

108TH CONGRESS
2D SESSION

S. 2734

To implement the recommendations of the Inspector General of the Department of the Interior regarding Indian Tribal detention facilities.

IN THE SENATE OF THE UNITED STATES

JULY 22, 2004

Mr. CAMPBELL introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To implement the recommendations of the Inspector General of the Department of the Interior regarding Indian Tribal detention facilities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Indian Tribal Deten-
5 tion Facility Reform Act of 2004”.

6 **SEC. 2. DEFINITIONS.**

7 Section 2 of the Indian Law Enforcement Reform Act
8 (25 U.S.C. 2801) is amended to read as follows:

9 **“SEC. 2. DEFINITIONS.**

10 “In this Act:

1 “(1) BRANCH OF CRIMINAL INVESTIGATIONS.—

2 The term ‘Branch of Criminal Investigations’ means
3 the entity the Secretary is required to establish with-
4 in the Division of Law Enforcement Services under
5 section 3(d)(1).

6 “(2) BRANCH OF DETENTION SERVICES.—The
7 term ‘Branch of Detention Services’ means the enti-
8 ty that the Secretary is required to establish within
9 the Division of Law Enforcement Services under
10 section 3(f)(1).

11 “(3) BUREAU.—The term ‘Bureau’ means the
12 Bureau of Indian Affairs of the Department of the
13 Interior.

14 “(4) COMPLEMENTARY FACILITY.—

15 “(A) IN GENERAL.—The term ‘complemen-
16 tary facility’ means a facility for the provision
17 of additional or necessary services to detainees
18 as a result of their being in custody.

19 “(B) INCLUSION.—The term ‘complemen-
20 tary facility’ includes a detoxification center,
21 protective custody cell, shelter care facility,
22 community treatment center, halfway house, or
23 any similar facility.

1 “(5) DETAINEE.—The term ‘detainee’ means
2 an individual who is held in a detention facility for
3 any period of time.

4 “(6) DETENTION FACILITY.—The term ‘deten-
5 tion facility’ means a facility for holding of individ-
6 uals for correctional, intergovernmental, or other
7 custodial purposes that is—

8 “(A) operated by the Bureau; or

9 “(B) operated by an Indian tribe under the
10 Indian Self-Determination and Education As-
11 sistance Act (25 U.S.C. 450 et seq.).

12 “(7) DIVISION OF LAW ENFORCEMENT SERV-
13 ICES.—The term ‘Division of Law Enforcement
14 Services’ means the entity established within the Bu-
15 reau under section 3(b).

16 “(8) EMPLOYEE OF THE BUREAU.—The term
17 ‘employee of the Bureau’ includes an officer of the
18 Bureau.

19 “(9) ENFORCEMENT OF A LAW.—The term ‘en-
20 forcement of a law’ includes the prevention, detec-
21 tion, and investigation of an offense and the deten-
22 tion or confinement of an offender.

23 “(10) INDIAN COUNTRY.—The term ‘Indian
24 country’ has the meaning given the term in section
25 1151 of title 18, United States Code.

1 “(11) INDIAN TRIBE.—The term ‘Indian tribe’
 2 has the meaning given the term in section 201 of
 3 Public Law 90–284 (commonly known as the ‘Civil
 4 Rights Act of 1968’) (25 U.S.C. 1301).

5 “(12) OFFENSE.—The term ‘offense’ means an
 6 offense against the United States, including a viola-
 7 tion of a Federal regulation relating to part or all
 8 of Indian country.

9 “(13) SECRETARY.—The term ‘Secretary’
 10 means the Secretary of the Interior.

11 “(14) SERIOUS INCIDENT.—

12 “(A) IN GENERAL.—The term ‘serious inci-
 13 cident’ means an occurrence, event, activity, or
 14 other incident that results in—

15 “(i) a risk of harm or actual harm to
 16 an individual or the community; or

17 “(ii) serious damage to property.

18 “(B) INCLUSION.—The term ‘serious inci-
 19 dent’ includes all incidents relating to detainee
 20 deaths or injuries, suicides, attempted suicides,
 21 escapes, and officer safety issues.”.

22 **SEC. 3. BRANCH OF DETENTION SERVICES.**

23 Section 3 of the Indian Law Enforcement Reform Act
 24 (25 U.S.C. 2802) is amended—

1 (1) in subsection (d)(4), by striking “Area”
2 each place it appears and inserting “Regional”; and

3 (2) by adding at the end the following:

4 “(f) BRANCH OF DETENTION SERVICES.—

5 “(1) ESTABLISHMENT.—The Secretary shall es-
6 tablish within the Division of Law Enforcement
7 Services a separate Branch of Detention Services.

8 “(2) DUTIES.—The Branch of Detention Serv-
9 ices—

10 “(A) except as prohibited by other Federal
11 law, shall be responsible for the detention, con-
12 finement, and corrections of offenders within
13 Indian country;

14 “(B) shall not be primarily responsible for
15 routine law enforcement, criminal investiga-
16 tions, or police operations in Indian country;
17 and

18 “(C) under an interagency agreement be-
19 tween the Secretary and Attorney General and
20 subject to such guidelines as the appropriate
21 agencies or officials of the Department of Jus-
22 tice may adopt, may be responsible for tempo-
23 rarily detaining individuals for the purpose of
24 Federal prosecution, immigration, or transpor-
25 tation, or any other detention purpose.

1 “(3) REGULATIONS.—The Secretary shall pro-
2 mulgate regulations establishing a procedure for ac-
3 tive cooperation and consultation of the detention
4 services employees of the Branch of Detention Serv-
5 ices assigned to an Indian reservation with the gov-
6 ernmental, law enforcement, and detention officials
7 of the Indian tribes located on the Indian reserva-
8 tion.

9 “(4) PERSONNEL.—

10 “(A) SUPERVISION AND DIRECTION.—Per-
11 sonnel of the Branch of Detention Services—

12 “(i) shall be subject only to the super-
13 vision and direction of the law enforcement
14 personnel or personnel of the Branch of
15 Detention Services or of the Division, as
16 the Secretary considers appropriate; and

17 “(ii) shall not be subject to the super-
18 vision of the Bureau Agency Super-
19 intendent or Bureau Regional Director.

20 “(B) EFFECT OF PARAGRAPH.—Nothing
21 in this paragraph—

22 “(i) precludes cooperation, coordina-
23 tion, or consultation, as appropriate, with
24 non-law enforcement Bureau personnel at
25 the agency or regional level; or

“(ii) restricts the right of an Indian tribe to contract a detention program under the authority of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) or to maintain its own detention operations.

“(C) REESTABLISHMENT OF AUTHORITY.—

“(i) REQUEST.—After the date that is 1 year after the date of establishment of the Branch of Detention Services, any Indian tribe may, by resolution of the governing body of the Indian tribe, request the Secretary to reestablish authority over detention of members of the Indian tribe directly through the Agency Superintendent or Bureau Regional Office Director rather than through the Branch of Detention Services.

“(ii) APPROVAL.—In the absence of good cause to the contrary, the Secretary, on receipt of a resolution under clause (i), shall reestablish the authority as requested by the Indian tribe.”.

1 **SEC. 4. FUNDING.**

2 Section 9 of the Indian Law Enforcement Reform Act
3 (25 U.S.C. 2808) is amended—

4 (1) by striking the section heading and all that
5 follows through “Any expenses” and inserting the
6 following:

7 **“SEC. 9. FUNDING.**

8 “(a) IN GENERAL.—Any expenses”; and

9 (2) by adding at the end the following:

10 “(b) AVAILABILITY.—Funds made available to carry
11 out this Act shall remain available until expended.”.

12 **SEC. 5. DETENTION REFORM AND REVIEW.**

13 The Indian Law Enforcement Reform Act is amend-
14 ed by inserting after section 10 (25 U.S.C. 2809) the fol-
15 lowing:

16 **“SEC. 10A. DETENTION REFORM.**

17 “(a) FINDINGS.—Congress finds that—

18 “(1) there are 74 detention facilities in Indian
19 country;

20 “(2) serious deficiencies in Indian country de-
21 tention have arisen, including—

22 “(A) poor facility conditions;

23 “(B) lack of staff training;

24 “(C) understaffing; and

1 “(D) lack of detention facility administra-
2 tion and other operational standards, or failure
3 to comply with any such standards;

4 “(3) those deficiencies create a dangerous and
5 potentially life-threatening situation for detainees
6 and detention personnel;

7 “(4) the April 2004 interim report of the In-
8 specter General of the Department of the Interior
9 found that deaths, escapes, and assaults on correc-
10 tional officers have occurred at several detention fa-
11 cilities in Indian country as a result of those defi-
12 ciencies;

13 “(5) the Division of Law Enforcement Services
14 has responsibility for both law enforcement and de-
15 tention services, but no clear lines of authority for
16 detention services;

17 “(6) existing Federal law does not provide clear
18 lines of authority or standards for detention services
19 in Indian country; and

20 “(7) clear authority and standards are needed
21 to assist detention and law enforcement officials
22 in—

23 “(A) meeting the principal goals of Indian
24 country law enforcement and detention;

25 “(B) protecting life and property; and

1 “(C) reducing crime and recidivism rates.

2 “(b) REPORTING PROTOCOLS FOR SERIOUS INCI-
3 DENTS.—

4 “(1) IN GENERAL.—Not later than 270 days
5 after the date of enactment of the Indian Tribal De-
6 tention Facility Reform Act of 2004, the Bureau
7 shall develop and implement protocols to ensure that
8 all serious incidents occurring at a detention facility
9 are reported promptly through an established chain
10 of command.

11 “(2) REPORTING OF ESCAPES TO LAW EN-
12 FORCEMENT AUTHORITIES.—The protocols shall en-
13 sure that each incident involving an escape of a de-
14 tainee from a detention facility is reported imme-
15 diately to the appropriate Federal, State, tribal, and
16 local law enforcement authorities.

17 “(3) PRELIMINARY INQUIRIES INTO SERIOUS
18 INCIDENTS.—

19 “(A) IN GENERAL.—The Division of Law
20 Enforcement Services shall conduct a prelimi-
21 nary inquiry of any serious incident to deter-
22 mine whether a full investigation is warranted.

23 “(B) FINDINGS.—All findings made in
24 conducting preliminary inquiries under subpara-
25 graph (A) shall be reported to the Division of

1 Law Enforcement Services and the Assistant
2 Secretary of the Interior for Indian Affairs.

3 “(4) DETENTION FACILITIES STAFFING RE-
4 VIEW.—The Bureau shall—

5 “(A) not later than 90 days after the date
6 of enactment of the Indian Tribal Detention
7 Facility Reform Act of 2004, conduct a review
8 of the staffing needs at all detention facilities;
9 and

10 “(B) update that review annually.

11 “(c) REGULATIONS.—Not later than 1 year after the
12 date of enactment of the Indian Tribal Detention Facility
13 Reform Act of 2004, the Secretary, after consultation with
14 the Attorney General, shall promulgate regulations to
15 carry out subsections (a) and (b).

16 “(d) DETENTION FACILITIES REVIEW.—

17 “(1) IN GENERAL.—

18 “(A) CONSULTATION.—Not later than 1
19 year after the date of enactment of the Indian
20 Tribal Detention Facility Reform Act of 2004,
21 in consultation with Indian tribes to the extent
22 practicable, the Bureau shall complete an as-
23 sessment of the physical conditions and needs
24 of all detention facilities.

1 “(B) REPORT.—Not later than 15 months
2 after the date of enactment of the Indian Tribal
3 Detention Facility Reform Act of 2004, the Bu-
4 reau shall—

5 “(i) submit to the Committee on In-
6 dian Affairs and the Committee on Appro-
7 priations of the Senate and the Committee
8 on Resources and the Committee on Ap-
9 propriations of the House of Representa-
10 tives a report that describes the results of
11 the assessment under subparagraph (A);
12 and

13 “(ii) make the report available to In-
14 dian tribal governments.

15 “(2) DATA AND METHODOLOGIES.—In pre-
16 paring the report under paragraph (1), the Bureau
17 shall use—

18 “(A) the existing Department of Justice
19 Federal Bureau of Prisons formula for deter-
20 mining the condition and adequacy of Depart-
21 ment of Justice detention facilities, including
22 operational standards;

23 “(B) data relating to conditions at deten-
24 tion facilities that have previously been com-
25 piled, collected, or secured from any source de-

1 rived, so long as the data are accurate, relevant,
2 timely, and necessary to preparation of the re-
3 port; and

4 “(C) the methodologies of the American
5 Institute of Architects or other accredited and
6 reputable architecture or engineering associa-
7 tions responsible for detention facility construc-
8 tion.

9 “(3) CONTENTS.—The report shall include—

10 “(A) a catalog of the condition of detention
11 facilities that—

12 “(i) identifies the existing detention
13 and complementary facilities and any de-
14 tention and complementary facilities that
15 do not exist but are needed, taking into
16 consideration—

17 “(I) the size of a detention facil-
18 ity or complementary facility;

19 “(II) the number of detainees in
20 a facility;

21 “(III) the age and condition of a
22 facility;

23 “(IV) interjurisdictional deten-
24 tion needs;

25 “(V) staff needs; and

1 “(VI) prisoner isolation and
2 transportation needs;

3 “(ii) establishes a routine mainte-
4 nance schedule for each facility;

5 “(iii) identifies staffing and oper-
6 ational needs of existing and needed facili-
7 ties; and

8 “(iv) provides specific cost estimates
9 needed to repair, renovate, lease or con-
10 struct any new, existing or additional de-
11 tention facilities or complementary facili-
12 ties;

13 “(B) a detailed plan to bring all detention
14 facilities and complementary facilities into com-
15 pliance with applicable standards that in-
16 cludes—

17 “(i) detailed information on the status
18 of each facility’s compliance with the
19 standards;

20 “(ii) specific cost estimates for meet-
21 ing the standards at each facility; and

22 “(iii) specific timelines for bringing
23 each facility into compliance with the
24 standards;

1 “(C) an assessment of the feasibility of de-
 2 veloping regional detention facilities, taking into
 3 consideration the factors identified in subpara-
 4 graph (A)(i) and a comparison of costs and
 5 benefits of regional facilities versus individual
 6 tribal facilities; and

7 “(D) an assessment of the feasibility of
 8 tribal operation of the facilities identified under
 9 subparagraphs (A)(i) and (C) under the Indian
 10 Self-Determination and Education Assistance
 11 Act (25 U.S.C. 450 et seq.), including—

12 “(i) any cost savings that would result
 13 from tribal rather than Federal operation
 14 of the facilities; and

15 “(ii) a comparison of costs and bene-
 16 fits arising from individual tribal operation
 17 versus contracting detention services with
 18 State or local facilities.

19 “(4) EFFECT OF SUBSECTION.—Nothing in this
 20 subsection requires termination of the operations of
 21 any facility that fails to comply with standards de-
 22 scribed in subparagraph (B).

23 “(5) AUTHORIZATION OF APPROPRIATIONS.—
 24 There is authorized to be appropriated to carry out

- 1 this subsection \$500,000, to remain available until
- 2 expended.”.

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