

103^D CONGRESS
1ST SESSION

H. R. 1268

AMENDMENT

In the Senate of the United States,

August 6 (legislative day, June 30), 1993.

Resolved, That the bill from the House of Representatives (H.R. 1268) entitled “An Act to assist the development of tribal judicial systems, and for other purposes”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***TITLE I—GENERAL PROVISIONS***

2 ***SEC. 101. SHORT TITLE.***

3 *This Act may be cited as the “Indian Tribal Justice*
4 *Systems Act”.*

5 ***SEC. 102. FINDINGS.***

6 *Congress finds and declares that—*

7 *(1) there is a government-to-government relation-*
8 *ship between the United States and each Indian tribe;*

9 *(2) the United States has a trust responsibility*
10 *to each tribal government that includes the protection*
11 *of the sovereignty of each tribal government;*

12 *(3) Congress, through statutes, treaties, and the*
13 *exercise of administrative authorities, has recognized*
14 *the self-determination, self-reliance, and inherent sov-*
15 *ereignty of Indian tribes;*

1 (4) *Indian tribes possess the inherent authority*
2 *to establish their own form of government, including*
3 *tribal justice systems;*

4 (5) *tribal justice systems are an essential part of*
5 *tribal governments and serve as important forums for*
6 *ensuring public health and safety and the political*
7 *integrity of tribal governments;*

8 (6) *Congress and the Federal courts have repeat-*
9 *edly recognized tribal justice systems as the appro-*
10 *priate forums for the adjudication of disputes affect-*
11 *ing personal and property rights;*

12 (7) *traditional tribal justice practices are essen-*
13 *tial to the maintenance of the culture and identity of*
14 *Indian tribes and to the goals of this Act;*

15 (8) *tribal justice systems are inadequately fund-*
16 *ed and the lack of adequate funding impairs their op-*
17 *eration; and*

18 (9) *tribal government involvement in and com-*
19 *mitment to improving tribal justice systems is essen-*
20 *tial to the accomplishment of the goals of this Act.*

21 **SEC. 103. DEFINITIONS.**

22 *For purposes of this Act:*

23 (1) *The term “Bureau” means the Bureau of In-*
24 *Indian Affairs of the Department of the Interior.*

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

4 (3) *The term “Indian tribe” means any Indian*
5 *tribe, band, nation, pueblo, or other organized group*
6 *or community, including any Alaska Native entity,*
7 *which administers justice under the authority of the*
8 *United States or the inherent authority of the native*
9 *entity and which is recognized as eligible for the spe-*
10 *cial programs and services provided by the United*
11 *States to Indian tribes because of their status as*
12 *Indians.*

13 (4) *The term “judicial personnel” means any*
14 *judge, magistrate, court counselor, court clerk, court*
15 *administrator, bailiff, probation officer, officer of the*
16 *court, dispute resolution facilitator, or other official,*
17 *employee, or volunteer within the tribal justice*
18 *system.*

19 (5) *The term “Office” means the Office of Tribal*
20 *Justice Support within the Bureau of Indian Affairs.*

21 (6) *The term “Secretary” means the Secretary of*
22 *the Interior.*

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

1 (8) *The term “tribal justice system” means the*
2 *entire justice system of an Indian tribe, including but*
3 *not limited to traditional methods and forums for dis-*
4 *pute resolution, lower courts, appellate courts (includ-*
5 *ing intertribal appellate courts), alternative dispute*
6 *resolution systems, and circuit rider systems, estab-*
7 *lished by inherent tribal authority without regard to*
8 *whether they constitute a court of record.*

9 ***TITLE II—TRIBAL JUSTICE***
10 ***SYSTEMS***

11 ***SEC. 201. OFFICE OF TRIBAL JUSTICE SUPPORT.***

12 (a) *ESTABLISHMENT.*—*There is hereby established*
13 *within the Bureau the Office of Tribal Justice Support. The*
14 *purpose of the Office shall be to further the development,*
15 *operation, and enhancement of tribal justice systems and*
16 *Courts of Indian Offenses.*

17 (b) *TRANSFER OF EXISTING FUNCTIONS AND PERSON-*
18 *NEL.*—*All functions performed before the date of the enact-*
19 *ment of this Act by the Branch of Judicial Services of the*
20 *Bureau and all personnel assigned to such Branch as of*
21 *the date of the enactment of this Act are hereby transferred*
22 *to the Office of Tribal Justice Support. Any reference in*
23 *any law, regulation, executive order, reorganization plan,*
24 *or delegation of authority to the Branch of Judicial Services*

1 *is deemed to be a reference to the Office of Tribal Justice*
2 *Support.*

3 (c) *FUNCTIONS.*—*Except as otherwise provided in title*
4 *III, in addition to the functions transferred to the Office*
5 *pursuant to subsection (b), the Office shall perform the fol-*
6 *lowing functions:*

7 (1) *Provide funds to Indian tribes and tribal or-*
8 *ganizations for the development, enhancement, and*
9 *continuing operation of tribal justice systems.*

10 (2) *Provide technical assistance and training,*
11 *including programs of continuing education and*
12 *training for personnel of Courts of Indian Offenses.*

13 (3) *Study and conduct research concerning the*
14 *operation of tribal justice systems.*

15 (4) *Promote cooperation and coordination be-*
16 *tween tribal justice systems, the Federal judiciary,*
17 *and State judiciary systems.*

18 (5) *Oversee the continuing operations of the*
19 *Courts of Indian Offenses.*

20 (d) *NO IMPOSITION OF STANDARDS.*—*Nothing in this*
21 *Act shall be deemed or construed to authorize the Office to*
22 *impose justice standards on Indian tribes.*

23 (e) *ASSISTANCE TO TRIBES.*—(1) *The Office shall pro-*
24 *vide training and technical assistance to any Indian tribe*
25 *or tribal organization upon request. Technical assistance*

1 *and training which may be provided by the Office shall in-*
2 *clude, but is not limited to, assistance for the development*
3 *of—*

4 *(A) tribal codes and rules of procedure;*

5 *(B) tribal court administrative procedures and*
6 *court records management systems;*

7 *(C) methods of reducing case delays;*

8 *(D) methods of alternative dispute resolution;*

9 *(E) tribal standards for judicial administration*
10 *and conduct; and*

11 *(F) long-range plans for the enhancement of trib-*
12 *al justice systems.*

13 *(2) Technical assistance and training provided pursu-*
14 *ant to paragraph (1) may be provided through direct serv-*
15 *ices, by contract with independent entities, or through*
16 *grants to Indian tribes and tribal organizations.*

17 *(f) INFORMATION CLEARINGHOUSE ON TRIBAL JUS-*
18 *TICE SYSTEMS.—The Office shall establish and maintain*
19 *an information clearinghouse (which shall include an elec-*
20 *tronic data base) on tribal justice systems, including, but*
21 *not limited to, information on staffing, funding, model trib-*
22 *al codes, tribal justice activities, and tribal judicial deci-*
23 *sions. The Office shall take such action as may be necessary*
24 *to ensure the confidentiality records, and other matters in-*
25 *volving privacy rights.*

1 **SEC. 202. SURVEY OF TRIBAL JUDICIAL SYSTEMS.**

2 (a) *IN GENERAL.*—Not later than 6 months after the
3 date of the enactment of this Act, the Secretary, in consulta-
4 tion with Indian tribes, shall enter into a contract with
5 a non-Federal entity to conduct a survey of conditions of
6 tribal justice systems and Courts of Indian Offenses to de-
7 termine the resources and funding, including base support
8 funding, needed to provide for expeditious and effective ad-
9 ministration of justice. The Secretary, in like manner, shall
10 annually update the information and findings contained
11 in the survey required under this section. Any survey con-
12 ducted pursuant to this section shall be completed and its
13 findings reported by the Secretary and the Congress not
14 later than 12 months after the date on which the contract
15 for the conduct of the survey is executed.

16 (b) *LOCAL CONDITIONS.*—In the course of any annual
17 survey, the non-Federal entity shall document local condi-
18 tions of each Indian tribe, including, but not limited to—

19 (1) *the geographic area and population to be*
20 *served;*

21 (2) *the levels of functioning and capacity of the*
22 *tribal justice system;*

23 (3) *the volume and complexity of the case loads;*

24 (4) *the facilities, including detention facilities,*
25 *and program resources available;*

1 *authorized to enter into contracts, grants, or agreements*
2 *with Indian tribes and tribal organizations, for the develop-*
3 *ment, enhancement, and continuing operation of tribal jus-*
4 *tice systems and traditional tribal judicial practices by In-*
5 *dian tribal governments.*

6 (b) *PURPOSES FOR WHICH FINANCIAL ASSISTANCE*
7 *MAY BE USED.—Financial assistance provided through*
8 *contracts, grants, or agreements entered into pursuant to*
9 *this section may be used for—*

10 (1) *planning for the development, enhancement,*
11 *and operation of tribal justice systems;*

12 (2) *the employment of judicial personnel;*

13 (3) *training programs and continuing education*
14 *for tribal judicial personnel;*

15 (4) *the acquisition, development, and mainte-*
16 *nance of a law library or computer assisted legal re-*
17 *search capacities;*

18 (5) *the development, revision, and publication of*
19 *tribal codes, rules of practice, rules of procedure, and*
20 *standards of judicial performance and conduct;*

21 (6) *the development and operation of records*
22 *management systems;*

23 (7) *the construction or renovation of facilities for*
24 *tribal justice systems;*

1 (8) membership and related expenses for partici-
2 pation in national and regional organizations of trib-
3 al justice systems and other professional organiza-
4 tions; and

5 (9) the development and operation of other inno-
6 vative and culturally relevant programs and projects,
7 including programs and projects for—

8 (A) alternative dispute resolution;

9 (B) tribal victims assistance or victims
10 services;

11 (C) tribal probation services or diversion
12 programs;

13 (D) juvenile justice services and multidisci-
14 plinary investigations of child abuse; and

15 (E) traditional tribal judicial practices,
16 traditional tribal justice systems and traditional
17 methods of dispute resolution.

18 (c) *FORMULA.*—(1) Not later than 180 days after the
19 date of the enactment of this Act, the Secretary, with the
20 full participation of Indian tribes, shall establish and pro-
21 mulgate by regulation, a formula which establishes base
22 support funding for tribal justice systems in carrying out
23 this section.

24 (2) The Secretary shall assess caseload and staffing
25 needs for tribal justice systems and take into account

1 *unique geographic and demographic conditions. In the as-*
2 *essment of these needs, the Secretary shall work coopera-*
3 *tively with Indian tribes and tribal organizations and shall*
4 *refer to any data developed as a result of the surveys con-*
5 *ducted pursuant to section 202 and to comparable relevant*
6 *assessment standards developed by the Judicial Conference*
7 *of the United States, the National Center for State Courts,*
8 *and the American Bar Association.*

9 (3) *Factors to be considered in the development of the*
10 *base support funding formula shall include, but are not lim-*
11 *ited to—*

12 (A) *the caseload and staffing needs identified*
13 *under paragraph (2) of this section;*

14 (B) *the geographic area and population to be*
15 *served;*

16 (C) *the volume and complexity of the caseloads;*

17 (D) *the projected number of cases per month;*

18 (E) *the projected number of persons receiving*
19 *probation services or participating in diversion pro-*
20 *grams; and*

21 (F) *any special circumstances warranting addi-*
22 *tional financial assistance.*

23 (4) *In developing the formula for base support funding*
24 *for tribal judicial systems under this section, the Secretary*
25 *shall ensure equitable distribution of funds.*

1 **TITLE III—TRIBAL JUDICIAL**
2 **CONFERENCES**

3 **SEC. 301. ESTABLISHMENT; FUNDING.**

4 (a) *ESTABLISHMENT.*—In any case in which two or
5 more governing bodies of Indian tribes establish a regional
6 or national judicial conference, such conference shall be con-
7 sidered a tribal organization and eligible to contract for
8 funds under this title, if each member tribe served by the
9 conference has adopted a tribal resolution which authorizes
10 the tribal judicial conference to receive and administer
11 funds under this title. At the written request of any tribal
12 judicial conference, a contract entered into pursuant to this
13 title shall authorize the conference to receive funds and per-
14 form any or all of the duties of the Bureau and the Office
15 under sections 201 and 202 of this Act on behalf of the mem-
16 bers of such conference.

17 (b) *CONTRACT AUTHORITY.*—Pursuant to the Indian
18 Self-Determination and Education Assistance Act, the Sec-
19 retary is authorized, subject to appropriations, to enter into
20 contracts, grants, or agreements with a tribal judicial con-
21 ference for the development, enhancement, and continuing
22 operation of tribal justice systems of Indian tribes which
23 are members of such conference.

24 (c) *FUNDING.*—The Secretary is authorized to provide
25 funding to tribal judicial conferences pursuant to contracts

1 *entered into under the authority of the Indian Self-Deter-*
2 *mination and Education Assistance Act for administrative*
3 *expenses incurred by such conferences.*

4 ***TITLE IV—STUDY OF TRIBAL/***
5 ***FEDERAL COURT REVIEW***

6 ***SEC. 401. STUDY.***

7 *(a) TRIBAL/FEDERAL COURT REVIEW.—A comprehen-*
8 *sive study shall be conducted in accordance with subsection*
9 *(b), of the treatment by tribal justice systems of matters*
10 *arising under the Indian Civil Rights Act (25 U.S.C. 1301*
11 *et seq.) and of other Federal laws for which tribal justice*
12 *systems have jurisdictional authority and regulations pro-*
13 *mulgated by Federal agencies pursuant to the Indian Civil*
14 *Rights Act and other Acts of Congress. The study shall in-*
15 *clude an analysis of those Indian Civil Rights Act cases*
16 *that were the subject of Federal court review from 1968 to*
17 *1978 and the burden, if any, on tribal governments, tribal*
18 *justice systems, and Federal courts of such review. The*
19 *study shall address the circumstances under which Federal*
20 *court review of actions arising under the Indian Civil*
21 *Rights Act may be appropriate or warranted.*

22 *(b) TRIBAL/FEDERAL COURT REVIEW STUDY*
23 *PANEL.—The study required in subsection (a) shall be con-*
24 *ducted by the Tribal/Federal Court Review Study Panel in*
25 *consultation with tribal governments.*

1 **SEC. 402. TRIBAL/FEDERAL COURT REVIEW STUDY PANEL.**

2 (a) *COMPOSITION.*—The Tribal/Federal Court Review
3 Study Panel shall consist of—

4 (1) *four representatives of tribal governments,*
5 *including tribal court judges, two of whom shall be*
6 *appointed by the Speaker of the House of Representa-*
7 *tives and two of whom shall be appointed by the*
8 *President pro tempore of the Senate; and*

9 (2) *four members of the United States Courts of*
10 *Appeal, of whom one shall be appointed by the chief*
11 *judge of the eighth circuit, one by the chief judge of*
12 *the ninth circuit, one by the chief judge of the tenth*
13 *circuit, and one by the chief judge of the Federal cir-*
14 *cuit.*

15 (b) *PERSONNEL.*—The Tribal/Federal Court Review
16 Study Panel may employ, on a temporary basis, such per-
17 sonnel as are required to carry out the provisions of this
18 title.

19 (c) *FINDINGS.*—The Tribal/Federal Court Review
20 Study Panel, not later than the expiration of the 12-month
21 period following the date on which moneys are first made
22 available to carry out this title, shall submit its findings
23 and recommendations to—

24 (1) *Congress;*

25 (2) *the Secretary;*

1 (3) *the Director of the Administrative Office of*
2 *the United States Courts; and*

3 (4) *each Indian tribe.*

4 (d) *TERMINATION.—Thirty days after the Panel has*
5 *submitted its findings and recommendations under sub-*
6 *section (c), the Panel shall cease to exist.*

7 **TITLE V—AUTHORIZATIONS**

8 **SEC. 501. TRIBAL JUSTICE SYSTEMS.**

9 (a) *OFFICE.—There are authorized to be appropriated*
10 *to carry out the provisions of sections 201, 202, and 301(a)*
11 *of this Act, \$7,000,000 for each of the fiscal years 1994,*
12 *1995, 1996, 1997, 1998, 1999, and 2000. None of the funds*
13 *provided pursuant to the authorizations under this sub-*
14 *section may be used for the administrative expenses of the*
15 *Office.*

16 (b) *BASE SUPPORT FUNDING FOR TRIBAL JUSTICE*
17 *SYSTEMS AND JUDICIAL CONFERENCES.—There are author-*
18 *ized to be appropriated to carry out the provisions of section*
19 *203 of this Act, \$50,000,000 for each of the fiscal years*
20 *1994, 1995, 1996, 1997, 1998, 1999, and 2000.*

21 (c) *ADMINISTRATIVE EXPENSES FOR OFFICE.—There*
22 *are authorized to be appropriated, for the administrative*
23 *expenses of the Office, \$500,000 for each of the fiscal years*
24 *1994, 1995, 1996, 1997, 1998, 1999, and 2000.*

1 (d) *ADMINISTRATIVE EXPENSES FOR TRIBAL JUDI-*
2 *CIAL CONFERENCES.*—There are authorized to be appro-
3 *priated, for the administrative expenses of tribal judicial*
4 *conferences, \$500,000 for each of the fiscal years 1994, 1995,*
5 *1996, 1997, 1998, 1999, and 2000.*

6 (e) *SURVEY.*—For carrying out the survey under sec-
7 *tion 202, there is authorized to be appropriated, in addition*
8 *to the amount authorized under subsection (a) of this sec-*
9 *tion, \$400,000 for each of the fiscal years 1994, 1995, 1996,*
10 *1997, 1998, 1999, and 2000.*

11 (f) *AUTHORIZATION.*—For carrying out the study
12 *under section 401, there is authorized to be appropriated*
13 *such sums as may be necessary.*

14 (g) *NO OFFSET.*—No Federal agency shall offset funds
15 *made available pursuant to this Act for tribal justice sys-*
16 *tems against funds otherwise available for use in connection*
17 *with tribal justice systems.*

18 (h) *ALLOCATION OF FUNDS.*—In allocating funds ap-
19 *propriated pursuant to the authorization contained in sub-*
20 *section (a) of this section among the Bureau, Office, tribal*
21 *governments, and tribal judicial conferences, the Secretary*
22 *shall take such action as may be necessary to ensure that*
23 *such allocation is carried out in a manner that is fair and*
24 *equitable, and is proportionate to base support funding*
25 *under section 203 received by the Bureau, Office, tribal gov-*

1 ernments, and tribal government members comprising a ju-
2 dicial conference.

3 (i) *INDIAN PRIORITY SYSTEM.*—Funds appropriated
4 pursuant to the authorizations provided by this section and
5 available for a tribal justice system shall not be subject to
6 the Indian priority system. Nothing in this Act shall pre-
7 clude a tribal government from supplementing any funds
8 received under this Act with funds received from any other
9 source including the Bureau or any other Federal agency.

10 **TITLE VI—DISCLAIMERS**

11 **SEC. 601. TRIBAL AUTHORITY.**

12 *Nothing in this Act shall be construed to—*

13 (1) *encroach upon or diminish in any way the*
14 *inherent sovereign authority of each tribal govern-*
15 *ment to determine the role of the tribal court within*
16 *the tribal government or to enact and enforce tribal*
17 *laws;*

18 (2) *diminish in any way the authority of tribal*
19 *governments to appoint personnel;*

20 (3) *impair the rights of each tribal government*
21 *to determine the nature of its own legal system or the*
22 *apportionment of authority within the tribal govern-*
23 *ment;*

24 (4) *alter in any way traditional dispute resolu-*
25 *tion forums;*

1 (5) *imply that any tribal court is an instrumen-*
2 *talilty of the United States; or*

3 (6) *diminish the trust responsibility of the*
4 *United States to Indian tribal governments and*
5 *tribal justice systems of such governments.*

Attest:

Secretary.

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