

TO REPEAL THE ACT ENTITLED “AN ACT TO CONFER JURISDICTION ON THE STATE OF IOWA OVER OFFENSES COMMITTED BY OR AGAINST INDIANS ON THE SAC AND FOX INDIAN RESERVATION”

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AUGUST 29, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. BISHOP of Utah, from the Committee on Natural Resources, submitted the following

R E P O R T

[To accompany H.R. 1074]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1074) to repeal the Act entitled “An Act to confer jurisdiction on the State of Iowa over offenses committed by or against Indians on the Sac and Fox Indian Reservation”, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 1074 is to repeal the Act entitled “An Act to confer jurisdiction on the State of Iowa over offenses committed by or against Indians on the Sac and Fox Indian Reservation”.

BACKGROUND AND NEED FOR LEGISLATION

The Sac and Fox Tribe of the Mississippi of Iowa live on what is known as the Meskwaki Settlement in Tama County, Iowa, which houses more than 1,300 enrolled members.¹ The tribe purchased 84 acres of original reservation lands in Iowa in 1857, but the land was not placed into trust until 1896. Pursuant to an Act of Congress (62 Stat. 1161, chapter 759), all crimes on the Tribe’s land, regardless of the Indian status of the offender or victim, fall under the jurisdiction of the State of Iowa. H.R. 1074 would rescind this Act and thereby put crimes committed by or against Indians on the Tribe’s lands under federal or tribal jurisdiction in a manner

¹ Meskwaki Official Site; <http://www.meskwaki.org>.

similar to the jurisdictional arrangement in most (but not all) Indian communities.

Criminal jurisdiction in Indian Country

Determining who may exercise jurisdiction over crime in tribal communities is extremely complex. The first consideration in determining jurisdiction over a crime is whether it was committed in Indian Country. “Indian Country,” which is defined in 18 U.S.C. 1151, means all lands and rights-of-way (regardless of who owns them) within the limits of an Indian reservation. The government has interpreted the term to include off-reservation lands held in trust for tribes.

In general, crimes committed by or against Indians in Indian Country are under the jurisdiction of the United States, pursuant to one or more federal statutes.² Crimes committed in Indian Country in which the offender and victim are non-Indian are under state jurisdiction. Crimes committed by Indians in Indian Country may be subject to the jurisdiction of a tribe (depending on the kind of crime) or the United States. Crimes committed by non-Indians against Indians are under federal but not tribal jurisdiction.³ One exception to this rule is found in Title IX of the Violence Against Women Reauthorization Act of 2013 (VAWA, Public Law 113–4). In VAWA, Congress recognized the “inherent power” of tribes to exercise criminal jurisdiction over non-Indians who commit certain domestic violence crimes against Indian spouses, dating partners, or those with whom the offender has a certain relationship. The constitutionality of these provisions has not yet been tested before the Supreme Court.

The scope and nature of tribal criminal jurisdiction is unique. Because they are not deemed to be parties to the U.S. Constitution, tribes are not required to adhere to the requirements contained in the Bill of Rights guaranteeing certain rights to defendants. Moreover, federal courts have opined that an individual can be prosecuted separately by a tribe and by the federal government for the same crime without violating the Constitution’s proscription against double jeopardy, as long as the tribe is exercising an “inherent” power and not one delegated by the federal government.

While Congress enacted the Indian Civil Rights Act (25 U.S.C. 1301 et seq.) to require tribes to guarantee to defendants basic protections resembling those in the Bill of Rights, individuals in a tribe’s jurisdiction generally do not have to seek review of their tribal conviction, or sentence in federal or state court except in narrow circumstances. For example, a defendant always has a right to file a *habeas corpus* petition with a federal court, which may determine whether the person is unlawfully detained because the individual is not Indian or the crime of which an individual is accused did not occur in the Indian Country of the tribe.⁴ Tribal sentencing

²The General Crimes Act (18 U.S.C. 1152) endows the federal government with jurisdiction to prosecute certain federal crimes committed by non-Indians against Indians in Indian country. These crimes include assault, domestic violence, illegal gun possession, stalking, murder or manslaughter (including attempts), aggravated sexual abuse, sexual abuse, sexual abuse of a minor or ward, and abusive sexual contact. The Assimilative Crimes Act (18 U.S.C. 13) authorizes the federal government to try non-Indians in federal court for violation of applicable state law.

³In *Oliphant v. Suquamish Indian tribe*, 435 U.S. 191 (1978), the Supreme Court held that tribes lack inherent authority over non-Indians.

⁴See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978).

powers are limited,⁵ many tribes lack financial resources to operate fully functioning justice systems, and tribes are not required by federal law to maintain separation between the political and judicial branches of their governments. For more information, an Indian Country Criminal Jurisdiction Chart is available on the U.S. Department of Justice website.⁶

Jurisdiction over crimes in the Sac and Fox Community

In 1948, Congress granted jurisdiction over all crimes committed by or against Indians on the Sac and Fox Reservation to the State of Iowa. At that time, there was no mechanism in the federal government concerning criminal jurisdiction on the Tribe's land, and up until that point the Tribe had largely policed itself.

Congress's transfer of criminal jurisdiction in the Sac and Fox tribal community to the State of Iowa was enacted not long before similar arrangements were made for reservations in other states. In 1953, Congress passed a law commonly called Public Law 280,⁷ transferring criminal jurisdiction over all crime (regardless of the Indian status of offender and victim) in Indian Country of six states from the federal government to those states.⁸ In 2010, with the passage of the Tribal Law and Order Act (Public Law 111–211), tribes residing in these “mandatory” Public Law 280 states could request the U.S. Department of Justice to re-assume federal criminal jurisdiction over that tribe in Indian Country, though states would exercise concurrent jurisdiction, and tribes would exercise concurrent jurisdiction where applicable.

COMMITTEE ACTION

H.R. 1074 was introduced on February 15, 2017, by Congressman Rod Blum (R–IA). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Indian, Insular and Alaska Native Affairs. On June 7, 2017, the Subcommittee held a hearing on the bill. On July 25, 2017, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. No amendments were offered, and the bill was ordered favorably reported to the House of Representatives by unanimous consent on July 26, 2017.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

⁵ “[The Tribal Law and Order Act] . . . restored limited felony sentencing authority to tribes that meet certain conditions. Specifically, TLOA allows tribes to impose sentences of up to three years' imprisonment and/or a \$15,000 fine per offense for a combined maximum sentence of nine years per criminal proceeding. 25 U.S.C. 1302(b).” <https://www.justice.gov/tribal/file/796981/download>.

⁶ <https://www.justice.gov/sites/default/files/usao-wdok/legacy/2014/03/25/Indian%20Country%20Criminal%20Jurisdiction%20ChartColor2010.pdf>.

⁷ Public Law 83–280, August 15, 1953, 18 U.S.C. 1162, 28 U.S.C. 1360, and 25 U.S.C. 1321–1326.

⁸ California, Minnesota, Nebraska, Oregon, Wisconsin, and Alaska. Since 1953, other states have assumed some jurisdiction over crimes committed by tribal members on tribal lands.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET
ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 4, 2017.

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1074, a bill to repeal the Act entitled “An Act to confer jurisdiction on the State of Iowa over offenses committed by or against Indians on the Sac and Fox Indian Reservation.”

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robert Reese.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 1074—A bill to repeal the Act entitled “An Act to confer jurisdiction on the State of Iowa over offenses committed by or against Indians on the Sac and Fox Indian Reservation”

H.R. 1074 would repeal a 1948 law that gave the state of Iowa jurisdiction over criminal offenses committed by or against Indians on the Sac and Fox Indian Reservation; thus criminal jurisdiction would revert to either the Sac and Fox Nation or the federal government.

As a result of the repeal, the Sac and Fox Nation would be eligible for funding from the Bureau of Indian Affairs (BIA) to equip and run its existing tribal court, law enforcement operations, and detention facility. The amount of such funding would depend on how much assistance the tribe would request after enactment. Based on information from BIA reports on the funding provided to tribes of a similar size, CBO estimates that the tribe would be eligible for up to \$7 million a year in assistance; that spending would be subject to the availability of appropriated funds. However, based on testimony and public statements from BIA and the tribe about the amount of assistance the tribe intends to apply for, CBO estimates that implementing H.R. 1074 would have no significant federal cost over the 2018–2022 period.

Enacting H.R. 1074 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1074 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

On June 2, 2017, CBO transmitted a cost estimate for S. 381, as ordered reported by the Senate Committee on Indian Affairs on March 29, 2017. S. 381 is similar to H.R. 1074 and CBO's estimates of their budgetary effects are the same.

The CBO staff contact for this estimate is Robert Reese. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to repeal the Act entitled "An Act to confer jurisdiction on the State of Iowa over offenses committed by or against Indians on the Sac and Fox Indian Reservation".

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets and existing law in which no change is proposed is shown in roman):

ACT OF JUNE 30, 1948

(Public Law Chapter 759)

AN ACT to confer jurisdiction on the State of Iowa over offenses committed by or against Indians on the Sac and Fox Indian Reservation

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That jurisdiction is hereby conferred on the State of Iowa over offenses committed by or against Indians on the Sac and Fox Indian Reservation in

that State to the same extent as its courts have jurisdiction generally over offenses committed within said State outside of any Indian reservation: *Provided, however,* That nothing herein contained shall deprive the courts of the United States of jurisdiction over offenses defined by the laws of the United States committed by or against Indians on Indian reservations.】

