

Union Calendar No. 116

103D CONGRESS
1ST SESSION

H. R. 1268

[Report No. 103-2051]

A BILL

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

AUGUST 2, 1993

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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[Report No. 103-205]

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

AUGUST 2, 1993

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on March 9, 1993]

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”.*

1 **SEC. 2. FINDINGS.**

2 *The Congress finds and declares that—*

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

5 *(2) the United States has a trust responsibility*
6 *to each tribal government that includes the protection*
7 *of the sovereignty of each tribal government;*

8 *(3) Congress, through statutes, treaties, and the*
9 *exercise of administrative authorities, has recognized*
10 *the self-determination, self-reliance, and inherent sov-*
11 *ereignty of Indian tribes;*

12 *(4) Indian tribes possess the inherent authority*
13 *to establish their own form of government, including*
14 *tribal justice systems;*

15 *(5) tribal justice systems are an essential part of*
16 *tribal governments and serve as important forums for*
17 *ensuring public health and safety and the political*
18 *integrity of tribal governments;*

19 *(6) Congress and the Federal courts have repeat-*
20 *edly recognized tribal justice systems as the appro-*
21 *priate forums for the adjudication of disputes affect-*
22 *ing personal and property rights;*

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

1 (8) *tribal justice systems are inadequately fund-*
2 *ed, and the lack of adequate funding impairs their*
3 *operation; and*

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

7 **SEC. 3. DEFINITIONS.**

8 *For purposes of this Act:*

9 (1) *The term “Bureau” means the Bureau of*
10 *Indian Affairs of the Department of the Interior.*

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

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

22 (4) *The term “judicial personnel” means any*
23 *judge, magistrate, court counselor, court clerk, court*
24 *administrator, bailiff, probation officer, officer of the*
25 *court, dispute resolution facilitator, or other official,*

1 *employee, or volunteer within the tribal justice sys-*
2 *tem.*

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

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

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

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

19 ***TITLE I—TRIBAL JUSTICE***
20 ***SYSTEMS***

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

22 (a) *ESTABLISHMENT.—There is hereby established*
23 *within the Bureau the Office of Tribal Justice Support. The*
24 *purpose of the Office shall be to further the development,*

1 *operation, and enhancement of tribal justice systems and*
2 *Courts of Indian Offenses.*

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

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

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

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

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

1 (4) *Promote cooperation and coordination*
2 *among tribal justice systems and the Federal and*
3 *State judiciary systems.*

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

6 (6) *Provide funds to Indian tribes and tribal or-*
7 *ganizations for the continuation and enhancement of*
8 *traditional tribal judicial practices.*

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

12 (e) *ASSISTANCE TO TRIBES.—(1) The Office shall pro-*
13 *vide technical assistance and training to any Indian tribe*
14 *or tribal organization upon request. Technical assistance*
15 *and training shall include (but not be limited to) assistance*
16 *for the development of—*

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

18 (B) *tribal court administrative procedures and*
19 *court records management systems;*

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

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

22 (E) *tribal standards for judicial administration*
23 *and conduct; and*

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

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

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

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

15 (a) *IN GENERAL.—Not later than six months after the*
16 *date of the enactment of this Act, the Secretary shall enter*
17 *into a contract with a non-Federal entity to conduct a sur-*
18 *vey of conditions of tribal justice systems and Courts of In-*
19 *dian Offenses to determine the resources and funding, in-*
20 *cluding base support funding, needed to provide for expedi-*
21 *tious and effective administration of justice. The Secretary,*
22 *in like manner, shall annually update the information and*
23 *findings contained in the survey required under this sec-*
24 *tion.*

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

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

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

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

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

11 (5) *funding levels and personnel staffing require-*
12 *ments for the tribal justice system; and*

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

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

1 *with the comments and recommendations of the Indian*
2 *tribes and tribal organizations, to the Secretary, the Com-*
3 *mittee on Indian Affairs of the Senate, and the Subcommit-*
4 *tee on Native American Affairs of the Committee on Natu-*
5 *ral Resources of the House of Representatives.*

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

8 *(a) IN GENERAL.—Pursuant to the Indian Self-Deter-*
9 *mination and Education Assistance Act, the Secretary is*
10 *authorized (to the extent provided in advance in appropria-*
11 *tions Acts) to enter into contracts, grants, or agreements*
12 *with Indian tribes and tribal organizations for the perform-*
13 *ance of any function of the Office and for the development,*
14 *enhancement, and continuing operation of tribal justice sys-*
15 *tems and traditional tribal judicial practices by Indian*
16 *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 re-
3 search capacities;

4 (5) the development, revision, and publication of
5 tribal codes, rules of practice, rules of procedure, and
6 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 for
10 tribal justice systems;

11 (8) membership and related expenses for partici-
12 pation in national and regional organizations of trib-
13 al justice systems and other professional organiza-
14 tions; and

15 (9) the development and operation of other inno-
16 vative and culturally relevant programs and projects,
17 including (but not limited to) programs and projects
18 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,*
2 *traditional 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 *essment 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 asso-*
20 *ciations.*

21 (3) *Factors to be considered in the development of the*
22 *base support funding formula shall include, but are not lim-*
23 *ited 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 loads;

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

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

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

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

14 **TITLE II—AUTHORIZATIONS OF**
15 **APPROPRIATIONS**

16 **SEC. 201. TRIBAL JUSTICE SYSTEMS.**

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

23 (b) BASE SUPPORT FUNDING FOR TRIBAL JUSTICE
24 SYSTEMS.—There is authorized to be appropriated to carry
25 out the provisions of section 103 of this Act, \$50,000,000

1 *for each of the fiscal years 1994, 1995, 1996, 1997, 1998,*
2 *1999, and 2000.*

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

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

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

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

1 *funding under section 103 received by the Bureau, Office,*
2 *tribal governments, and Courts of Indian Offenses.*

3 (g) *No OFFSET.—No Federal agency shall offset funds*
4 *made available pursuant to this Act for tribal justice sys-*
5 *tems against other funds otherwise available for use in con-*
6 *nection with tribal justice systems.*

7 ***TITLE III—DISCLAIMERS***

8 ***SEC. 301. TRIBAL AUTHORITY.***

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

10 (1) *encroach upon or diminish in any way the*
11 *inherent sovereign authority of each tribal govern-*
12 *ment to determine the role of the tribal justice system*
13 *within the tribal government or to enact and enforce*
14 *tribal laws;*

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

17 (3) *impair the rights of each tribal government*
18 *to determine the nature of its own legal system or the*
19 *appointment of authority within the tribal govern-*
20 *ment;*

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

23 (5) *imply that any tribal justice system is an in-*
24 *strumentality of the United States; or*

1 (6) *diminish the trust responsibility of the*
2 *United States to Indian tribal governments and trib-*
3 *al justice systems of such governments.*

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