as Appendix A.

Indians on trust lands within their own Tribe's reservation, the state assumed jurisdiction only as to eight subject matter areas. *Yakima Indian Nation*, 439 U.S. at 475-76. But as to fee lands, such as the hospital where the offense in this case occurred, Washington assumed criminal jurisdiction to the full extent permitted by Public Law 280. *Id.* at 475, 498; see *Makah Indian Tribe v. State*, 76 Wn.2d 485, 488, 457 P.2d 590 (1969) (“total state jurisdiction over [tribal] members exists only when the tribal members are on nontrust property”). The United States Supreme Court rejected statutory and constitutional challenges to this land-title-based jurisdictional scheme and upheld Washington's 1963 law in its entirety in *Washington v. Confederated Bands & Tribes of the Yakima Indian Nation*, 439 U.S. 463, 99 S. Ct. 740, 58 L. Ed. 2d 740 (1979).

The 1963 assumption of jurisdiction restored state criminal jurisdiction on fee lands to what it had been in Washington before Congress enacted 18 U.S.C. § 1151 in 1948. Under RCW 37.12.010, Washington courts have jurisdiction over offenses committed on fee lands within Indian reservations “to the same extent that this state has jurisdiction over offenses committed elsewhere within this state.” RCW 37.12.030; see *Yakima Indian Nation*, 439 U.S. at 498 (“State jurisdiction . . . is complete as to Indians on nontrust lands”); *State v. Clark*, 178 Wn.2d 19, 25, 308 P.3d 590 (2013) (under RCW 37.12.010,

state had jurisdiction over burglary committed by Indian at a railroad facility on fee land within Colville Reservation); *State v. Boyd*, 109 Wn. App. 244, 252, 34 P.3d 912 (2001) (under RCW 37.12.010, state had jurisdiction over felonies committed by Indians against non-Indians on fee land within Colville Reservation).

Washington's jurisdiction under Public Law 280 and RCW 37.12.010 does not change federal or tribal jurisdiction. Regardless of the extent of state jurisdiction, the United States and Indian tribes retain the same jurisdiction they would have in the absence of state jurisdiction. *See Confederated Tribes & Bands of the Yakima Indian Nation v. Washington*, 608 F.2d 750, 752 (9th Cir. 1979); *State v. Schmuck*, 121 Wn.2d 373, 394-95, 850 P.2d 1332 (1993); 28 C.F.R. § 50.25(a)(2).<sup>4</sup> Thus, in some instances, state jurisdiction is concurrent with that of the United States or the tribe.

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<sup>4</sup> The United States Department of Justice has issued guidance to United States Attorneys stating that the United States' litigating position is that the United States has concurrent jurisdiction under 18 U.S.C. §§ 1152 and 1153 over Indian-country crimes that fall within Washington's Public Law 280 jurisdiction. U.S. Dep't of Justice, *Memorandum for United States Attorneys in "Optional" Public Law 280 States* (Jan. 18, 2017), available at [https://turtletalk.files.wordpress.com/2017/01/oaag-80488-v1-optional\\_pl\\_280\\_memo\\_to\\_u\\_s\\_attorneys.pdf](https://turtletalk.files.wordpress.com/2017/01/oaag-80488-v1-optional_pl_280_memo_to_u_s_attorneys.pdf).

**C. Governor's Proclamation 14-01 Partially Withdrew Some Jurisdiction Under RCW 37.12.010 Within the Yakama Reservation After April 2016**

In 1968, Congress modified Public Law 280 to permit states to choose whether they wanted to undo, or "retrocede," some or all of the jurisdiction previously assumed under Public Law 280. 25 U.S.C. § 1323. The President delegated to the Secretary of the Interior the authority to accept retrocession. 33 Fed. Reg. 17339 (Nov. 23, 1968).

In 2012, the Washington Legislature enacted a process under which an Indian tribe may request retrocession of jurisdiction the state previously acquired within the tribe's reservation under Public Law 280. RCW 37.12.160. The Yakama Nation is the first tribe to use this process. Governor Inslee granted the Yakama Nation's request, in part, in Proclamation 14-01 (January 17, 2014). CP 35-37.<sup>5</sup> As required by RCW 37.12.160(4), the governor submitted the Proclamation to the Department of the Interior, along with a cover letter explaining the governor's intent.<sup>6</sup> The Secretary of the Interior accepted retrocession effective April 19, 2016. 80 Fed. Reg. 63583 (Oct. 20, 2015).

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<sup>5</sup> Governor's Proclamation 14-01 is attached as Appendix B. It is also available online at [http://www.governor.wa.gov/sites/default/files/proclamations/proc\\_14-01.pdf](http://www.governor.wa.gov/sites/default/files/proclamations/proc_14-01.pdf).

<sup>6</sup> Governor Inslee's January 27, 2014, letter is attached as Appendix C. It is also available online at <http://www.yakimacounty.us/DocumentCenter/Home/View/941>, along with Proclamation 14-01.

Within the Yakama Reservation, Paragraph 1 of Proclamation 14-01 gave up all of the state's Public Law 280 civil and criminal jurisdiction over four subject matter areas, and Paragraphs 2 and 3 gave up jurisdiction over criminal offenses involving only Indians as perpetrator and victim. But, for other offenses, the Proclamation retroceded criminal jurisdiction only "in part." In particular, Paragraph 3 of the Proclamation provides that the "State retains jurisdiction over criminal offenses involving non-Indian defendants and non-Indian victims." CP 36; Appendix B, p. 2. Governor Inslee explained in his cover letter to the Department of the Interior that "the intent is for the State to retain such jurisdiction in those cases involving non-Indian defendants *and/or* non-Indian victims." Appendix C, p. 2. Finally, Paragraph 7 of the Proclamation says, "Pursuant to RCW 37.12.010, the State shall retain all jurisdiction not specifically retroceded herein." CP 37; Appendix B, p.3.

The assault in this case occurred after retrocession took effect. The trial court identified the issue to be "Post retrocession Indian defendant, non-Indian victim on deeded land," which, as explained above, is an offense over which the State would have had jurisdiction under RCW 37.12.010 before retrocession. RP 7; *see Clark*, 178 Wn.2d at 25; *Boyd*, 109 Wn. App. at 252. In denying Mr. Zack's motion to dismiss, the court interpreted Paragraph 3 of Proclamation 14-01 as preserving state

jurisdiction over criminal offenses involving either non-Indian defendants or non-Indian victims, including the offense in this case. RP 38.

#### **IV. ARGUMENT IN RESPONSE**

##### **A. Standard of Review**

Jurisdiction is a question of law reviewed de novo. *State v. Shale*, 182 Wn.2d 882, 890, 345 P.3d 776 (2015). The meaning of a gubernatorial proclamation is a question of law reviewed de novo. *See State v. Squally*, 132 Wn.2d 333, 340, 937 P.2d 1069 (1997) (whether state court had jurisdiction under RCW 37.12 and gubernatorial proclamation over offenses committed by Indians on land added to Nisqually Reservation was a question of law reviewed de novo).

##### **B. The Trial Court Had Jurisdiction Over the Offense**

The trial court had jurisdiction over the assault in this case because, under the plain language of Governor's Proclamation 14-01, the retrocession was only "in part." The state retains the jurisdiction it previously exercised under RCW 37.12.010 over offenses committed by Indians against non-Indians on fee land within the Yakama Reservation except in four subject matter areas not at issue here. The Court should affirm on that basis.

In the alternative, even if Proclamation 14-01 had not retained that jurisdiction, the state has jurisdiction in this case because Mr. Zack did not

produce evidence sufficient to establish Indian status for purposes of defeating state jurisdiction.

**1. Under Governor’s Proclamation 14-01, the state retains jurisdiction under RCW 37.12.010 over assaults committed by Indians against non-Indians on fee lands within the Yakama Reservation**

As Mr. Zack recognizes, the jurisdictional question in this case turns on the meaning of Governor’s Proclamation 14-01. Br. Appellant 9.<sup>7</sup>

Statutes and gubernatorial proclamations are construed according to the same rules. AGO 1957 No. 74; *see State v. Ness*, 774 N.W.2d 254, 258 (N.D. 2009); *Squally*, 132 Wn.2d at 343. The fundamental object of construction is to ascertain and carry out the intent of the lawmaker. *Shale*, 182 Wn.2d at 894. If a statute’s meaning is plain on its face, the court must give effect to that plain meaning as an expression of the lawmaker’s intent. *State Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). Plain meaning is to be discerned from the ordinary meaning of words, basic rules of grammar, and the statutory context. *Darkenwald v. State Emp’t Sec. Dep’t*, 183 Wn.2d 237, 245, 350 P.3d 647 (2015); *see Campbell & Gwinn*, 146 Wn.2d at 11-12. Individual words are not to be read in isolation. *State v. Lilyblad*, 163 Wn.2d 1, 9, 177 P.3d 686

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<sup>7</sup> The “substance of what [the state] retroceded . . . is a question of state law.” *Tyndall v. Gunter*, 840 F.2d 617, 618 (8th Cir. 1988) (deferring to Nebraska Supreme Court interpretation of whether Nebraska intended to retrocede jurisdiction over certain offenses within Omaha Indian Reservation).

(2008). All words in a statute must be given effect, with no portion rendered superfluous. *Citizens Alliance for Property Rights Legal Fund v. San Juan County*, 184 Wn.2d 428, 440, 359 P.3d 753 (2015).

This case focuses on Paragraph 3 of Proclamation 14-01:

Within the exterior boundaries of the Yakama Reservation, the State shall retrocede, in part, criminal jurisdiction over all offenses not addressed by Paragraphs 1 and 2. *The State retains jurisdiction over criminal offenses involving non-Indian defendants and non-Indian victims.*

CP 36; Appendix B, p. 2 (emphasis added). The plain language of Proclamation 14-01, read in light of RCW 37.12.160, demonstrates that the governor intended in Paragraph 3 to retain jurisdiction over two categories of criminal offenses: (1) criminal offenses involving non-Indian defendants, and (2) criminal offenses involving non-Indian victims. In other words, the state retains jurisdiction where either the defendant *or* the victim is non-Indian. Mr. Zack's primary argument is that the word "and" should be interpreted as a mandatory conjunction. But, as shown by the context of the Proclamation, that interpretation is inappropriate and could not have been the governor's intended meaning.

"[T]he word 'and' is not a word with a single meaning, for chameleonlike, it takes its color from its surroundings." *Peacock v. Lubbock Compress Co.*, 252 F.2d 892, 893 (5th Cir. 1958). Thus, the disjunctive "or" may be substituted for the conjunctive "and" if it is clear

from the plain language of the statute that it is appropriate to do so. *E.g.*, *State v. Keller*, 98 Wn.2d 725, 729, 657 P.2d 1384 (1983) (statute for revoking an offender’s conditional release if the offender “did not adhere to the terms and conditions of his release, and is a substantial danger to other persons” allowed for revocation if the offender *either* violates a condition of release *or* presents a substantial danger to other persons); *State v. Hodgins*, 190 Wn. App. 437, 444, 360 P.3d 850 (2015) (statute defining “domestic violence” as having “the same meaning as defined in RCW 10.99.020 and 26.50.010” meant “domestic violence” as defined in either RCW 10.99.020 or 26.50.010). *See also Yakima Indian Nation*, 439 U.S. at 496-97 (rejecting argument that the phrase “assumption of civil *and* criminal jurisdiction” in Public Law 280 § 6 must be read conjunctively).

The plain language and structure of Proclamation 14-01 reveal two compelling reasons why this Court should reject Zack’s interpretation. First, Paragraph 3 of Proclamation 14-01 plainly says the state “shall retrocede, *in part*,” certain criminal jurisdiction. This directly contradicts Zack’s argument. If “and” meant that the state retains jurisdiction only where both parties are non-Indian, that would not be retrocession “in part.” It would be *full* retrocession of all Public Law 280 criminal jurisdiction, as Zack acknowledges. Br. Appellant 12. Public Law 280

authorized Washington to assume jurisdiction over criminal offenses committed “by or against Indians.” See RCW 37.12.030. Some portion of that must be retained to give effect to the words “in part.” Those words cannot refer to offenses committed by non-Indians against non-Indians because Washington did not need Public Law 280 for jurisdiction over such crimes. To the contrary, it has always had that jurisdiction as part of its state sovereignty. *Draper v. United States*, 164 U.S. 240, 17 S. Ct. 107, 41 L. Ed. 419 (1896) (state court, not federal court, had jurisdiction to try non-Indian for murder of non-Indian within Indian reservation); *State v. Lindsey*, 133 Wash. 140, 144-45, 233 P. 327 (1925) (under *Draper*, state court had jurisdiction to try non-Indian for manufacturing liquor within Yakama Reservation); *State v. Batten*, 17 Wn. App. 428, 430, 563 P.2d 1287 (1977) (state court had jurisdiction to try non-Indian for murder of non-Indian within Quinault Reservation). Thus, the only reading of Paragraph 3 that gives effect to the words “retrocede, *in part*” is the one given by the trial court, where the state retains jurisdiction over offenses committed by or against Indians where *any* party is non-Indian.

Second, Zack’s reading of Paragraph 3 would make Paragraph 1 superfluous. Paragraph 1 of Proclamation 14-01 says the state “shall retrocede full” criminal jurisdiction in four subject matter areas. The governor need not have called out those subject matter areas had he

intended Paragraph 3 to result in full retrocession. But Paragraph 3 says “retrocede, in part.” The different phrasings of Paragraphs 1 and 3 indicate a different meaning. *Citizens Alliance*, 184 Wn.2d at 440. The only reading that gives effect to both paragraphs is that Paragraph 1 retroceded all jurisdiction over certain types of offenses, while Paragraph 3 retains jurisdiction over other types of offenses where either the defendant or victim is non-Indian.

Mr. Zack urges that a conjunctive reading would give the state more jurisdiction than it had before retrocession. Br. Appellant 11-13. He is wrong. It is true that the state has never had jurisdiction over offenses committed by Yakama Indians on *trust* lands within the Yakama Reservation, except in a few subject matter areas. RCW 37.12.010; *Yakima Indian Nation*, 439 U.S. at 475-76. But this case involves *fee* lands, and Proclamation 14-01 must be read in light of its authorizing statute. The legislature authorized the governor to retrocede jurisdiction that the state previously acquired under Public Law 280, not to assume more jurisdiction. RCW 37.12.160(9)(b). Consistent with that statute, Paragraph 7 of Proclamation 14-01 says “*Pursuant to RCW 37.12.010*, the State shall retain all jurisdiction not specifically retroceded.” CP 37; Appendix B p. 3 (emphasis added). Thus, Paragraph 3 must be read as retaining state jurisdiction only to the extent the state already had it under

RCW 37.12.010. On fee lands, that includes offenses committed by Indians against non-Indians. *See Yakima Indian Nation*, 439 U.S. at 498 (“State jurisdiction is . . . complete as to Indians on nontrust lands”); *Clark*, 178 Wn.2d at 25; *Boyd*, 109 Wn. App. at 252; RCW 37.12.010.

Having no sound basis in the text, Zack argues that this Court must apply canons of construction in order to reach his result. Br. Appellant 10-12. That would be a misapplication of such canons. The United States Supreme Court has said that ambiguities in *federal* laws enacted for the benefit of Indians should be construed based on a presumed federal intent to benefit Indians. *See* Conference of Western Attorneys General, American Indian Law Deskbook § 1:6 (2017). But states do not have the same federal trust relationship with Indian tribes. *Auto. United Trades Org. v. State*, 175 Wn.2d 214, 225, 285 P.3d 52 (2012). Here, the legislature directed the governor to consider the interests of all communities who would be affected by a proposed retrocession, not merely the tribe’s interests. RCW 37.12.160(3), (8); *see* RP 63-66.

Moreover, it is highly doubtful that Zack’s construction of Proclamation 14-01 would benefit the interests of the Yakama Nation. Under Zack’s construction, only the federal courts would have jurisdiction over offenses committed by non-Indians against Indians within the Yakama Reservation, depriving Yakama members of access to state courts

as crime victims. *E.g.*, AGO 1955 No. 63; *State v. Larson*, 455 N.W.2d 600, 601 (S.D. 1990) (“the prevailing rule has always been that federal courts have exclusive jurisdiction over an offense committed in Indian country by a non-Indian, against the person or property of an Indian”). The Yakama Nation did not want the state to retrocede jurisdiction over such crimes. As the preamble to Proclamation 14-01 states, the Yakama Nation “acknowledges that the State would retain criminal jurisdiction over non-Indian defendants,” regardless of the victim’s identity. CP 36; Appendix B p. 2.

Finally, if there were any doubt about the governor’s intent in Proclamation 14-01, Governor Inslee’s own contemporaneous explanation puts it to rest. *See State v. Reis*, 183 Wn.2d 197, 212-13, 351 P.3d 127 (2015) (relying on governor’s veto message to determine legislative intent). In his cover letter submitting the Proclamation to the Department of the Interior, the governor explained that “the intent of [Paragraph 3] is for the State to retain such jurisdiction in those cases involving non-Indian defendants *and/or* non-Indian victims.” Appendix C, p. 2 (emphasis in original). The governor did not intend Zack’s interpretation.

In summary, the trial court in this case correctly interpreted Paragraph 3 of Proclamation 14-01 as preserving state jurisdiction over criminal offenses involving either non-Indian defendants or non-Indian

victims, to the full extent authorized by RCW 37.12.010. RP 38. That interpretation should be affirmed.

**2. Donald Zack produced insufficient evidence that, if believed, would establish that he is Indian for criminal jurisdictional purposes**

The trial court did not determine whether Donald Zack is Indian for criminal jurisdictional purposes, concluding that, because the victim is non-Indian, the state has jurisdiction over the offense under Proclamation 14-01 regardless of Mr. Zack's status. RP 38-39. This Court may affirm the conviction on that basis without reaching the issue of whether Mr. Zack is Indian.

Even if this Court were to accept Zack's argument that the state has no jurisdiction over offenses committed by Indians within the Yakama Reservation, he would still bear the burden of contesting jurisdiction by producing evidence that, if believed, would be sufficient to establish Indian status and defeat state jurisdiction. *State v. L.J.M.*, 129 Wn.2d 386, 395, 918 P.2d 898 (1996). Mr. Zack did not meet that burden.

This Court looks to federal case law in determining whether a defendant is Indian for purposes of criminal jurisdiction. *State v. Daniels*, 104 Wn. App. 271, 280, 16 P.3d 650 (2001). A party with the burden to prove Indian status must show "that the defendant (1) has some quantum of Indian blood and (2) is a member of, or is affiliated with, a federally

recognized tribe.” *United States v. Zepeda*, 792 F.3d 1103, 1106-07 (9th Cir. 2015) (en banc). A defendant claiming Indian status must satisfy both elements. *United States v. Bruce*, 394 F.3d 1215, 1223 (9th Cir. 2005). Indian status is a mixed question of law and fact reviewed de novo. *Id.* at 1218.

Donald Zack satisfied the first element of the *Zepeda/Bruce* test by producing evidence that he has some quantum of Indian blood. CP 48. But Mr. Zack did not meet his burden of production on the second element of the *Zepeda/Bruce* test. The criteria for the second element are, in declining order of importance:

- (1) enrollment in a federally recognized tribe;
- (2) government recognition formally and informally through receipt of assistance available only to persons who are members, or are eligible to become members, of federally recognized tribes;
- (3) enjoyment of the benefits of affiliation with a federally recognized tribe;
- (4) social recognition as someone affiliated with a federally recognized tribe through residence on a reservation and participation in the social life of a federally recognized tribe.

*Zepeda*, 792 F.3d at 114.

First, Donald Zack is not enrolled in any federally recognized tribe. RP 12. He testified that he is eligible for enrollment in the Muscogee (Creek) Nation in Oklahoma, RP 11-12, but provided no evidence that he has ever had any contact with that tribe. “[B]are allegations of an

affiliation with a tribe is insufficient to raise a doubt as to State jurisdiction.” *Daniels*, 104 Wn. App. at 282.

Second, Mr. Zack produced no evidence that he receives assistance available only to persons who are members of federally recognized tribes. He receives care from the Indian Health Services, but one does not need to be a member of a federally recognized tribe to receive such care; Indian ancestry can be enough. 25 C.F.R. § 136.12; CP 50; RP 15. Mr. Zack testified that he lived in tribal housing with his Yakama grandfather for many years, but provided no evidence that he is eligible for tribal housing on his own. RP 11. Mr. Zack said he had been in the tribal jail, but he testified that tribal police now “send me to Yakama County” rather than the tribal jail. RP 20. Mr. Zack produced no evidence that the Bureau of Indian Affairs recognizes him as Indian.

Third, Mr. Zack testified that he participates in Yakama fishing and wood-cutting activities, but those benefits are a result of other family members’ affiliation with the Yakama Nation. RP 16-18.

Fourth, Mr. Zack testified that he has lived within the Yakama Reservation for a long time, participates in Yakama cultural activities, and has worked at the Yakama Nation’s casino. RP 15-17. Though that shows some degree of social recognition by the Yakama Nation, by itself it is not enough to establish Indian status. *See United States v. Loera*, 190

F. Supp. 3d 873, 883-84 (D. Ariz. 2016), *appeal docketed*, No. 16-10250 (9th Cir. June 8, 2016).

In *Bruce*, the Ninth Circuit reversed a district court ruling that the defendant had failed to meet her burden of production to show Indian status sufficient to defeat federal jurisdiction under 18 U.S.C. § 1152. *Bruce*, 394 F.3d at 1226-27. Zack says *Bruce* is “directly analogous” to this case. Br. Appellant 16. True, the issue in *Bruce* was analogous to the issue here, but the facts were not. In *Bruce*, the Ninth Circuit found it significant that a witness testified that tribal law enforcement had treated the defendant as an Indian person her entire life. 394 F.3d at 1226-27. Mr. Zack provided only his own testimony and even testified that tribal law enforcement “send me to Yakama County.” RP 20; *see* CP 30-33 (defendant case history showing charges in state courts). On this record, Mr. Zack does not meet the *Zepeda/Bruce* test.

**C. As a Matter of Law, a Toppenish Corrections Officer is an “Employee of a Law Enforcement Agency” Under RCW 9A.36.031(1)(g)**

A person is guilty of third degree assault if he “[a]ssaults a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault.” RCW 9A.36.031(1)(g). The Court should affirm Mr. Zack’s conviction for third degree assault because Toppenish Corrections Officer Weible was an

“employee of a law enforcement agency who was performing his . . . official duties at the time” Mr. Zack assaulted him.

A Toppenish corrections officer is, as a matter of law, an “employee of a law enforcement agency” under RCW 9A.36.031(1)(g) because corrections officers are supervised by the Toppenish Police Department. Under RCW 70.48.090(4), if a city does not have a separate department of corrections, “the chief law enforcement officer of the city . . . shall have charge of the jail and of all persons confined therein.” In compliance with state law, Section 1.16.030 of the Toppenish Municipal Code places the Toppenish City Jail “under the charge and supervision of the chief of police of the city and his duly authorized deputies.” Certainly, the Toppenish Police Department is a “law enforcement agency” under RCW 9A.36.031(1)(g), and therefore Officer Weible is an “employee of a law enforcement agency.”

As Mr. Zack recognizes, Br. Appellant 20 n.4, this Court has previously determined that the Department of Corrections is a “law enforcement agency” for purposes of RCW 9.96A.030 (“any law enforcement agency” may consider prior felony convictions in making hiring decisions). *McLean v. Dep’t of Corrections*, 37 Wn. App. 255, 680 P.2d 65, review denied, 101 Wn.2d 1023 (1984). The reasoning of that case applies equally here. In *McLean*, the Court recognized that, under

RCW 9.94.050, correctional employees have the powers and duties of peace officers when they supervise prisoners—as do employees of local jails. RCW 9.94.049(1). Peace officers are law enforcement officers and employees of law enforcement agencies. *McLean*, 37 Wn. App. at 257; see ch. 10.93 RCW.

For the first time on appeal, Mr. Zack argues that there is insufficient evidence to support his conviction because a corrections officer cannot be an “employee of a law enforcement agency” under RCW 9A.36.031(1)(g), the third degree assault statute. He now contends that he should have been charged under the custodial assault statute, RCW 9A.36.100(1)(b), which he says is a more specific section that punishes assaults against corrections officers. Br. Appellant 18-21. As this is a legal argument disguised as an argument about sufficiency of the evidence, the Court should decline to consider this new argument. RAP 2.5(a); *State v. Gentry*, 183 Wn.2d 749, 760, 356 P.3d 714 (2015).

In any event, Zack’s argument fails because the custodial assault statute would not apply to the facts of this case. It provides:

(1) A person is guilty of custodial assault . . . where the person:

...

(b) Assaults a full or part-time staff member or volunteer, any educational personnel, any personal service provider,

or any vendor or agent thereof *at* any adult corrections institution or local adult detention facilities who was performing official duties at the time of the assault[.]

RCW 9A.36.100(1)(b) (emphasis added). Under this statute, a particular type of location—at a prison or jail—is one of the elements of the crime. Indeed, all of the custodial assault cases that Zack cites involved assaults at a prison or jail. *State v. Bradley*, 141 Wn.2d 731, 101 P.3d 358 (2000) (King County Jail); *State v. Ratliff*, 77 Wn. App. 522, 892 P.2d 118 (1995) (King County Jail); *State v. Skenandore*, 99 Wn. App. 494, 994 P.2d 291 (2000) (Clallam Bay Corrections Center). This case, in contrast, involves an assault at Toppenish Hospital, which is not a prison or jail.

Zack's argument that Toppenish Corrections Officer Weible is not an "employee of a law enforcement agency" under RCW 9A.36.031(1)(g) lacks merit and should be rejected.

**D. Mr. Zack Failed to Preserve Any Objection to the Imposition of Legal Financial Obligations**

For the first time on appeal, Mr. Zack contends that the trial court exceeded its statutory authority by ordering him to pay up to \$200 toward the cost of his incarceration. Br. Appellant 21-22; *see* CP 64. Mr. Zack says that, under RCW 9.94A.760(2), the court was required to find that he had the means to pay at the time of sentencing. Br. Appellant 21. Mr. Zack

did not raise this argument in the trial court, so the court should not consider it now.

A defendant who makes no objection to the imposition of discretionary legal financial obligations at sentencing is not automatically entitled to review. *State v. Blazina*, 182 Wn.2d 827, 832, 344 P.3d 680 (2015). Subject to three exceptions that do not apply here, RAP 2.5(a) provides that an “appellate court may refuse to review any claim of error which was not raised in the trial court.” This Court should decline to consider Mr. Zack’s untimely argument.

Alternatively, should this Court exercise its discretion to consider Mr. Zack’s argument, the State would request leave of this Court to file an order, ex parte, amending the Judgment and Sentence by simply striking section 4.D.4 (CP 64), so that the defendant shall not be liable for any costs of incarceration. The State proposes this solution to avoid incurring the cost of returning the defendant to the custody of Yakima County, appointing counsel, setting a hearing date and time, and conducting a hearing.

**E. The State Does Not Intend to Request Appellate Costs**

Under RAP 14.2, “A commissioner or clerk of the appellate court will award costs to the party that substantially prevails on review, unless the appellate court directs otherwise in its decision terminating review, or

unless the commissioner or clerk determines an adult offender does not have the current or likely future ability to pay such costs.” The State does not intend to present evidence that Mr. Zack’s financial circumstances have significantly improved since the trial court’s determination of indigency. Though the State has the legal right to request costs in this case and the State fully expects to “substantially prevail,” the State has not asked for nor will it ask for appellate costs in this case when it prevails.

#### **V. CONCLUSION**

The trial court correctly ruled that, under Governor’s Proclamation 14-01 and RCW 37.12.010, the State retains jurisdiction over offenses committed by Indians against non-Indians on fee land within the Yakama Reservation, including the assault in this case. Mr. Zack was properly charged with third degree assault under RCW 9A.36.031(1)(g). The Court should decline to consider Mr. Zack’s arguments about legal financial obligations.

The Judgment should be affirmed in all respects.

RESPECTFULLY SUBMITTED this 16th day of June, 2017.

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Yakima County Prosecuting Attorney

*for* *Fronda Woods per email* *Fronda Woods*  
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I filed the Brief of Respondent electronically with the Washington Court of Appeals, Division III, through the Court's online filing system.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 16th day of June, 2017, at Olympia, WA.

  
\_\_\_\_\_  
RACHEL GIBBONS, Legal Assistant

APPENDIX A  
Chapter 37.12 RCW (2016)

**37.08.250 Additional right-of-way.** That a right-of-way of not exceeding five hundred feet in width is hereby granted to the United States of America through any lands or shorelands belonging to the state of Washington, or to the University of Washington, and lying in King county between Lakes Union and Washington, or in or adjoining either of them, the southern boundary of such right-of-way on the upland to be coincident with the southern boundary of the lands now occupied by the University of Washington adjacent to the present right-of-way of said canal; the width and definite location of such right-of-way before the same is taken possession of by said United States shall be plainly and completely platted and a plat thereof approved by the secretary of war of the United States filed with the department of natural resources: PROVIDED, That nothing in this section contained shall be construed to repeal or impair any right, interest, privilege or grant expressed or intended in the act of the legislature of the state of Washington approved February 8, 1901, entitled, "An Act relative to and in aid of the construction, maintenance and operation by the United States of America of a ship canal with proper locks and appurtenances to connect the waters of Lakes Union and Washington in King county with Puget Sound and declaring an emergency." [1988 c 128 § 9; 1907 c 216 § 1; RRS § 8121.]

**37.08.260 Auburn general depot.** Concurrent jurisdiction shall be, and the same is hereby ceded to the United States over and within all the land comprising the Auburn General Depot area, being 570.08 acres, more or less, situate in King county, state of Washington; saving, however, to the state the right to serve civil and criminal process within the limits of the aforesaid area in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state, but outside of said area. The metes and bounds description of the land over which jurisdiction is ceded hereby is as follows:

A parcel of land in sections 24 and 25, Township 21 North, Range 4 East, Willamette Meridian, King County, as follows: Beginning at a point on the west line of the Northern Pacific Railway right-of-way which point is S 89°16'55" W, 423.65 feet and N 2°12'33" W, 20 feet from the southeast corner of section 25, thence S 89°16'55" W, 1548.93 feet along the north right-of-way line of Ellingson Road to a point, thence N 0°10'45" E, 1298.11 feet to a point, thence S 89°31'28" W, 638.25 feet to the east right-of-way line of Greenhalgh Road, thence N 0°08'47" E, 1351.31 feet along said east right-of-way line to its intersection with the north right-of-way line of Algona Road, thence S 89°46'07" W, 1724.35 feet along said north right-of-way line to a point on the easterly right-of-way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad, thence N 0°04'38" W, 1223.74 feet along said right-of-way to a point of spiral curve, thence along a spiral curve whose central angle is 1°36'14" and whose long chord bears N 0°27'20" E, 158.51 feet, thence along a circular curve to the right, whose radius bears S 88°28'24" E, 2822.01 feet, through a central angle of 21°16'24" for a distance of 1047.78 feet to a point of spiral, thence along a spiral curve whose central angle is 1°36'14", and whose long chord bears N 23°51'42" E, 158.51 feet, thence N 24°24'15" E, 3088.12 feet to a point of spiral curve, thence along a spiral whose central angle is 1°35'51", and

whose long chord bears N 23°51'55" E, 161.51 feet to point of circular curve, thence along a circular curve, to the left, whose radius bears N 67°11'36" W, 2908.01 feet, through a central angle of 20°58'46" for a distance of 1064.80 feet, thence along a spiral curve to the left, whose central angle is 1°35'51", and whose long chord bears N 0°45'10" E, 161.51 feet, thence N 0°13'47" E, 1148.81 feet to the centerline of the Chicago, Milwaukee, St. Paul and Pacific Railroad and Northern Pacific crossover track being a point in a curve, thence along centerline of said crossover track on a curve to the left in a southeasterly direction, from a radius which bears N 63°36'26" E, 351.28 feet, through a central angle of 26°50'13" for a distance of 164.54 feet, thence S 53°13'47" E, 1840.78 feet along said centerline, thence along a curve to the right in a southeasterly direction, from a radius which bears S 36°46'13" W, 386.60 feet, through a central angle of 10°26'06" for a distance of 70.41 feet to the intersection of the westerly right-of-way line of county road No. 76, thence \*S 2°12'33" E, 6596.21 feet along the westerly right-of-way line of county road No. 76 to the East-West centerline of said section 25, thence N 89°46'02" E, 60.04 feet to the westerly right-of-way line of the Northern Pacific Railway Company, thence S 2°12'33" E, 2605.01 feet to point of beginning. The jurisdiction ceded hereby does not extend to any existing perimeter railroad or county road right-of-way. [1951 c 40 § 1.]

\*Reviser's note: In the third from the last course, the "2" in the description "S 2°12'33" E" was by typographical error omitted from the session laws. The digit is inserted by the reviser after verification from original sources.

**37.08.280 Veterans hospitals.** Upon the filing of an appropriate notice thereof with the governor by the administrator of veterans affairs, an agency of the United States of America, pursuant to the provisions of section 302 of Public Law 93-82 (87 Stat. 195; 38 U.S.C. Sec. 5007), the governor is hereby authorized and directed to accept such legislative jurisdiction as is necessary to establish concurrent jurisdiction between the United States and the state of Washington to all land comprising the veterans hospital located at Vancouver in Clark county, Washington; the veterans administration hospital located at Walla Walla in Walla Walla county, Washington, and the veterans administration hospital located at American Lake in Pierce county, Washington. The acquisition of such concurrent jurisdiction shall become effective upon filing the documents signifying such acceptance in the office of the secretary of state. [1975 1st ex.s. c 142 § 1.]

## Chapter 37.12 RCW

### INDIANS AND INDIAN LANDS—JURISDICTION

#### Sections

37.12.010	Assumption of criminal and civil jurisdiction by state.
37.12.021	Assumption of criminal and civil jurisdiction by state—Resolution of request—Proclamation by governor, 1963 act.
37.12.030	Effective date for assumption of jurisdiction—Criminal causes.
37.12.040	Effective date for assumption of jurisdiction—Civil causes.
37.12.050	State's jurisdiction limited by federal law.
37.12.060	Chapter limited in application.
37.12.070	Tribal ordinances, customs, not inconsistent with law applicable in civil causes.

- 37.12.100 Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, and Colville Indian reservations—Retrocession of criminal jurisdiction—Intent.
- 37.12.110 Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, and Colville Indian reservations—Retrocession of criminal jurisdiction—Definitions.
- 37.12.120 Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, and Colville Indian reservations—Retrocession of criminal jurisdiction—Proclamation by governor.
- 37.12.130 Quileute, Chehalis, Swinomish, and Colville Indian reservations—Retrocession of criminal jurisdiction—Savings.
- 37.12.140 Quileute, Chehalis, Swinomish, and Colville Indian reservations—Retrocession of criminal jurisdiction—Short title.
- 37.12.150 Retrocession of federal jurisdiction over lands excluded from Olympic National Park.
- 37.12.160 Retrocession of civil and/or criminal jurisdiction—Process.
- 37.12.170 Limits on retrocession under RCW 37.12.160.
- 37.12.180 Issues related to retrocession under RCW 37.12.160.

*Alienation of land by Indians: Chapter 64.20 RCW.*

*Annexation of federal areas by first-class city: RCW 35.13.185.*

*Compact with the United States: State Constitution Art. 26 § 2.*

*Daylight saving time—Prohibition not applicable to federal areas: RCW 1.20.050.*

*Qualifications of voters: State Constitution Art. 6 § 1 (Amendment 63).*

**37.12.010 Assumption of criminal and civil jurisdiction by state.** The state of Washington hereby obligates and binds itself to assume criminal and civil jurisdiction over Indians and Indian territory, reservations, country, and lands within this state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd Congress, 1st Session), but such assumption of jurisdiction shall not apply to Indians when on their tribal lands or allotted lands within an established Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States, unless the provisions of RCW 37.12.021 have been invoked, except for the following:

- (1) Compulsory school attendance;
- (2) Public assistance;
- (3) Domestic relations;
- (4) Mental illness;
- (5) Juvenile delinquency;
- (6) Adoption proceedings;
- (7) Dependent children; and
- (8) Operation of motor vehicles upon the public streets, alleys, roads and highways: PROVIDED FURTHER, That Indian tribes that petitioned for, were granted and became subject to state jurisdiction pursuant to this chapter on or before March 13, 1963 shall remain subject to state civil and criminal jurisdiction as if \*chapter 36, Laws of 1963 had not been enacted. [1963 c 36 § 1; 1957 c 240 § 1.]

**37.12.021 Assumption of criminal and civil jurisdiction by state—Resolution of request—Proclamation by governor, 1963 act.** Whenever the governor of this state shall receive from the majority of any tribe or the tribal council or other governing body, duly recognized by the Bureau of Indian Affairs, of any Indian tribe, community, band, or group in this state a resolution expressing its desire that its people and lands be subject to the criminal or civil jurisdiction of the state of Washington to the full extent authorized

*\*Reviser's note:* Chapter 36, Laws of 1963, which became effective on March 13, 1963, amended RCW 37.12.010, 37.12.030, 37.12.040, and 37.12.060, repealed RCW 37.12.020, and enacted a new section codified herein as RCW 37.12.021.

**37.12.021 Assumption of criminal and civil jurisdiction by state—Resolution of request—Proclamation by governor, 1963 act.** Whenever the governor of this state shall receive from the majority of any tribe or the tribal council or other governing body, duly recognized by the Bureau of Indian Affairs, of any Indian tribe, community, band, or group in this state a resolution expressing its desire that its people and lands be subject to the criminal or civil jurisdiction of the state of Washington to the full extent authorized

by federal law, he or she shall issue within sixty days a proclamation to the effect that such jurisdiction shall apply to all Indians and all Indian territory, reservations, country, and lands of the Indian body involved to the same extent that this state exercises civil and criminal jurisdiction or both elsewhere within the state: PROVIDED, That jurisdiction assumed pursuant to this section shall nevertheless be subject to the limitations set forth in RCW 37.12.060. [2011 c 336 § 765; 1963 c 36 § 5.]

**37.12.030 Effective date for assumption of jurisdiction—Criminal causes.** Upon March 13, 1963 the state of Washington shall assume jurisdiction over offenses as set forth in RCW 37.12.010 committed by or against Indians in the lands prescribed in RCW 37.12.010 to the same extent that this state has jurisdiction over offenses committed elsewhere within this state, and such criminal laws of this state shall have the same force and effect within such lands as they have elsewhere within this state. [1963 c 36 § 2; 1957 c 240 § 3.]

**37.12.040 Effective date for assumption of jurisdiction—Civil causes.** Upon March 13, 1963 the state of Washington shall assume jurisdiction over civil causes of action as set forth in RCW 37.12.010 between Indians or to which Indians are parties which arise in the lands prescribed in RCW 37.12.010 to the same extent that this state has jurisdiction over other civil causes of action and, except as otherwise provided in this chapter, those civil laws of this state that are of general application to private persons or private property shall have the same force and effect within such lands as they have elsewhere within this state. [1963 c 36 § 3; 1957 c 240 § 4.]

**37.12.050 State's jurisdiction limited by federal law.** The jurisdiction assumed pursuant to this chapter shall be subject to the limitations and provisions of the federal act of August 15, 1953 (Public Law 280, 83rd Congress, 1st Session). [1957 c 240 § 5.]

**37.12.060 Chapter limited in application.** Nothing in this chapter shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights and tidelands, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the state to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under federal treaty, agreement, statute, or executive order with respect to Indian land grants, hunting, trapping, or fishing or the control, licensing, or regulation thereof. [1963 c 36 § 4; 1957 c 240 § 6.]

**37.12.070 Tribal ordinances, customs, not inconsistent with law applicable in civil causes.** Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the state, be given full force and effect in the determination of civil causes of action pursuant to this section. [1957 c 240 § 7.]

**37.12.100 Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, and Colville Indian reservations—Retrocession of criminal jurisdiction—Intent.** It is the intent of the legislature to authorize a procedure for the retrocession, to the Quileute Tribe, Chehalis Tribe, Swinomish Tribe, Skokomish Tribe, Muckleshoot Tribe, Tulalip Tribes, and the Colville Confederated Tribes of Washington and the United States, of criminal jurisdiction over Indians for acts occurring on tribal lands or allotted lands within the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, or Colville Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States.

RCW 37.12.100 through 37.12.140 in no way expand the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, or Colville tribe's criminal or civil jurisdiction, if any, over non-Indians or fee title property. RCW 37.12.100 through 37.12.140 shall have no effect whatsoever on water rights, hunting and fishing rights, the established pattern of civil jurisdiction existing on the lands of the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, or Colville Indian reservation, the established pattern of regulatory jurisdiction existing on the lands of the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, or Colville Indian reservation, taxation, or any other matter not specifically included within the terms of RCW 37.12.100 through 37.12.140. [1995 c 202 § 1; 1995 c 177 § 1; 1994 c 12 § 1; 1988 c 108 § 1; 1986 c 267 § 2.]

**Reviser's note:** This section was amended by 1995 c 177 § 1 and by 1995 c 202 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**37.12.110 Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, and Colville Indian reservations—Retrocession of criminal jurisdiction—Definitions.** Unless the context clearly requires otherwise, the following definitions apply throughout RCW 37.12.100 through 37.12.140:

(1) "Colville reservation" or "Colville Indian reservation," "Quileute reservation" or "Quileute Indian reservation," "Chehalis reservation" or "Chehalis Indian reservation," "Swinomish reservation" or "Swinomish Indian reservation," "Skokomish reservation" or "Skokomish Indian reservation," "Muckleshoot reservation" or "Muckleshoot Indian reservation," or "Tulalip reservation" or "Tulalip Indian reservation" means all tribal lands or allotted lands lying within the reservation of the named tribe and held in trust by the United States or subject to a restriction against alienation imposed by the United States, but does not include those lands which lie north of the present Colville Indian reservation which were included in original reservation bound-

aries created in 1872 and which are referred to as the "diminished reservation."

(2) "Indian tribe," "tribe," "Colville tribes," or "Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, or Tulalip tribe" means the confederated tribes of the Colville reservation or the tribe of the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, or Tulalip reservation.

(3) "Tribal court" means the trial and appellate courts of the Colville tribes or the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, or Tulalip tribe. [1995 c 202 § 2; 1995 c 177 § 2; 1994 c 12 § 2; 1988 c 108 § 2; 1986 c 267 § 3.]

**Reviser's note:** This section was amended by 1995 c 177 § 2 and by 1995 c 202 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**37.12.120 Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, and Colville Indian reservations—Retrocession of criminal jurisdiction—Proclamation by governor.** Whenever the governor receives from the confederated tribes of the Colville reservation or the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, or Tulalip tribe a resolution expressing their desire for the retrocession by the state of all or any measure of the criminal jurisdiction acquired by the state pursuant to RCW 37.12.021 over lands of that tribe's reservation, the governor may, within ninety days, issue a proclamation retroceding to the United States the criminal jurisdiction previously acquired by the state over such reservation. However, the state of Washington shall retain jurisdiction as provided in RCW 37.12.010. The proclamation of retrocession shall not become effective until it is accepted by an officer of the United States government in accordance with 25 U.S.C. Sec. 1323 (82 Stat. 78, 79) and in accordance with procedures established by the United States for acceptance of such retrocession of jurisdiction. The Colville tribes and the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, and Tulalip tribes shall not exercise criminal or civil jurisdiction over non-Indians. [1995 c 202 § 3; 1995 c 177 § 3; 1994 c 12 § 3; 1988 c 108 § 3; 1986 c 267 § 4.]

**Reviser's note:** This section was amended by 1995 c 177 § 3 and by 1995 c 202 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**37.12.130 Quileute, Chehalis, Swinomish, and Colville Indian reservations—Retrocession of criminal jurisdiction—Savings.** An action or proceeding which has been filed with any court or agency of the state or local government preceding the effective date of retrocession of jurisdiction under RCW 37.12.100 through 37.12.140 shall not abate by reason of the retrocession or determination of jurisdiction. [1986 c 267 § 6.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**37.12.140 Quileute, Chehalis, Swinomish, and Colville Indian reservations—Retrocession of criminal jurisdiction—Short title.** RCW 37.12.100 through 37.12.140 may be known and cited as the Indian reservation

criminal jurisdiction retrocession act. [1988 c 108 § 4; 1986 c 267 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**37.12.150 Retrocession of federal jurisdiction over lands excluded from Olympic National Park.** The state of Washington hereby accepts retrocession from the United States of the jurisdiction which the United States acquired over those lands excluded from the boundaries of the Olympic National Park by 16 U.S.C. Sec. 251e. The lands restored to the Quileute Indian Reservation by Public Law 94-578 shall be subject to the same Washington state and tribal jurisdiction as all other lands within the Quileute Reservation. [1988 c 108 § 5.]

**37.12.160 Retrocession of civil and/or criminal jurisdiction—Process.** (1) The process by which the state may retrocede to the United States all or part of the civil and/or criminal jurisdiction previously acquired by the state over a federally recognized Indian tribe, and the Indian country of such tribe, must be accomplished in accordance with the requirements of this section.

(2) To initiate civil and/or criminal retrocession the duly authorized governing body of a tribe must submit a retrocession resolution to the governor accompanied by information about the tribe's plan regarding the tribe's exercise of jurisdiction following the proposed retrocession. The resolution must express the desire of the tribe for the retrocession by the state of all or any measures or provisions of the civil and/or criminal jurisdiction acquired by the state under this chapter over the Indian country and the members of such Indian tribe. Before a tribe submits a retrocession resolution to the governor, the tribe and affected municipalities are encouraged to collaborate in the adoption of interlocal agreements, or other collaborative arrangements, with the goal of ensuring that the best interests of the tribe and the surrounding communities are served by the retrocession process.

(3) Upon receiving a resolution under this section, the governor must within ninety days convene a government-to-government meeting with either the governing body of the tribe or duly authorized tribal representatives for the purpose of considering the tribe's retrocession resolution. The governor's office must consult with elected officials from the counties, cities, and towns proximately located to the area of the proposed retrocession.

(4) Within one year of the receipt of an Indian tribe's retrocession resolution the governor must issue a proclamation, if approving the request either in whole or in part. This one-year deadline may be extended by the mutual consent of the tribe and the governor, as needed. In addition, either the tribe or the governor may extend the deadline once for a period of up to six months. Within ten days of issuance of a proclamation approving the retrocession resolution, the governor must formally submit the proclamation to the federal government in accordance with the procedural requirements for federal approval of the proposed retrocession. In the event the governor denies all or part of the resolution, the reasons for such denial must be provided to the tribe in writing.

(5) Within one hundred twenty days of the governor's receipt of a tribe's resolution requesting civil and/or criminal retrocession, but prior to the governor's issuance of the pro-

clamation approving or denying the tribe's resolution, the appropriate standing committees of the state house and senate may conduct public hearings on the tribe's request for state retrocession. The majority leader of the senate must designate the senate standing committee and the speaker of the house of representatives must designate the house standing committee. Following such public hearings, the designated legislative committees may submit advisory recommendations and/or comments to the governor regarding the proposed retrocession, but in no event are such legislative recommendations binding on the governor or otherwise of legal effect.

(6) The proclamation for retrocession does not become effective until it is approved by a duly designated officer of the United States government and in accordance with the procedures established by the United States for the approval of a proposed state retrocession.

(7) The provisions of RCW 37.12.010 are not applicable to a civil and/or criminal retrocession that is accomplished in accordance with the requirements of this section.

(8) For any proclamation issued by the governor under this section that addresses the operation of motor vehicles upon the public streets, alleys, roads, and highways, the governor must consider the following:

(a) Whether the affected tribe has in place interlocal agreements with neighboring jurisdictions, including applicable state transportation agencies, that address uniformity of motor vehicle operations over Indian country;

(b) Whether there is a tribal traffic policing agency that will ensure the safe operation of motor vehicles in Indian country;

(c) Whether the affected tribe has traffic codes and courts in place; and

(d) Whether there are appropriate traffic control devices in place sufficient to maintain the safety of the public roadways.

(9) The following definitions apply for the purposes of this section:

(a) "Civil retrocession" means the state's act of returning to the federal government the civil jurisdiction acquired over Indians and Indian country under federal Public Law 280, Act of August 15, 1953, 67 Stat. 588 (codified as amended at 18 U.S.C. Sec. 1162, 25 U.S.C. Secs. 1321-1326, and 28 U.S.C. Sec. 1360);

(b) "Criminal retrocession" means the state's act of returning to the federal government the criminal jurisdiction acquired over Indians and Indian country under federal Public Law 280, Act of August 15, 1953, 67 Stat. 588 (codified as amended at 18 U.S.C. Sec. 1162, 25 U.S.C. Secs. 1321-1326, and 28 U.S.C. Sec. 1360);

(c) "Indian tribe" means any federally recognized Indian tribe, nation, community, band, or group;

(d) "Indian country" means:

(i) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(ii) All dependent Indian communities with the borders of the United States whether in the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and

(iii) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. [2012 c 48 § 1.]

**37.12.170 Limits on retrocession under RCW 37.12.160.** A civil or criminal retrocession accomplished pursuant to the procedure set forth in RCW 37.12.160 does not:

(1) Affect the state's civil jurisdiction over the civil commitment of sexually violent predators pursuant to chapter 71.09 RCW and the state must retain such jurisdiction notwithstanding the completion of the retrocession process authorized under RCW 37.12.160; and

(2) Abate any action or proceeding which has been filed with any court or agency of the state or local government preceding the effective date of the completion of a retrocession authorized under RCW 37.12.160. [2012 c 48 § 2.]

**37.12.180 Issues related to retrocession under RCW 37.12.160.** (1) The provisions of RCW 37.12.160 do not affect the validity of any retrocession procedure commenced under RCW 37.12.100 through 37.12.140 prior to June 7, 2012.

(2) Any Indian tribe that has commenced but not completed the retrocession procedure authorized in RCW 37.12.100 through 37.12.140 may request retrocession under RCW 37.12.160 in lieu of completing that procedure.

(3) Any Indian tribe that has completed the retrocession procedure authorized in RCW 37.12.100 through 37.12.140 may use the process authorized under RCW 37.12.160 to request retrocession of any civil or criminal jurisdiction retained by the state under RCW 37.12.120 or 37.12.010.

(4) The provisions of RCW 37.12.120 are not applicable to a civil and/or criminal retrocession that is accomplished in accordance with the requirements of RCW 37.12.160. [2012 c 48 § 3.]

*Tidelands and shorelands grants to United States: RCW 79.125.760 through 79.125.790.*

*Transfer of property to state or United States for military purposes or housing projects: RCW 36.34.260.*

**37.16.180 Jurisdiction ceded.** Pursuant to the Constitution and laws of the United States, and especially to paragraph seventeen of section eight of article one of such Constitution, the consent of the legislature of the state of Washington is hereby given to the United States to acquire by donation from any county acting under the provisions of this chapter, title to all the lands herein intended to be referred to, to be evidenced by the deed or deeds of such county, signed by the chair of its board of county commissioners and attested by the clerk of such board under the seal of such board, and the consent of the state of Washington is hereby given to the exercise by the congress of the United States of exclusive legislation in all cases whatsoever, over such tracts or parcels of land so conveyed to it: PROVIDED, Upon such conveyance being concluded, a sufficient description by metes and bounds and an accurate plat or map of each such tract or parcel of land be filed in the auditor's office of the county in which such lands are situated, together with copies of the orders, deeds, patents, or other evidences in writing of the title of the United States: AND PROVIDED, That all civil process issued from the courts of this state, and such criminal process as may issue under the authority of this state against any person charged with crime in cases arising outside of such reservation, may be served and executed thereon in the same mode and manner and by the same officers as if the consent herein given had not been made. [2011 c 336 § 766; 1917 c 4 § 22; no RRS. Formerly RCW 37.08.180.]

*General cession of jurisdiction: Chapter 37.04 RCW.*

*Jurisdiction in special cases: Chapter 37.08 RCW.*

## Chapter 37.16 RCW

### ACQUISITION OF LANDS FOR PERMANENT MILITARY INSTALLATIONS

#### Sections

37.16.180 Jurisdiction ceded.

**Reviser's note:** Chapter 4, Laws of 1917, herein codified as chapter 37.16 RCW, is discussed in *State ex rel. Board of Commissioners v. Clausen*, 95 Wash. 214, 163 Pac. 744 (1917), where it is considered in conjunction with 1917 c 3, a special act authorizing (and directing) Pierce county to condemn property and issue bonds in payment of awards therefor in order to secure the location of Camp (now Fort) Lewis in that county. In prior compilations, Remington omitted 1917 c 4, and Pierce omitted all but section 22, ceding the state's jurisdiction to the United States. 1917 c 4 appears to have been a general act and for that reason was codified herein. Most of the sections in this chapter were subsequently repealed by 1971 c 76 § 6.

*Appropriation authorized in aid of federal or state improvement: RCW 8.08.090.*

*Condemnation for military purposes: RCW 8.04.170, 8.04.180.*

*Eminent domain by counties: Chapter 8.08 RCW.*

*Joint armory sites: RCW 36.64.050.*

*Lease or conveyance to the state or to United States for military, housing and other purposes: RCW 36.34.250.*

*Leases to United States for national defense: RCW 79.13.090.*

*Long term leases to United States by counties: RCW 36.34.310.*

(2016 Ed.)

[Title 37 RCW—page 7]

APPENDIX B  
Proclamation by the Governor 14-01

JAY INSLEE  
Governor



STATE OF WASHINGTON  
OFFICE OF THE GOVERNOR  
*P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 902-4111 • www.governor.wa.gov*

**PROCLAMATION BY THE GOVERNOR  
14-01**

**WHEREAS**, on March 19, 2012, Governor Christine Gregoire signed Engrossed Substitute House Bill 2233, "Creating a procedure for the state's retrocession of civil and criminal jurisdiction over Indian tribes and Indian country"; and

**WHEREAS**, Engrossed Substitute House Bill 2233, which became Chapter 48, Laws of 2012, creates a process by which the state of Washington (hereafter, "the State") may retrocede to the United States all or part of the civil and criminal jurisdiction previously acquired by the State over a federally recognized Indian tribe, and the Indian country of such tribe, under federal Public Law 280, Act of August 15, 1953; and

**WHEREAS**, on March 13, 1963, in accordance with federal Public Law 280, Act of August 15, 1953, the State assumed partial civil and criminal jurisdiction, subject to the limitations in RCW 37.12.021 and RCW 37.12.060, within the Indian country of the Confederated Tribes and Bands of the Yakama Nation (hereafter, "Yakama Nation") pursuant to Chapter 36, Laws of 1963; and

**WHEREAS**, after March 13, 1963, the Yakama Nation did not invoke with the State the provision of RCW 37.12.021 but chose to rely upon the rights and remedies of its Treaty of 1855 with the United States, 12 Stat. 951 and federal laws; and

**WHEREAS**, on January 11, 1980, the Assistant Secretary-Indian Affairs, United States Department of the Interior, approved the Yakama Nation's petition for re-assumption of jurisdiction over Indian child custody proceedings under the Indian Child Welfare Act of 1978. Effective March 28, 1980, the Yakama Nation reassumed jurisdiction over Yakama Indian child custody proceedings; and

**WHEREAS**, on July 17, 2012, the Yakama Nation filed a retrocession petition with the Office of the Governor. The retrocession petition by the Yakama Nation requests full retrocession of civil and criminal jurisdiction on all of Yakama Nation Indian country and in five areas of RCW 37.12.010, including: Compulsory School Attendance; Public Assistance; Domestic Relations; Juvenile Delinquency; and Operation of Motor Vehicles on Public Streets, Alleys, Roads, and Highways; and

**WHEREAS**, Governor Gregoire convened government-to-government meetings with the Yakama Nation to discuss the Nation's retrocession petition. In the course of those meetings, the Yakama Nation and Governor Gregoire confirmed that the Yakama Nation asks the State to retrocede all jurisdiction assumed pursuant to RCW 37.12.010 in 1963 over the Indian country of the Yakama Nation, both within and without the external boundaries of the Yakama Reservation. However, the Yakama Nation requests that the State retain jurisdiction over mental illness as provided in RCW 37.12.010(4), and jurisdiction over civil commitment of sexually violent predators under RCW 71.09, and acknowledges that the State would retain criminal jurisdiction over non-Indian defendants; and

**WHEREAS**, Governor Jay Inslee convened further government-to-government meetings between the State and Yakama Nation. The Governor's Office has also consulted with elected officials from the jurisdictions proximately located to the Yakama Nation's Indian country; and

**WHEREAS**, on July 9, 2013, Governor Inslee exercised the six-month extension provision for issuing a proclamation, pursuant to RCW 37.12.160; and

**WHEREAS**, strengthening the sovereignty and independence of the federally recognized Indian tribes within Washington State is an important priority for the State; and

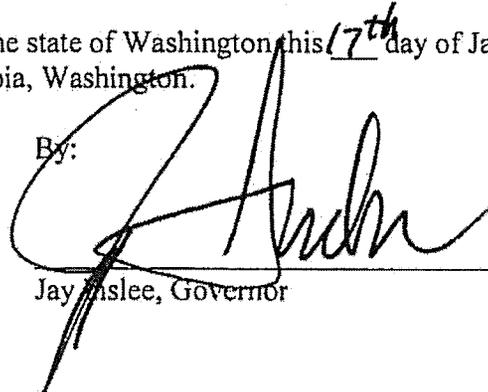
**NOW, THEREFORE**, I, Jay Inslee, Governor of the state of Washington, by virtue of the authority vested in me by Section 37.12.160 of the Revised Code of Washington, do hereby grant in part, and deny in part, the retrocession petition submitted by the Confederated Tribes and Bands of the Yakama Nation, according to the following provisions:

1. Within the exterior boundaries of the Yakama Reservation, the State shall retrocede full civil and criminal jurisdiction in the following subject areas of RCW 37.12.010: Compulsory School Attendance; Public Assistance; Domestic Relations; and Juvenile Delinquency.
2. Within the exterior boundaries of the Yakama Reservation, the State shall retrocede, in part, civil and criminal jurisdiction in Operation of Motor Vehicles on Public Streets, Alleys, Roads, and Highways cases in the following manner: Pursuant to RCW 37.12.010(8), the State shall retain jurisdiction over civil causes of action involving non-Indian plaintiffs, non-Indian defendants, and non-Indian victims; the State shall retain jurisdiction over criminal offenses involving non-Indian defendants and non-Indian victims.
3. Within the exterior boundaries of the Yakama Reservation, the State shall retrocede, in part, criminal jurisdiction over all offenses not addressed by Paragraphs 1 and 2. The State retains jurisdiction over criminal offenses involving non-Indian defendants and non-Indian victims.

4. Jurisdiction over Indian child custody proceedings under RCW 37.12.010(3) and Adoption proceedings and Dependent Children pursuant to RCW 37.12.010(6) and (7), which the Yakama Nation reassumed in 1980 under the Indian Child Welfare Act, shall remain under the exclusive jurisdiction of the Yakama Nation.
5. Outside the exterior boundaries of the Yakama Reservation, the State does not retrocede jurisdiction. The State shall retain all jurisdiction it assumed pursuant to RCW 37.12.010 in 1963 over the Yakama Nation's Indian country outside the Yakama Reservation.
6. Nothing herein shall affect the State's civil jurisdiction over the civil commitment of sexually violent predators pursuant to chapter 71.09 RCW and the State must retain such jurisdiction notwithstanding the completion of the retrocession process authorized under RCW 37.12.160.
7. Pursuant to RCW 37.12.010, the State shall retain all jurisdiction not specifically retroceded herein within the Indian country of the Yakama Nation.
8. This Proclamation does not affect, foreclose, or limit the Governor's authority to act on future requests for retrocession under RCW 37.12.160.

Signed and sealed with the official seal of the state of Washington, this 17<sup>th</sup> day of January, A.D. Two-thousand and Fourteen, at Olympia, Washington.

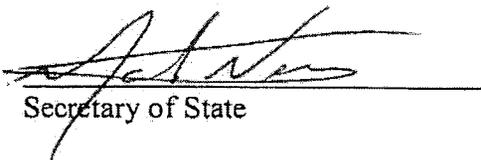
By:



Jay Insee, Governor



BY THE GOVERNOR:



Secretary of State

APPENDIX C  
Letter dated January 27, 2014  
Governor Jay Inslee to Assistant Secretary Kevin Washburn

JAY INSLEE  
Governor



STATE OF WASHINGTON  
Office of the Governor

January 27, 2014

The Honorable Kevin Washburn  
Assistant Secretary of Indian Affairs  
U.S. Department of Interior  
MS-4141 –MIB  
1849 C. Street, N.W.  
Washington, D.C. 20240

Re: Yakama Nation Retrocession Petition

Dear Assistant Secretary Washburn:

Pursuant to 25 U.S.C. §1323 and Revised Code of Washington (RCW) 37.12, I have included the attached proclamation, signed by me on January 17, 2014. The proclamation addresses a retrocession petition submitted by the Confederate Tribes and Bands of the Yakama Nation in Washington State.

On March 19, 2012, former Washington State Governor Christine Gregoire signed Engrossed Substitute House Bill 2233. This important piece of legislation created a process by which the state of Washington may retrocede to the United States civil and criminal jurisdiction previously acquired by the State over a federally recognized Indian tribe under federal Public Law 280 in 1953. The bill gives the Governor of the state of Washington the authority to approve, in whole or in part, a retrocession petition submitted by a Washington State Indian tribe. Final approval rests with the U.S. Department of the Interior.

On July 17, 2012, the Yakama Nation filed a retrocession petition with the Office of the Governor requesting full civil and criminal jurisdiction on all of Yakama Nation Indian country in five specific areas of RCW 37.12.010. I believe that the enclosed Proclamation is a great first step towards strengthening the sovereignty and independence of the Yakama Nation.

In paragraph one of the proclamation, the State grants exclusive civil and criminal jurisdiction within the exterior boundaries of the Yakama Reservation in four subject areas of RCW 37.12.010: Compulsory School Attendance; Public Assistance; Domestic Relations; and Juvenile Delinquency.

In paragraph two, the proclamation also grants to the Yakama Nation civil and criminal jurisdiction within the exterior boundaries of the reservation in Operation of Motor Vehicles on Public Streets, Alleys, Roads, and Highways cases which do not involve non-Indian plaintiffs, non-Indian defendants, or non-Indian victims. I would note that the proclamation itself states that the State will retain jurisdiction in these cases over civil causes of action involving "non-Indian



The Honorable Kevin Washburn  
January 27, 2014  
Page Two

plaintiffs, non-Indian defendants, *and* non-Indian victims,” as well as in criminal cases involving “non-Indian defendants *and* non-Indian victims.” The intent set forth in paragraph two, however, is for the State to retain jurisdiction in this area where *any* party is non-Indian, and therefore may be more properly read in both instances as the State retaining jurisdiction in those cases involving “non-Indian plaintiffs, non-Indian defendants *and/or* non-Indian victims.” I respectfully request that the Department make this clear in the notice accepting the retrocession Proclamation.

Finally, in paragraph three of the proclamation, the State is also retroceding criminal jurisdiction within the exterior boundaries of the reservation over all offenses not specifically addressed in paragraphs one and two, which do not involve non-Indian defendants or non-Indian victims. Again, I would note that in this paragraph the proclamation states that the State retains jurisdiction over criminal offenses involving “non-Indian defendants *and* non-Indian victims,” but the intent is for the State to retain such jurisdiction in those cases involving non-Indian defendants *and/or* non-Indian victims.”

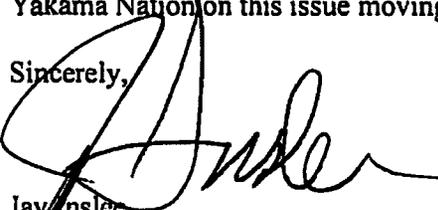
The proclamation does deny part of the petition by the Yakama Nation, and allow the State to retain existing civil and criminal jurisdiction in a limited number of areas. First and foremost, the State is retaining its existing jurisdiction outside of the exterior boundaries of the Yakama Reservation, including all trust and fee lands. Moreover, consistent with the description above, the State is retaining civil and criminal jurisdiction in Operation of Motor Vehicle cases that involve non-Indian plaintiffs, non-Indian defendants, *and/or* non-Indian victims.

It is important to note that nothing in the proclamation changes the existing jurisdiction the Yakama Nation has over Indian child custody proceedings under RCW 37.12.010(3) and Adoption proceedings and Dependent Children pursuant to RCW 37.12.010(6) and (7). The Yakama Nation reassumed jurisdiction over these subjects in 1980 under the Indian Child Welfare Act, and shall remain under the exclusive jurisdiction of the Yakama Nation.

Similarly, nothing in the proclamation shall affect the State’s civil jurisdiction over the civil commitment of sexually violent predators pursuant to chapter 71.09 RCW and the State must retain such jurisdiction notwithstanding the completion of the retrocession process authorized under RCW 37.12.160.

Thank you for accepting this proclamation on behalf of the state of Washington and for working to bring the retrocession petition to fruition. I look forward to continue working with you and the Yakama Nation on this issue moving forward.

Sincerely,



Jay Inslee  
Governor

**AGO/LICENSING AND ADMINISTRATIVE LAW DIV**

**June 16, 2017 - 2:50 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division III  
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**Appellate Court Case Title:** State of Washington v. Donald Joseph Gabriel Zack  
**Superior Court Case Number:** 16-1-01637-1

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