

25 USC Ch. 15: CONSTITUTIONAL RIGHTS OF INDIANS

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From Title 25—INDIANS

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SUBCHAPTER I—GENERALLY

§1301. Definitions

For purposes of this subchapter, the term—

- (1) “Indian tribe” means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;
- (2) “powers of self-government” means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;
- (3) “Indian court” means any Indian tribal court or court of Indian offense; and
- (4) “Indian” means any person who would be subject to the jurisdiction of the United States as an Indian under section 1153, title 18, if that person were to commit an offense listed in that section in Indian country to which that section applies.

(Pub. L. 90–284, title II, §201, Apr. 11, 1968, 82 Stat. 77; Pub. L. 101–511, title VIII, §8077(b), (c), Nov. 5, 1990, 104 Stat. 1892.)

AMENDMENTS

1990—Par. (2). Pub. L. 101–511, §8077(b), inserted at end “means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;”.

Par. (4). Pub. L. 101–511, §8077(c), added par. (4).

SHORT TITLE

Title II of Pub. L. 90–284, which is classified generally to this subchapter, is popularly known as the “Indian Civil Rights Act of 1968”.

TIME LIMITATION ON CRIMINAL MISDEMEANOR JURISDICTION OF TRIBAL COURTS OVER NON-MEMBER INDIANS

Pub. L. 101–511, title VIII, §8077(d), Nov. 5, 1990, 104 Stat. 1893, as amended by Pub. L. 102–124, §1, Oct. 9, 1991, 105 Stat. 616, which provided that the effects of subsecs. (b) and (c), which amended this section, as those subsections affect the criminal misdemeanor jurisdiction of tribal courts over non-member Indians have no effect after Oct. 18, 1991, was repealed by Pub. L. 102–137, Oct. 28, 1991, 105 Stat. 646. Subsequent to repeal, Pub. L. 102–172, title VIII, §8112A(b), Nov. 26, 1991, 105 Stat. 1202, purported to amend section 8077(d) of Pub. L. 101–511 by substituting “1993” for “1991”.

§1302. Constitutional rights

(a) In general

No Indian tribe in exercising powers of self-government shall—

- (1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;
- (2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
- (3) subject any person for the same offense to be twice put in jeopardy;
- (4) compel any person in any criminal case to be a witness against himself;
- (5) take any private property for a public use without just compensation;

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense (except as provided in subsection (b));

- (7)(A) require excessive bail, impose excessive fines, or inflict cruel and unusual punishments;
- (B) except as provided in subparagraph (C), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 1 year or a fine of \$5,000, or both;
- (C) subject to subsection (b), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 3 years or a fine of \$15,000, or both; or
- (D) impose on a person in a criminal proceeding a total penalty or punishment greater than imprisonment for a term of 9 years;
- (8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
- (9) pass any bill of attainder or ex post facto law; or
- (10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

(b) Offenses subject to greater than 1-year imprisonment or a fine greater than \$5,000

A tribal court may subject a defendant to a term of imprisonment greater than 1 year but not to exceed 3 years for any 1 offense, or a fine greater than \$5,000 but not to exceed \$15,000, or both, if the defendant is a person accused of a criminal offense who—

- (1) has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or
- (2) is being prosecuted for an offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States.

(c) Rights of defendants

In a criminal proceeding in which an Indian tribe, in exercising powers of self-government, imposes a total term of imprisonment of more than 1 year on a defendant, the Indian tribe shall—

- (1) provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; and
- (2) at the expense of the tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;
- (3) require that the judge presiding over the criminal proceeding—
 - (A) has sufficient legal training to preside over criminal proceedings; and
 - (B) is licensed to practice law by any jurisdiction in the United States;

(4) prior to charging the defendant, make publicly available the criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances) of the tribal government; and

(5) maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.

(d) Sentences

In the case of a defendant sentenced in accordance with subsections (b) and (c), a tribal court may require the defendant—

- (1) to serve the sentence—
 - (A) in a tribal correctional center that has been approved by the Bureau of Indian Affairs for long-term incarceration, in accordance with guidelines to be developed by the Bureau of Indian Affairs (in consultation with Indian tribes) not later than 180 days after July 29, 2010;
 - (B) in the nearest appropriate Federal facility, at the expense of the United States pursuant to the Bureau of Prisons tribal prisoner pilot program described in section 304(c)¹ of the Tribal Law and Order Act of 2010;
 - (C) in a State or local government-approved detention or correctional center pursuant to an

agreement between the Indian tribe and the State or local government; or
(D) in an alternative rehabilitation center of an Indian tribe; or

(2) to serve another alternative form of punishment, as determined by the tribal court judge pursuant to tribal law.

(e) Definition of offense

In this section, the term “offense” means a violation of a criminal law.

(f) Effect of section

Nothing in this section affects the obligation of the United States, or any State government that has been delegated authority by the United States, to investigate and prosecute any criminal violation in Indian country.

(Pub. L. 90–284, title II, §202, Apr. 11, 1968, 82 Stat. 77; Pub. L. 99–570, title IV, §4217, Oct. 27, 1986, 100 Stat. 3207–146; Pub. L. 111–211, title II, §234(a), July 29, 2010, 124 Stat. 2279.)

REFERENCES IN TEXT

Section 304(c) of the Tribal Law and Order Act of 2010, referred to in subsec. (d)(1)(B), probably means section 234(c) of title II of Pub. L. 111–211, which is set out as a note below. See par. (13) of H. Con. Res. 304 (111th Congress), which is not classified to the Code.

AMENDMENTS

2010—Pub. L. 111–211, §234(a)(1), designated existing provisions as subsec. (a) and inserted subsec. heading.

Subsec. (a)(6). Pub. L. 111–211, §234(a)(2)(A), inserted “(except as provided in subsection (b))” after “assistance of counsel for his defense”. Amendment was executed to reflect the probable intent of Congress, notwithstanding errors in the directory language in quoting the text to be inserted.

Subsec. (a)(7). Pub. L. 111–211, §234(a)(2)(B), added par. (7) and struck out former par. (7) which read as follows: “require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year and a fine of \$5,000, or both;”.

Subsecs. (b) to (f). Pub. L. 111–211, §234(a)(3), added subsecs. (b) to (f).

1986—Par. (7). Pub. L. 99–570, which directed that “for a term of one year and a fine of \$5,000, or both” be substituted for “for a term of six months and a fine of \$500, or both”, was executed by making the substitution for “for a term of six months or a fine of \$500, or both” as the probable intent of Congress.

BUREAU OF PRISONS TRIBAL PRISONER PILOT PROGRAM

Pub. L. 111–211, title II, §234(c), July 29, 2010, 124 Stat. 2281, provided that:

“(1) IN GENERAL.—Not later than 120 days after the date of enactment of this title [July 29, 2010], the Director of the Bureau of Prisons shall establish a pilot program under which the Bureau of Prisons shall accept offenders convicted in tribal court pursuant to section 202 of the Indian Civil Rights Act of 1968 (25 U.S.C. 1302) (as amended by this section), subject to the conditions described in paragraph (2).

“(2) CONDITIONS.—

“(A) IN GENERAL.—As a condition of participation in the pilot program described in paragraph (1), the tribal court shall submit to the Attorney General a request for confinement of the offender, for approval by the Attorney General (or a designee) by not later than 30 days after the date of submission.

“(B) LIMITATIONS.—Requests for confinement shall be limited to offenders convicted of a violent crime (comparable to the violent crimes described in section 1153(a) of title 18, United States Code) for which the sentence includes a term of imprisonment of 2 or more

years.

“(C) CUSTODY CONDITIONS.—The imprisonment by the Bureau of Prisons shall be subject to the conditions described in section 5003 of title 18, United States Code, regarding the custody of State offenders, except that the offender shall be placed in the nearest available and appropriate Federal facility, and imprisoned at the expense of the United States.

“(D) CAP.—The Bureau of Prisons shall confine not more than 100 tribal offenders at any time.

“(3) RESCINDING REQUESTS.—

“(A) IN GENERAL.—The applicable tribal government shall retain the authority to rescind the request for confinement of a tribal offender by the Bureau of Prisons under this paragraph at any time during the sentence of the offender.

“(B) RETURN TO TRIBAL CUSTODY.—On rescission of a request under subparagraph (A), a tribal offender shall be returned to tribal custody.

“(4) REASSESSMENT.—If tribal court demand for participation in this pilot program exceeds 100 tribal offenders, a representative of the Bureau of Prisons shall notify Congress.

“(5) REPORT.—Not later than 3 years after the date of establishment of the pilot program, the Attorney General shall submit to Congress a report describing the status of the program, including recommendations regarding the future of the program, if any.

“(6) TERMINATION.—Except as otherwise provided by an Act of Congress, the pilot program under this paragraph shall expire on the date that is 4 years after the date on which the program is established.”

[For definition of “tribal government” as used in section 234(c) of Pub. L. 111–211, set out above, see section 203(a) of Pub. L. 111–211, set out as a note under section 2801 of this title.]

PURPOSE OF 1986 AMENDMENT

Pub. L. 99–570, title IV, §4217, Oct. 27, 1986, 100 Stat. 3207–146, provided in part that amendment of par. (7) of this section was to “enhance the ability of tribal governments to prevent and penalize the traffic of illegal narcotics on Indian reservations”.

¹ See References in Text note below.

§1303. Habeas corpus

The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

(Pub. L. 90–284, title II, §203, Apr. 11, 1968, 82 Stat. 78.)

§1304. Tribal jurisdiction over crimes of domestic violence

(a) Definitions

In this section:

(1) Dating violence

The term “dating violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(2) Domestic violence

The term “domestic violence” means violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who

is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim under the domestic- or family- violence laws of an Indian tribe that has jurisdiction over the Indian country where the violence occurs.

(3) Indian country

The term “Indian country” has the meaning given the term in section 1151 of title 18.

(4) Participating tribe

The term “participating tribe” means an Indian tribe that elects to exercise special domestic violence criminal jurisdiction over the Indian country of that Indian tribe.

(5) Protection order

The term “protection order”—

(A) means any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and

(B) includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendent lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

(6) Special domestic violence criminal jurisdiction

The term “special domestic violence criminal jurisdiction” means the criminal jurisdiction that a participating tribe may exercise under this section but could not otherwise exercise.

(7) Spouse or intimate partner

The term “spouse or intimate partner” has the meaning given the term in section 2266 of title 18.

(b) Nature of the criminal jurisdiction

(1) In general

Notwithstanding any other provision of law, in addition to all powers of self-government recognized and affirmed by sections 1301 and 1303 of this title, the powers of self-government of a participating tribe include the inherent power of that tribe, which is hereby recognized and affirmed, to exercise special domestic violence criminal jurisdiction over all persons.

(2) Concurrent jurisdiction

The exercise of special domestic violence criminal jurisdiction by a participating tribe shall be concurrent with the jurisdiction of the United States, of a State, or of both.

(3) Applicability

Nothing in this section—

(A) creates or eliminates any Federal or State criminal jurisdiction over Indian country; or

(B) affects the authority of the United States or any State government that has been delegated authority by the United States to investigate and prosecute a criminal violation in Indian country.

(4) Exceptions

(A) Victim and defendant are both non-Indians

(i) In general

A participating tribe may not exercise special domestic violence criminal jurisdiction over an alleged offense if neither the defendant nor the alleged victim is an Indian.

(ii) Definition of victim

In this subparagraph and with respect to a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction based on a violation of a protection order, the term “victim” means a person specifically protected by a protection order that the defendant allegedly violated.

(B) Defendant lacks ties to the Indian tribe

A participating tribe may exercise special domestic violence criminal jurisdiction over a defendant only if the defendant—

- (i) resides in the Indian country of the participating tribe;
- (ii) is employed in the Indian country of the participating tribe; or
- (iii) is a spouse, intimate partner, or dating partner of—
 - (I) a member of the participating tribe; or
 - (II) an Indian who resides in the Indian country of the participating tribe.

(c) Criminal conduct

A participating tribe may exercise special domestic violence criminal jurisdiction over a defendant for criminal conduct that falls into one or more of the following categories:

(1) Domestic violence and dating violence

An act of domestic violence or dating violence that occurs in the Indian country of the participating tribe.

(2) Violations of protection orders

An act that—

- (A) occurs in the Indian country of the participating tribe; and
- (B) violates the portion of a protection order that—
 - (i) prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person;
 - (ii) was issued against the defendant;
 - (iii) is enforceable by the participating tribe; and
 - (iv) is consistent with section 2265(b) of title 18.

(d) Rights of defendants

In a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction, the participating tribe shall provide to the defendant—

- (1) all applicable rights under this Act;
- (2) if a term of imprisonment of any length may be imposed, all rights described in section 1302(c) of this title;
- (3) the right to a trial by an impartial jury that is drawn from sources that—
 - (A) reflect a fair cross section of the community; and
 - (B) do not systematically exclude any distinctive group in the community, including non-Indians;and

(4) all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise special domestic violence criminal jurisdiction over the defendant.

(e) Petitions to stay detention

(1) In general

A person who has filed a petition for a writ of habeas corpus in a court of the United States under section 1303 of this title may petition that court to stay further detention of that person by the participating tribe.

(2) Grant of stay

A court shall grant a stay described in paragraph (1) if the court—

- (A) finds that there is a substantial likelihood that the habeas corpus petition will be granted; and
- (B) after giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.

(3) Notice

An Indian tribe that has ordered the detention of any person has a duty to timely notify such

person of his rights and privileges under this subsection and under section 1303 of this title.

(f) Grants to tribal governments

The Attorney General may award grants to the governments of Indian tribes (or to authorized designees of those governments)—

(1) to strengthen tribal criminal justice systems to assist Indian tribes in exercising special domestic violence criminal jurisdiction, including—

- (A) law enforcement (including the capacity of law enforcement or court personnel to enter information into and obtain information from national crime information databases);
- (B) prosecution;
- (C) trial and appellate courts;
- (D) probation systems;
- (E) detention and correctional facilities;
- (F) alternative rehabilitation centers;
- (G) culturally appropriate services and assistance for victims and their families; and
- (H) criminal codes and rules of criminal procedure, appellate procedure, and evidence;

(2) to provide indigent criminal defendants with the effective assistance of licensed defense counsel, at no cost to the defendant, in criminal proceedings in which a participating tribe prosecutes a crime of domestic violence or dating violence or a criminal violation of a protection order;

(3) to ensure that, in criminal proceedings in which a participating tribe exercises special domestic violence criminal jurisdiction, jurors are summoned, selected, and instructed in a manner consistent with all applicable requirements; and

(4) to accord victims of domestic violence, dating violence, and violations of protection orders rights that are similar to the rights of a crime victim described in section 3771(a) of title 18, consistent with tribal law and custom.

(g) Supplement, not supplant

Amounts made available under this section shall supplement and not supplant any other Federal, State, tribal, or local government amounts made available to carry out activities described in this section.

(h) Authorization of appropriations

There are authorized to be appropriated \$5,000,000 for each of fiscal years 2014 through 2018 to carry out subsection (f) and to provide training, technical assistance, data collection, and evaluation of the criminal justice systems of participating tribes.

(Pub. L. 90–284, title II, §204, as added Pub. L. 113–4, title IX, §904, Mar. 7, 2013, 127 Stat. 120.)

REFERENCES IN TEXT

This Act, referred to in subsec. (d)(1), probably means title II of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 77, popularly known as the Indian Civil Rights Act of 1968, which is classified generally to this subchapter.

EFFECTIVE DATES; PILOT PROJECT.

Pub. L. 113–4, title IX, §908, Mar. 7, 2013, 127 Stat. 125, provided that:

“(a) GENERAL EFFECTIVE DATE.—Except as provided in section 4 [18 U.S.C. 2261 note] and subsection (b) of this section, the amendments made by this title [see Tables for classification] shall take effect on the date of enactment of this Act [Mar. 7, 2013].

“(b) EFFECTIVE DATE FOR SPECIAL DOMESTIC-VIOLENCE CRIMINAL JURISDICTION.—

“(1) IN GENERAL.—Except as provided in paragraph (2), subsections (b) through (d) of section 204 of Public Law 90–284 [25 U.S.C. 1304(b)–(d)] (as added by section 904) shall take effect on the date that is 2 years after the date of enactment of this Act [Mar. 7, 2013].

“(2) PILOT PROJECT.—

“(A) IN GENERAL.—At any time during the 2-year period beginning on the date of enactment of this Act, an Indian tribe may ask the Attorney General to designate the tribe as a participating tribe under section 204(a) of Public Law 90–284 [25 U.S.C. 1304(a)] on an accelerated basis.

“(B) PROCEDURE.—The Attorney General may grant a request under subparagraph (A) after coordinating with the Secretary of the Interior, consulting with affected Indian tribes, and concluding that the criminal justice system of the requesting tribe has adequate safeguards in place to protect defendants’ rights, consistent with section 204 of Public Law 90–284 [25 U.S.C. 1304].

“(C) EFFECTIVE DATES FOR PILOT PROJECTS.—An Indian tribe designated as a participating tribe under this paragraph may commence exercising special domestic violence criminal jurisdiction pursuant to subsections (b) through (d) of section 204 of Public Law 90–284 on a date established by the Attorney General, after consultation with that Indian tribe, but in no event later than the date that is 2 years after the date of enactment of this Act.”

SUBCHAPTER II—MODEL CODE GOVERNING COURTS OF INDIAN OFFENSES

§1311. Model code

The Secretary of the Interior is authorized and directed to recommend to the Congress, on or before July 1, 1968, a model code to govern the administration of justice by courts of Indian offenses on Indian reservations. Such code shall include provisions which will (1) assure that any individual being tried for an offense by a court of Indian offenses shall have the same rights, privileges, and immunities under the United States Constitution as would be guaranteed any citizen of the United States being tried in a Federal court for any similar offense, (2) assure that any individual being tried for an offense by a court of Indian offenses will be advised and made aware of his rights under the United States Constitution, and under any tribal constitution applicable to such individual, (3) establish proper qualifications for the office of judge of the court of Indian offenses, and (4) provide for the establishing of educational classes for the training of judges of courts of Indian offenses. In carrying out the provisions of this subchapter, the Secretary of the Interior shall consult with the Indians, Indian tribes, and interested agencies of the United States.

(Pub. L. 90–284, title III, §301, Apr. 11, 1968, 82 Stat. 78.)

§1312. Authorization of appropriations

There is hereby authorized to be appropriated such sum as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 90–284, title III, §302, Apr. 11, 1968, 82 Stat. 78.)

SUBCHAPTER III—JURISDICTION OVER CRIMINAL AND CIVIL ACTIONS

§1321. Assumption by State of criminal jurisdiction

(a) Consent of United States

(1) In general

The consent of the United States is hereby given to any State not having jurisdiction over criminal

offenses committed by or against Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian country or part thereof which could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

(2) Concurrent jurisdiction

At the request of an Indian tribe, and after consultation with and consent by the Attorney General, the United States shall accept concurrent jurisdiction to prosecute violations of sections 1152 and 1153 of title 18 within the Indian country of the Indian tribe.

(b) Alienation, encumbrance, taxation, and use of property; hunting, trapping, or fishing

Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(Pub. L. 90–284, title IV, §401, Apr. 11, 1968, 82 Stat. 78; Pub. L. 111–211, title II, §221(a), July 29, 2010, 124 Stat. 2271.)

AMENDMENTS

2010—Pub. L. 111–211 substituted “Assumption by State of criminal jurisdiction” for “Assumption by State” in section catchline, inserted subsec. (a) heading, inserted par. (1) designation and heading, and added par. (2). Amendment to section catchline was executed as the probable intent of Congress, notwithstanding directory language which erroneously directed the amendment to subsec. (a).

§1322. Assumption by State of civil jurisdiction

(a) Consent of United States; force and effect of civil laws

The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

(b) Alienation, encumbrance, taxation, use, and probate of property

Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute, or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Force and effect of tribal ordinances or customs

Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

(Pub. L. 90-284, title IV, §402, Apr. 11, 1968, 82 Stat. 79.)

§1323. Retrocession of jurisdiction by State

(a) Acceptance by United States

The United States is authorized to accept a retrocession by any State of all or any measure of the criminal or civil jurisdiction, or both, acquired by such State pursuant to the provisions of section 1162 of title 18, section 1360 of title 28, or section 7 of the Act of August 15, 1953 (67 Stat. 588), as it was in effect prior to its repeal by subsection (b) of this section.

(b) Repeal of statutory provisions

Section 7 of the Act of August 15, 1953 (67 Stat. 588), is hereby repealed, but such repeal shall not affect any cession of jurisdiction made pursuant to such section prior to its repeal.

(Pub. L. 90-284, title IV, §403, Apr. 11, 1968, 82 Stat. 79.)

REFERENCES IN TEXT

Section 7 of the Act of August 15, 1953, referred to in text, is section 7 of act Aug. 15, 1953, ch. 505, 67 Stat. 588, which is set out as a note under section 1360 of Title 28, Judiciary and Judicial Procedure.

EX. ORD. NO. 11435. DESIGNATING SECRETARY OF THE INTERIOR TO ACCEPT RETROCESSION OF JURISDICTION BY STATE

Ex. Ord. No. 11435, Nov. 21, 1968, 33 F.R. 17339, provided:

By virtue of the authority vested in me by section 465 of the Revised Statutes (25 U.S.C. 9) and as President of the United States, the Secretary of the Interior is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President or of any other officer of the United States, any and all authority conferred upon the United States by Section 403(a) of the Act of April 11, 1968, 82 Stat. 79 (25 U.S.C. 1323(a)): *Provided*, That acceptance of retrocession of all or any measure of civil or criminal jurisdiction, or both, by the Secretary hereunder shall be effected by publication in the FEDERAL REGISTER of a notice which shall specify the jurisdiction retroceded and the effective date of the retrocession: *Provided further*, That acceptance of such retrocession of criminal jurisdiction shall be effected only after consultation by the Secretary with the Attorney General.

LYNDON B. JOHNSON.

§1324. Amendment of State constitutions or statutes to remove legal impediment; effective date

Notwithstanding the provisions of any enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil or criminal jurisdiction in accordance with the provisions of this subchapter. The provisions of this subchapter shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes, as the case may be.

(Pub. L. 90-284, title IV, §404, Apr. 11, 1968, 82 Stat. 79.)

§1325. Abatement of actions

(a) Pending actions or proceedings; effect of cession

No action or proceeding pending before any court or agency of the United States immediately prior to any cession of jurisdiction by the United States pursuant to this subchapter shall abate by reason of that cession. For the purposes of any such action or proceeding, such cession shall take effect on the day following the date of final determination of such action or proceeding.

(b) Criminal actions; effect of cession

No cession made by the United States under this subchapter shall deprive any court of the United States of jurisdiction to hear, determine, render judgment, or impose sentence in any criminal action instituted against any person for any offense committed before the effective date of such cession, if the offense charged in such action was cognizable under any law of the United States at the time of the commission of such offense. For the purposes of any such criminal action, such cession shall take effect on the day following the date of final determination of such action.

(Pub. L. 90–284, title IV, §405, Apr. 11, 1968, 82 Stat. 80.)

§1326. Special election

State jurisdiction acquired pursuant to this subchapter with respect to criminal offenses or civil causes of action, or with respect to both, shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose. The Secretary of the Interior shall call such special election under such rules and regulations as he may prescribe, when requested to do so by the tribal council or other governing body, or by 20 per centum of such enrolled adults.

(Pub. L. 90–284, title IV, §406, Apr. 11, 1968, 82 Stat. 80.)

SUBCHAPTER IV—EMPLOYMENT OF LEGAL COUNSEL

§1331. Approval

Notwithstanding any other provision of law, if any application made by an Indian, Indian tribe, Indian council, or any band or group of Indians under any law requiring the approval of the Secretary of the Interior or the Commissioner of Indian Affairs of contracts or agreements relating to the employment of legal counsel (including the choice of counsel and the fixing of fees) by any such Indians, tribe, council, band, or group is neither granted nor denied within ninety days following the making of such application, such approval shall be deemed to have been granted.

(Pub. L. 90–284, title VI, §601, Apr. 11, 1968, 82 Stat. 80.)

SUBCHAPTER V—MATERIALS AND PUBLICATIONS

§1341. Authorization of Secretary

(a) Revision of document on “Indian Affairs, Laws and Treaties” and treatise on “Federal Indian Laws”; compilation of official opinions; printing and republication

In order that the constitutional rights of Indians might be fully protected, the Secretary of the Interior is authorized and directed to—

- (1) have the document entitled “Indian Affairs, Laws and Treaties” (Senate Document Numbered

319, volumes 1 and 2, Fifty-eighth Congress), revised and extended to include all treaties, laws, Executive orders, and regulations relating to Indian affairs in force on September 1, 1967, and to have such revised document printed at the Government Printing Office;

(2) have revised and republished the treatise entitled "Federal Indian Law"; and

(3) have prepared, to the extent determined by the Secretary of the Interior to be feasible, an accurate compilation of the official opinions, published and unpublished, of the Solicitor of the Department of the Interior relating to Indian affairs rendered by the Solicitor prior to September 1, 1967, and to have such compilation printed as a Government publication at the Government Printing Office.

(b) Current services

With respect to the document entitled "Indian Affairs, Laws and Treaties" as revised and extended in accordance with paragraph (1) of subsection (a) of this section, and the compilation prepared in accordance with paragraph (3) of such subsection, the Secretary of the Interior shall take such action as may be necessary to keep such document and compilation current on an annual basis.

(c) Authorization of appropriations

There is authorized to be appropriated for carrying out the provisions of this subchapter such sum as may be necessary.

(Pub. L. 90-284, title VII, §701, Apr. 11, 1968, 82 Stat. 80; Pub. L. 93-265, Apr. 12, 1974, 88 Stat. 84.)

AMENDMENTS

1974—Subsec. (c). Pub. L. 93-265 struck out ", with respect to the preparation but not including printing," before "such sum".