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1<sup>ST</sup> SESSION

# H. R. 1268

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IN THE SENATE OF THE UNITED STATES

AUGUST 3 (legislative day, JUNE 30), 1993

Received; read twice and referred to the Committee on Indian Affairs

AUGUST 6 (legislative day, JUNE 30), 1993

Committee discharged

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## AN ACT

To assist the development of tribal judicial systems, and  
for other purposes.

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 Justice  
5 Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds and declares that—

8 (1) there is a government-to-government rela-  
9 tionship between the United States and each Indian  
10 tribe;

1           (2) the United States has a trust responsibility  
2           to each tribal government that includes the protec-  
3           tion of the sovereignty of each tribal government;

4           (3) Congress, through statutes, treaties, and  
5           the exercise of administrative authorities, has recog-  
6           nized the self-determination, self-reliance, and inher-  
7           ent sovereignty of Indian tribes;

8           (4) Indian tribes possess the inherent authority  
9           to establish their own form of government, including  
10          tribal justice systems;

11          (5) tribal justice systems are an essential part  
12          of tribal governments and serve as important forums  
13          for ensuring public health and safety and the politi-  
14          cal integrity of tribal governments;

15          (6) Congress and the Federal courts have re-  
16          peatedly recognized tribal justice systems as the ap-  
17          propriate forums for the adjudication of disputes af-  
18          fecting personal and property rights;

19          (7) traditional tribal justice practices are essen-  
20          tial to the maintenance of the culture and identity  
21          of Indian tribes and to the goals of this Act;

22          (8) tribal justice systems are inadequately fund-  
23          ed, and the lack of adequate funding impairs their  
24          operation; and

1           (9) tribal government involvement in and com-  
2           mitment to improving tribal justice systems is essen-  
3           tial to the accomplishment of the goals of this Act.

4 **SEC. 3. DEFINITIONS.**

5           For purposes of this Act:

6           (1) The term “Bureau” means the Bureau of  
7           Indian Affairs of the Department of the Interior.

8           (2) The term “Courts of Indian Offenses”  
9           means the courts established pursuant to part 11 of  
10          title 25, Code of Federal Regulations.

11          (3) The term “Indian tribe” means any Indian  
12          tribe, band, nation, pueblo, or other organized group  
13          or community, including any Alaska Native entity,  
14          which administers justice under its inherent author-  
15          ity or the authority of the United States and which  
16          is recognized as eligible for the special programs and  
17          services provided by the United States to Indian  
18          tribes because of their status as Indians.

19          (4) The term “judicial personnel” means any  
20          judge, magistrate, court counselor, court clerk, court  
21          administrator, bailiff, probation officer, officer of the  
22          court, dispute resolution facilitator, or other official,  
23          employee, or volunteer within the tribal justice  
24          system.

1           (5) The term “Office” means the Office of  
2 Tribal Justice Support within the Bureau of Indian  
3 Affairs.

4           (6) The term “Secretary” means the Secretary  
5 of the Interior.

6           (7) The term “tribal organization” means any  
7 organization defined in section 4(l) of the Indian  
8 Self-Determination and Education Assistance Act.

9           (8) The term “tribal justice system” means the  
10 entire judicial branch, and employees thereof, of an  
11 Indian tribe, including (but not limited to) tradi-  
12 tional methods and forums for dispute resolution,  
13 lower courts, appellate courts (including intertribal  
14 appellate courts), alternative dispute resolution sys-  
15 tems, and circuit rider systems, established by inher-  
16 ent tribal authority whether or not they constitute a  
17 court of record.

## 18           **TITLE I—TRIBAL JUSTICE** 19           **SYSTEMS**

### 20   **SEC. 101. OFFICE OF TRIBAL JUSTICE SUPPORT.**

21           (a) ESTABLISHMENT.—There is hereby established  
22 within the Bureau the Office of Tribal Justice Support.  
23 The purpose of the Office shall be to further the develop-  
24 ment, operation, and enhancement of tribal justice sys-  
25 tems and Courts of Indian Offenses.

1           (b) TRANSFER OF EXISTING FUNCTIONS AND PER-  
2 SONNEL.—All functions performed before the date of the  
3 enactment of this Act by the Branch of Judicial Services  
4 of the Bureau and all personnel assigned to such Branch  
5 as of the date of the enactment of this Act are hereby  
6 transferred to the Office of Tribal Justice Support. Any  
7 reference in any law, regulation, executive order, reorga-  
8 nization plan, or delegation of authority to the Branch of  
9 Judicial Services is deemed to be a reference to the Office  
10 of Tribal Justice Support.

11           (c) FUNCTIONS.—In addition to the functions trans-  
12 ferred to the Office pursuant to subsection (b), the Office  
13 shall perform the following functions:

14           (1) Provide funds to Indian tribes and tribal or-  
15 ganizations for the development, enhancement, and  
16 continuing operation of tribal justice systems.

17           (2) Provide technical assistance and training,  
18 including programs of continuing education and  
19 training for personnel of Courts of Indian Offenses.

20           (3) Study and conduct research concerning the  
21 operation of tribal justice systems.

22           (4) Promote cooperation and coordination  
23 among tribal justice systems and the Federal and  
24 State judiciary systems.

1           (5) Oversee the continuing operations of the  
2 Courts of Indian Offenses.

3           (6) Provide funds to Indian tribes and tribal or-  
4 ganizations for the continuation and enhancement of  
5 traditional tribal judicial practices.

6           (d) NO IMPOSITION OF STANDARDS.—Nothing in  
7 this Act shall be deemed or construed to authorize the Of-  
8 fice to impose justice standards on Indian tribes.

9           (e) ASSISTANCE TO TRIBES.—(1) The Office shall  
10 provide technical assistance and training to any Indian  
11 tribe or tribal organization upon request. Technical assist-  
12 ance and training shall include (but not be limited to) as-  
13 sistance for the development of—

14           (A) tribal codes and rules of procedure;

15           (B) tribal court administrative procedures and  
16 court records management systems;

17           (C) methods of reducing case delays;

18           (D) methods of alternative dispute resolution;

19           (E) tribal standards for judicial administration  
20 and conduct; and

21           (F) long-range plans for the enhancement of  
22 tribal justice systems.

23           (2) Technical assistance and training provided pursu-  
24 ant to paragraph (1) may be provided through direct serv-

1 ices, by contract with independent entities, or through  
2 grants to Indian tribes or tribal organizations.

3 (f) INFORMATION CLEARINGHOUSE ON TRIBAL JUS-  
4 TICE SYSTEMS.—The Office shall maintain an information  
5 clearinghouse (which shall include an electronic data base)  
6 on tribal justice systems and Courts of Indian Offenses,  
7 including (but not limited to) information on staffing,  
8 funding, model tribal codes, tribal justice activities, and  
9 tribal judicial decisions. The Office shall take such actions  
10 as may be necessary to ensure the confidentiality of  
11 records and other matters involving privacy rights.

12 **SEC. 102. SURVEY OF TRIBAL JUDICIAL SYSTEMS.**

13 (a) IN GENERAL.—Not later than six months after  
14 the date of the enactment of this Act, the Secretary shall  
15 enter into a contract with a non-Federal entity to conduct  
16 a survey of conditions of tribal justice systems and Courts  
17 of Indian Offenses to determine the resources and fund-  
18 ing, including base support funding, needed to provide for  
19 expeditious and effective administration of justice. The  
20 Secretary, in like manner, shall annually update the infor-  
21 mation and findings contained in the survey required  
22 under this section.

23 (b) LOCAL CONDITIONS.—In the course of any an-  
24 nual survey, the non-Federal entity shall document local

1 conditions of each Indian tribe, including, but not limited  
2 to—

3 (1) the geographic area and population to be  
4 served;

5 (2) the levels of functioning and capacity of the  
6 tribal justice system;

7 (3) the volume and complexity of the case loads;

8 (4) the facilities, including detention facilities,  
9 and program resources available;

10 (5) funding levels and personnel staffing re-  
11 quirements for the tribal justice system; and

12 (6) the training and technical assistance needs  
13 of the tribal justice system.

14 (c) CONSULTATION WITH INDIAN TRIBES.—The  
15 non-Federal entity shall actively consult with Indian tribes  
16 and tribal organizations in the development and conduct  
17 of the surveys, including updates thereof, under this sec-  
18 tion. Indian tribes and tribal organizations shall have the  
19 opportunity to review and make recommendations regard-  
20 ing the findings of the survey, including updates thereof,  
21 prior to final publication of the survey or any update  
22 thereof. After Indian tribes and tribal organizations have  
23 reviewed and commented on the results of the survey, or  
24 any update thereof, the non-Federal entity shall report its  
25 findings, together with the comments and recommenda-

1 tions of the Indian tribes and tribal organizations, to the  
2 Secretary, the Committee on Indian Affairs of the Senate,  
3 and the Subcommittee on Native American Affairs of the  
4 Committee on Natural Resources of the House of Rep-  
5 resentatives.

6 **SEC. 103. BASE SUPPORT FUNDING FOR TRIBAL JUSTICE**  
7 **SYSTEMS.**

8 (a) IN GENERAL.—Pursuant to the Indian Self-De-  
9 termination and Education Assistance Act, the Secretary  
10 is authorized (to the extent provided in advance in appro-  
11 priations Acts) to enter into contracts, grants, or agree-  
12 ments with Indian tribes and tribal organizations for the  
13 performance of any function of the Office and for the de-  
14 velopment, enhancement, and continuing operation of trib-  
15 al justice systems and traditional tribal judicial practices  
16 by Indian tribal governments.

17 (b) PURPOSES FOR WHICH FINANCIAL ASSISTANCE  
18 MAY BE USED.—Financial assistance provided through  
19 contracts, grants, or agreements entered into pursuant to  
20 this section may be used for—

- 21 (1) planning for the development, enhancement,  
22 and operation of tribal justice systems;
- 23 (2) the employment of judicial personnel;
- 24 (3) training programs and continuing education  
25 for tribal judicial personnel;

1           (4) the acquisition, development, and mainte-  
2 nance of a law library and computer assisted legal  
3 research capacities;

4           (5) the development, revision, and publication  
5 of tribal codes, rules of practice, rules of procedure,  
6 and standards of judicial performance and conduct;

7           (6) the development and operation of records  
8 management systems;

9           (7) the construction or renovation of facilities  
10 for tribal justice systems;

11           (8) membership and related expenses for par-  
12 ticipation in national and regional organizations of  
13 tribal justice systems and other professional organi-  
14 zations; and

15           (9) the development and operation of other in-  
16 novative and culturally relevant programs and  
17 projects, including (but not limited to) programs and  
18 projects for—

19                   (A) alternative dispute resolution;

20                   (B) tribal victims assistance or victims  
21 services;

22                   (C) tribal probation services or diversion  
23 programs;

24                   (D) juvenile services and multidisciplinary  
25 investigations of child abuse; and

1 (E) traditional tribal judicial practices, tra-  
2 ditional tribal justice systems, and traditional  
3 methods of dispute resolution.

4 (c) FORMULA.—(1) Not later than 180 days after the  
5 date of the enactment of this Act, the Secretary, with the  
6 full participation of Indian tribes, shall establish and pro-  
7 mulgate by regulation, a formula which establishes base  
8 support funding for tribal justice systems in carrying out  
9 this section.

10 (2) The Secretary shall assess case load and staffing  
11 needs for tribal justice systems that take into account  
12 unique geographic and demographic conditions. In the as-  
13 sessment of these needs, the Secretary shall work coopera-  
14 tively with Indian tribes and tribal organizations and shall  
15 refer to any data developed as a result of the surveys con-  
16 ducted pursuant to section 102 and to relevant assessment  
17 standards developed by the Judicial Conference of the  
18 United States, the National Center for State Courts, the  
19 American Bar Association, and appropriate State bar  
20 associations.

21 (3) Factors to be considered in the development of  
22 the base support funding formula shall include, but are  
23 not limited to—

24 (A) the case load and staffing needs identified  
25 under paragraph (2);

1 (B) the geographic area and population to be  
2 served;

3 (C) the volume and complexity of the case  
4 loads;

5 (D) the projected number of cases per month;

6 (E) the projected number of persons receiving  
7 probation services or participating in diversion pro-  
8 grams; and

9 (F) any special circumstances warranting addi-  
10 tional financial assistance.

11 (4) In developing and administering the formula for  
12 base support funding for the tribal judicial systems under  
13 this section, the Secretary shall ensure equitable distribu-  
14 tion of funds.

## 15 **TITLE II—AUTHORIZATIONS OF** 16 **APPROPRIATIONS**

### 17 **SEC. 201. TRIBAL JUSTICE SYSTEMS.**

18 (a) OFFICE.—There is authorized to be appropriated  
19 to carry out the provisions of sections 101 and 102 of this  
20 Act, \$7,000,000 for each of the fiscal years 1994, 1995,  
21 1996, 1997, 1998, 1999, and 2000. None of the funds  
22 provided under this subsection may be used for the admin-  
23 istrative expenses of the Office.

24 (b) BASE SUPPORT FUNDING FOR TRIBAL JUSTICE  
25 SYSTEMS.—There is authorized to be appropriated to

1 carry out the provisions of section 103 of this Act,  
2 \$50,000,000 for each of the fiscal years 1994, 1995, 1996,  
3 1997, 1998, 1999, and 2000.

4 (c) ADMINISTRATIVE EXPENSES FOR OFFICE.—  
5 There is authorized to be appropriated, for the administra-  
6 tive expenses of the Office, \$500,000 for each of the fiscal  
7 years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

8 (d) SURVEY.—For carrying out the survey under sec-  
9 tion 102, there is authorized to be appropriated, in addi-  
10 tion to the amount authorized under subsection (a) of this  
11 section, \$400,000.

12 (e) INDIAN PRIORITY SYSTEM.—Funds appropriated  
13 pursuant to the authorizations provided by this section  
14 and available for a tribal justice system shall not be sub-  
15 ject to the Indian priority system. Nothing in this Act  
16 shall preclude a tribal government from supplementing  
17 any funds received under this Act with funds received  
18 from any other source including the Bureau or any other  
19 Federal agency.

20 (f) ALLOCATION OF FUNDS.—In allocating funds ap-  
21 propriated pursuant to the authorization contained in sub-  
22 section (a) among the Bureau, Office, tribal governments  
23 and Courts of Indian Offenses, the Secretary shall take  
24 such actions as may be necessary to ensure that such allo-  
25 cation is carried out in a manner that is fair and equitable

1 to all tribal governments and is proportionate to base sup-  
2 port funding under section 103 received by the Bureau,  
3 Office, tribal governments, and Courts of Indian Offenses.

4 (g) NO OFFSET.—No Federal agency shall offset  
5 funds made available pursuant to this Act for tribal justice  
6 systems against other funds otherwise available for use in  
7 connection with tribal justice systems.

## 8 **TITLE III—DISCLAIMERS**

### 9 **SEC. 301. TRIBAL AUTHORITY.**

10 Nothing in this Act shall be construed to—

11 (1) encroach upon or diminish in any way the  
12 inherent sovereign authority of each tribal govern-  
13 ment to determine the role of the tribal justice sys-  
14 tem within the tribal government or to enact and en-  
15 force tribal laws;

16 (2) diminish in any way the authority of tribal  
17 governments to appoint personnel;

18 (3) impair the rights of each tribal government  
19 to determine the nature of its own legal system or  
20 the appointment of authority within the tribal gov-  
21 ernment;

22 (4) alter in any way any tribal traditional dis-  
23 pute resolution forum;

24 (5) imply that any tribal justice system is an  
25 instrumentality of the United States; or

