

103D CONGRESS
1ST SESSION

H. R. 1268

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 1993

Mr. RICHARDSON (for himself and Ms. ENGLISH of Arizona) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

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

5 (3) Indian tribes possess the inherent authority
6 to establish their own form of government, including
7 tribal justice systems;

8 (4) tribal justice systems are essential to self-
9 government and integral to the fulfillment of the
10 Federal Government’s policy of self-determination;

11 (5) tribal justice systems are inadequately fund-
12 ed and the lack of adequate funding impairs their
13 ability to administer justice effectively; and

14 (6) tribal government involvement in and com-
15 mitment to improving tribal justice systems is essen-
16 tial to the accomplishment of the goals of this Act.

17 **SEC. 3. DEFINITIONS.**

18 For purposes of this Act:

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

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

24 (3) The term “Indian tribe” means any Indian
25 tribe, band, nation, pueblo, or other organized group

1 or community, including any Alaska Native entity,
2 which administers justice under its inherent author-
3 ity or the authority of the United States and which
4 is recognized as eligible for the special programs and
5 services provided by the United States to Indian
6 tribes because of their status as Indians.

7 (4) The term “judicial personnel” means any
8 judge, magistrate, court counselor, court clerk, court
9 administrator, bailiff, probation officer, officer of the
10 court, dispute resolution facilitator, or other official,
11 employee, or volunteer within the tribal justice sys-
12 tem.

13 (5) The term “Office” means the Office of
14 Tribal Justice Support within the Bureau of Indian
15 Affairs.

16 (6) The term “Secretary” means the Secretary
17 of the Interior.

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

21 (8) The term “tribal justice system” means the
22 entire judicial branch, and employees thereof, of an
23 Indian tribe, including but not limited to traditional
24 methods and forums for dispute resolution, lower
25 courts, appellate courts, alternative dispute resolu-

1 tion systems, and circuit rider systems, established
2 by inherent tribal authority whether or not they con-
3 stitute a court of record.

4 **TITLE I—TRIBAL JUSTICE** 5 **SYSTEMS**

6 **SEC. 101. OFFICE OF TRIBAL JUSTICE SUPPORT.**

7 (a) ESTABLISHMENT.—There is hereby established
8 within the Bureau the Office of Tribal Justice Support.
9 The purpose of the Office shall be to further the develop-
10 ment, operation, and enhancement of tribal justice sys-
11 tems and Courts of Indian Offenses.

12 (b) TRANSFER OF EXISTING FUNCTIONS AND PER-
13 SONNEL.—All functions performed before the date of the
14 enactment of this Act by the Branch of Judicial Services
15 of the Bureau and all personnel assigned to such Branch
16 as of the date of the enactment of this Act are hereby
17 transferred to the Office of Tribal Justice Support. Any
18 reference in any law, regulation, executive order, reorga-
19 nization plan, or delegation of authority to the Branch of
20 Judicial Services is deemed to be a reference to the Office
21 of Tribal Justice Support.

22 (c) FUNCTIONS.—Except as otherwise provided in
23 title II, in addition to the functions transferred to the Of-
24 fice pursuant to subsection (b), the Office shall perform
25 the following functions:

1 (1) Develop and conduct programs of continu-
2 ing education and training for personnel of tribal ju-
3 dicial systems and Courts of Indian Offenses.

4 (2) Provide funds to Indian tribes and tribal or-
5 ganizations for the development, enhancement, and
6 continuing operation of tribal justice systems.

7 (3) Provide technical assistance and training to
8 Indian tribes and tribal organizations upon request.

9 (4) Study and conduct research concerning the
10 operation of tribal justice systems.

11 (5) Promote cooperation and coordination be-
12 tween tribal justice systems, the Federal judiciary,
13 and State judiciary systems.

14 (6) Oversee the continuing operations of the
15 Courts of Indian Offenses.

16 (d) NO IMPOSITION OF STANDARDS.—Nothing in
17 this section shall be deemed or construed to authorize the
18 Office to impose justice standards on Indian tribes.

19 (e) ASSISTANCE TO TRIBES.—(1) The Office shall
20 provide training and technical assistance to any Indian
21 tribe or tribal organization upon request. Technical assist-
22 ance and training which may be provided by the Office
23 shall include, but is not limited to, assistance for the devel-
24 opment of—

25 (A) tribal codes and rules of procedure;

1 (B) tribal court administrative procedures and
2 court records management systems;

3 (C) methods of reducing case delays;

4 (D) methods of alternative dispute resolution;

5 (E) tribal standards for judicial administration
6 and conduct; and

7 (F) long-range plans for the enhancement of
8 tribal justice systems.

9 (2) Technical assistance and training provided pursu-
10 ant to paragraph (1) may be provided through direct serv-
11 ices, by contract with independent entities, or through
12 grants to Indian tribes or tribal organizations.

13 (f) INFORMATION CLEARINGHOUSE ON TRIBAL JUS-
14 TICE SYSTEMS.—The Office shall establish an information
15 clearinghouse (which shall include an electronic data base)
16 on tribal justice systems and Courts of Indian Offenses
17 including, but not limited to, information on tribal judicial
18 personnel, funding, model tribal codes, tribal justice activi-
19 ties, and tribal judicial decisions.

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

21 (a) IN GENERAL.—Not later than one year after the
22 date of the enactment of this Act, the Office shall conduct
23 a survey of conditions of tribal justice systems and Courts
24 of Indian Offenses to determine the resources and funding
25 needed to provide for expeditious and effective administra-

1 tion of justice. The Office shall annually update the infor-
2 mation and findings contained in the survey required
3 under this section.

4 (b) LOCAL CONDITIONS.—In the course of any an-
5 nual survey, the Office shall document local conditions on
6 each reservation, including, but not limited to—

7 (1) the reservation size and population to be
8 served;

9 (2) the levels of functioning and capacity of the
10 tribal justice system;

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

12 (4) the facilities, including detention facilities,
13 and program resources available;

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

16 (6) the experience and qualifications of judicial
17 personnel of the tribal justice system; and

18 (7) the training and technical assistance needs
19 of the tribal justice system.

20 (c) CONSULTATION WITH INDIAN TRIBES.—The Of-
21 fice shall actively consult with Indian tribes and tribal or-
22 ganizations in the development and conduct of the surveys
23 under this section. Indian tribes and tribal organizations
24 shall have the opportunity to review and make rec-
25 ommendations regarding the findings of the survey prior

1 to final publication of the survey. After Indian tribes and
2 tribal organizations have reviewed and commented on the
3 results of the survey, the Office shall report its findings,
4 together with the comments and recommendations of the
5 Indian tribes and tribal organizations, to the Secretary,
6 the Select Committee on Indian Affairs of the Senate, and
7 the Subcommittee on Native American Affairs of the Com-
8 mittee on Natural Resources of the House of Representa-
9 tives.

10 **SEC. 103. BASE SUPPORT FUNDING FOR TRIBAL JUSTICE**
11 **SYSTEMS.**

12 (a) IN GENERAL.—Pursuant to the Indian Self-De-
13 termination and Education Assistance Act, the Secretary
14 is authorized (to the extent provided in advance in appro-
15 priations Acts) to enter into contracts, grants, or agree-
16 ments with Indian tribes and tribal organizations for the
17 development, enhancement, and continuing operation of
18 tribal justice systems on Indian reservations.

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

23 (1) planning for the development, enhancement,
24 and operation of tribal justice systems;

25 (2) the employment of judicial personnel;

1 (3) training programs and continuing education
2 for tribal judicial personnel;

3 (4) the acquisition, development, and mainte-
4 nance of a law library or computer assisted legal re-
5 search capacities;

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

9 (6) the development and operation of records
10 management systems;

11 (7) the construction or renovation of facilities
12 for tribal justice systems;

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

17 (9) the development and operation of other in-
18 novative and culturally relevant programs and
19 projects, including programs and projects for—

20 (A) alternative dispute resolution;

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

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

1 (D) multidisciplinary investigations of child
2 abuse; and

3 (E) tribal traditional justice systems or
4 traditional methods of dispute resolution.

5 (c) FORMULA.—(1) Not later than 180 days after the
6 date of the enactment of this Act, the Secretary, with the
7 full participation of Indian tribes, shall establish and pro-
8 mulgate by regulation, a formula which establishes base
9 support funding for tribal justice systems in carrying out
10 this section and tribal judicial conferences carrying out
11 section 201(a)(2) on behalf of members of such con-
12 ferences. Such formula shall assure that in any case in
13 which two or more Indian tribes form a tribal judicial con-
14 ference under title II, the base support for such conference
15 shall be an amount equal to the aggregate of that which
16 each tribal member of such conference would have received
17 if such tribe had not elected to be a member of the con-
18 ference.

19 (2) The Secretary shall develop appropriate case load
20 standards and staffing requirements for tribal justice sys-
21 tems that take into account unique reservation conditions.
22 In the development of these standards, the Secretary shall
23 work cooperatively with Indian tribes and tribal organiza-
24 tions and shall refer to comparable relevant standards de-
25 veloped by the Judicial Conference of the United States,

1 the National Center for State Courts, and the American
2 Bar Association.

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

6 (A) the case load standards and staffing re-
7 quirements developed under paragraph (2);

8 (B) the reservation size and population to be
9 served;

10 (C) the volume and complexity of the case
11 loads;

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

13 (E) the projected number of persons receiving
14 probation services or participating in diversion pro-
15 grams; and

16 (F) any special circumstances warranting addi-
17 tional financial assistance.

18 (4) In developing the formula for base support fund-
19 ing for the tribal judicial systems and tribal judicial con-
20 ferences under this section, the Secretary shall ensure eq-
21 uitable distribution of funds.

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

3 **SEC. 201. ESTABLISHMENT; FUNDING.**

4 (a) ESTABLISHMENT.—In any case in which two or
5 more governing bodies of Indian tribes establish a judicial
6 conference, such conference shall be considered a tribal or-
7 ganization and eligible to contract for funds pursuant to
8 this title if each member tribe served by the conference
9 has adopted a tribal resolution which authorizes the tribal
10 judicial conference to receive and administer funds under
11 this title. At the written request of any tribal judicial con-
12 ference, a contract entered into pursuant to this title
13 shall—

14 (1) authorize the conference to receive funds
15 and only perform some or all of the duties of the
16 Bureau and the Office under sections 101 and 102
17 on behalf of the members of such conference; and

18 (2) authorize the conference to receive funds
19 and only perform some or all of the duties of the
20 Bureau and the Office under section 103 on behalf
21 of members of the conference.

22 (b) CONTRACT AUTHORITY.—Pursuant to the Indian
23 Self-Determination and Education Assistance Act, the
24 Secretary is authorized to enter into contracts, grants, or
25 agreements with a tribal judicial conference for the devel-

1 opment, enhancement, and continuing operation of tribal
2 justice systems of Indian tribes which are members of
3 such conference.

4 (c) FUNDING.—The Secretary is authorized to pro-
5 vide funding to tribal judicial conferences pursuant to con-
6 tracts entered into under the authority of the Indian Self-
7 Determination and Education Assistance Act for adminis-
8 trative expenses incurred by such conferences.

9 **SEC. 202. LIMITATION.**

10 In any case in which an Indian tribe receives financial
11 assistance through a tribal judicial conference for the op-
12 eration of a tribal justice system for any fiscal year, the
13 tribal justice system of that tribe shall not be eligible for
14 assistance under title I for that fiscal year.

15 **TITLE III—AUTHORIZATIONS**

16 **SEC. 301. TRIBAL JUSTICE SYSTEMS.**

17 (a) OFFICE.—There are authorized to be appro-
18 priated to carry out the provisions of sections 101, 102,
19 and 201(a)(1) of this Act, \$7,000,000 for each of the fis-
20 cal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.
21 None of the funds provided under this subsection may be
22 used for the administrative expenses of the Office or any
23 tribal judicial conference.

24 (b) BASE SUPPORT FUNDING FOR TRIBAL JUSTICE
25 SYSTEMS AND JUDICIAL CONFERENCES.—There are au-

1 thORIZED to be appropriated to carry out the provisions of
2 sections 103 and 201(a)(2) of this Act, \$50,000,000 for
3 each of the fiscal years 1994, 1995, 1996, 1997, 1998,
4 1999, and 2000.

5 (c) ADMINISTRATIVE EXPENSES FOR OFFICE.—
6 There are authorized to be appropriated, for the adminis-
7 trative expenses of the Office, \$500,000 for each of the
8 fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and
9 2000.

10 (d) ADMINISTRATIVE EXPENSES FOR TRIBAL JUDI-
11 CIAL CONFERENCES.—There are authorized to be appro-
12 priated, for the administrative expenses of tribal judicial
13 conferences, \$500,000 for each of the fiscal years 1994,
14 1995, 1996, 1997, 1998, 1999, and 2000.

15 (e) INDIAN PRIORITY SYSTEM.—Funds appropriated
16 pursuant to the authorizations provided by this section
17 and available to a tribal judicial conference shall not be
18 subject to the Indian priority system.

19 (f) ALLOCATION OF FUNDS.—In allocating funds ap-
20 propriated pursuant to the authorization contained in sub-
21 section (a) among the Bureau, Office, and tribal judicial
22 conferences, the Secretary shall take such actions as may
23 be necessary to ensure that such allocation is carried out
24 in a manner that is fair and equitable to tribal justice sys-
25 tems and judicial conferences.

