

## SUBCHAPTER I—GENERALLY

## § 1301. Definitions

For purposes of this subchapter, the term—

(1) “Indian tribe” means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;

(2) “powers of self-government” means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;

(3) “Indian court” means any Indian tribal court or court of Indian offense; and

(4) “Indian” means any person who would be subject to the jurisdiction of the United States as an Indian under section 1153, title 18, if that person were to commit an offense listed in that section in Indian country to which that section applies.

(Pub. L. 90-284, title II, §201, Apr. 11, 1968, 82 Stat. 77; Pub. L. 101-511, title VIII, §8077(b), (c), Nov. 5, 1990, 104 Stat. 1892.)

## AMENDMENTS

1990—Par. (2). Pub. L. 101-511, §8077(b), inserted at end “means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;”.

Par. (4). Pub. L. 101-511, §8077(c), added par. (4).

## SHORT TITLE

Title II of Pub. L. 90-284, which is classified generally to this subchapter, is popularly known as the “Indian Civil Rights Act of 1968”.

## TIME LIMITATION ON CRIMINAL MISDEMEANOR JURISDICTION OF TRIBAL COURTS OVER NON-MEMBER INDIANS

Section 8077(d) of Pub. L. 101-511, as amended by Pub. L. 102-124, §1, Oct. 9, 1991, 105 Stat. 616, which provided that the effects of subsecs. (b) and (c), which amended this section, as those subsections affect the criminal misdemeanor jurisdiction of tribal courts over non-member Indians have no effect after Oct. 18, 1991, was repealed by Pub. L. 102-137, Oct. 28, 1991, 105 Stat. 646. Subsequent to repeal, Pub. L. 102-172, title VIII, §8112A(b), Nov. 26, 1991, 105 Stat. 1202, purported to amend section 8077(d) of Pub. L. 101-511 by substituting “1993” for “1991”.

## § 1302. Constitutional rights

## (a) In general

No Indian tribe in exercising powers of self-government shall—

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(3) subject any person for the same offense to be twice put in jeopardy;

(4) compel any person in any criminal case to be a witness against himself;

(5) take any private property for a public use without just compensation;

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense (except as provided in subsection (b));

(7)(A) require excessive bail, impose excessive fines, or inflict cruel and unusual punishment;

(B) except as provided in subparagraph (C), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 1 year or a fine of \$5,000, or both;

(C) subject to subsection (b), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 3 years or a fine of \$15,000, or both; or

(D) impose on a person in a criminal proceeding a total penalty or punishment greater than imprisonment for a term of 9 years;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any bill of attainder or ex post facto law; or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

## (b) Offenses subject to greater than 1-year imprisonment or a fine greater than \$5,000

A tribal court may subject a defendant to a term of imprisonment greater than 1 year but not to exceed 3 years for any 1 offense, or a fine greater than \$5,000 but not to exceed \$15,000, or both, if the defendant is a person accused of a criminal offense who—

(1) has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or

(2) is being prosecuted for an offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States.

## (c) Rights of defendants

In a criminal proceeding in which an Indian tribe, in exercising powers of self-government, imposes a total term of imprisonment of more than 1 year on a defendant, the Indian tribe shall—

(1) provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; and

(2) at the expense of the tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that

applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;

(3) require that the judge presiding over the criminal proceeding—

(A) has sufficient legal training to preside over criminal proceedings; and

(B) is licensed to practice law by any jurisdiction in the United States;

(4) prior to charging the defendant, make publicly available the criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances) of the tribal government; and

(5) maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.

#### (d) Sentences

In the case of a defendant sentenced in accordance with subsections (b) and (c), a tribal court may require the defendant—

(1) to serve the sentence—

(A) in a tribal correctional center that has been approved by the Bureau of Indian Affairs for long-term incarceration, in accordance with guidelines to be developed by the Bureau of Indian Affairs (in consultation with Indian tribes) not later than 180 days after July 29, 2010;

(B) in the nearest appropriate Federal facility, at the expense of the United States pursuant to the Bureau of Prisons tribal prisoner pilot program described in section 304(c)<sup>1</sup> of the Tribal Law and Order Act of 2010;

(C) in a State or local government-approved detention or correctional center pursuant to an agreement between the Indian tribe and the State or local government; or

(D) in an alternative rehabilitation center of an Indian tribe; or

(2) to serve another alternative form of punishment, as determined by the tribal court judge pursuant to tribal law.

#### (e) Definition of offense

In this section, the term “offense” means a violation of a criminal law.

#### (f) Effect of section

Nothing in this section affects the obligation of the United States, or any State government that has been delegated authority by the United States, to investigate and prosecute any criminal violation in Indian country.

(Pub. L. 90-284, title II, §202, Apr. 11, 1968, 82 Stat. 77; Pub. L. 99-570, title IV, §4217, Oct. 27, 1986, 100 Stat. 3207-146; Pub. L. 111-211, title II, §234(a), July 29, 2010, 124 Stat. 2279.)

#### REFERENCES IN TEXT

Section 304(c) of the Tribal Law and Order Act of 2010, referred to in subsec. (d)(1)(B), probably means section 234(c) of title II of Pub. L. 111-211, which is set out as a note below. See par. (13) of H. Con. Res. 304 (111th Congress), which is not classified to the Code.

<sup>1</sup> See References in Text note below.

#### AMENDMENTS

2010—Pub. L. 111-211, §234(a)(1), designated existing provisions as subsec. (a) and inserted subsec. heading.

Subsec. (a)(6). Pub. L. 111-211, §234(a)(2)(A), inserted “(except as provided in subsection (b))” after “assistance of counsel for his defense”. Amendment was executed to reflect the probable intent of Congress, notwithstanding errors in the directory language in quoting the text to be inserted.

Subsec. (a)(7). Pub. L. 111-211, §234(a)(2)(B), added par. (7) and struck out former par. (7) which read as follows: “require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year and a fine of \$5,000, or both;”.

Subsecs. (b) to (f). Pub. L. 111-211, §234(a)(3), added subsecs. (b) to (f).

1986—Par. (7). Pub. L. 99-570, which directed that “for a term of one year and a fine of \$5,000, or both” be substituted for “for a term of six months and a fine of \$500, or both”, was executed by making the substitution for “for a term of six months or a fine of \$500, or both” as the probable intent of Congress.

#### BUREAU OF PRISONS TRIBAL PRISONER PILOT PROGRAM

Pub. L. 111-211, title II, §234(c), July 29, 2010, 124 Stat. 2281, provided that:

“(1) IN GENERAL.—Not later than 120 days after the date of enactment of this title [July 29, 2010], the Director of the Bureau of Prisons shall establish a pilot program under which the Bureau of Prisons shall accept offenders convicted in tribal court pursuant to section 202 of the Indian Civil Rights Act of 1968 (25 U.S.C. 1302) (as amended by this section), subject to the conditions described in paragraph (2).

“(2) CONDITIONS.—

“(A) IN GENERAL.—As a condition of participation in the pilot program described in paragraph (1), the tribal court shall submit to the Attorney General a request for confinement of the offender, for approval by the Attorney General (or a designee) by not later than 30 days after the date of submission.

“(B) LIMITATIONS.—Requests for confinement shall be limited to offenders convicted of a violent crime (comparable to the violent crimes described in section 1153(a) of title 18, United States Code) for which the sentence includes a term of imprisonment of 2 or more years.

“(C) CUSTODY CONDITIONS.—The imprisonment by the Bureau of Prisons shall be subject to the conditions described in section 5003 of title 18, United States Code, regarding the custody of State offenders, except that the offender shall be placed in the nearest available and appropriate Federal facility, and imprisoned at the expense of the United States.

“(D) CAP.—The Bureau of Prisons shall confine not more than 100 tribal offenders at any time.

“(3) RESCINDING REQUESTS.—

“(A) IN GENERAL.—The applicable tribal government shall retain the authority to rescind the request for confinement of a tribal offender by the Bureau of Prisons under this paragraph at any time during the sentence of the offender.

“(B) RETURN TO TRIBAL CUSTODY.—On rescission of a request under subparagraph (A), a tribal offender shall be returned to tribal custody.

“(4) REASSESSMENT.—If tribal court demand for participation in this pilot program exceeds 100 tribal offenders, a representative of the Bureau of Prisons shall notify Congress.

“(5) REPORT.—Not later than 3 years after the date of establishment of the pilot program, the Attorney General shall submit to Congress a report describing the status of the program, including recommendations regarding the future of the program, if any.

“(6) TERMINATION.—Except as otherwise provided by an Act of Congress, the pilot program under this paragraph shall expire on the date that is 4 years after the date on which the program is established.”

[For definition of “tribal government” as used in section 234(c) of Pub. L. 111-211, set out above, see section 203(a) of Pub. L. 111-211, set out as a note under section 2801 of this title.]

PURPOSE OF 1986 AMENDMENT

Section 4217 of Pub. L. 99-570 provided in part that amendment of par. (7) of this section was to “enhance the ability of tribal governments to prevent and penalize the traffic of illegal narcotics on Indian reservations”.

**§ 1303. Habeas corpus**

The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

(Pub. L. 90-284, title II, §203, Apr. 11, 1968, 82 Stat. 78.)

SUBCHAPTER II—MODEL CODE GOVERNING COURTS OF INDIAN OFFENSES

**§ 1311. Model code**

The Secretary of the Interior is authorized and directed to recommend to the Congress, on or before July 1, 1968, a model code to govern the administration of justice by courts of Indian offenses on Indian reservations. Such code shall include provisions which will (1) assure that any individual being tried for an offense by a court of Indian offenses shall have the same rights, privileges, and immunities under the United States Constitution as would be guaranteed any citizen of the United States being tried in a Federal court for any similar offense, (2) assure that any individual being tried for an offense by a court of Indian offenses will be advised and made aware of his rights under the United States Constitution, and under any tribal constitution applicable to such individual, (3) establish proper qualifications for the office of judge of the court of Indian offenses, and (4) provide for the establishing of educational classes for the training of judges of courts of Indian offenses. In carrying out the provisions of this subchapter, the Secretary of the Interior shall consult with the Indians, Indian tribes, and interested agencies of the United States.

(Pub. L. 90-284, title III, §301, Apr. 11, 1968, 82 Stat. 78.)

**§ 1312. Authorization of appropriations**

There is hereby authorized to be appropriated such sum as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 90-284, title III, §302, Apr. 11, 1968, 82 Stat. 78.)

SUBCHAPTER III—JURISDICTION OVER CRIMINAL AND CIVIL ACTIONS

**§ 1321. Assumption by State of criminal jurisdiction**

**(a) Consent of United States**

**(1) In general**

The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or

against Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian country or part thereof which could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

**(2) Concurrent jurisdiction**

At the request of an Indian tribe, and after consultation with and consent by the Attorney General, the United States shall accept concurrent jurisdiction to prosecute violations of sections 1152 and 1153 of title 18 within the Indian country of the Indian tribe.

**(b) Alienation, encumbrance, taxation, and use of property; hunting, trapping, or fishing**

Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, 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 deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(Pub. L. 90-284, title IV, §401, Apr. 11, 1968, 82 Stat. 78; Pub. L. 111-211, title II, §221(a), July 29, 2010, 124 Stat. 2271.)

AMENDMENTS

2010—Pub. L. 111-211 substituted “Assumption by State of criminal jurisdiction” for “Assumption by State” in section catchline, inserted subsec. (a) heading, inserted par. (1) designation and heading, and added par. (2). Amendment to section catchline was executed as the probable intent of Congress, notwithstanding directory language which erroneously directed the amendment to subsec. (a).

**§ 1322. Assumption by State of civil jurisdiction**

**(a) Consent of United States; force and effect of civil laws**

The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian country or any part thereof as may