

Subcommittee on Indian, Insular and Alaska Native Affairs
Doug LaMalfa, Chairman
Hearing Memorandum

June 5, 2017

To: All Subcommittee on Indian, Insular and Alaska Native Affairs Members

From: Majority Committee Staff, Subcommittee on Indian, Insular and Alaska Native Affairs (x6-9725)

Hearing: Legislative hearing on **H.R. 1074 (Rep. Rod Blum)**, To repeal the Act entitled “An Act to confer jurisdiction on the State of Iowa over offenses committed by or against Indians on the Sac and Fox Indian Reservation”.
June 7, 2017, 2:00 p.m., 1324 Longworth HOB

Summary of the Bill

H.R. 1074 was introduced by Rep. Rod Blum on February 15, 2017. The bill would repeal the Act titled “An Act to confer jurisdiction on the State of Iowa over offenses committed by or against Indians on the Sac and Fox Indian Reservation”¹. The bill will rescind criminal jurisdiction from the state of Iowa regarding crimes committed by or against members of the Sac and Fox Tribe on their reservation. In doing so, either the Tribe or the federal government would have exclusive jurisdiction under the Major Crimes Act.²

Cosponsors

Rep. Steve King (R-IA), Rep. David Loebsack (D-IA), Rep. David Young (R-IA)

Invited Witnesses

The Honorable Jeff Sessions or Designee
Attorney General
U.S. Department of Justice
Washington, DC

The Honorable Laverne Jefferson
Council Member & Treasurer
Sac and Fox Tribe of the Mississippi in Iowa
Tama, Iowa

Mr. Bruce Loudermilk
Director
Bureau of Indian Affairs
U.S. Department of the Interior
Washington, DC

¹ Pub.L. 80-846.

² 18 U.S.C. §1153, 2343.

Background

The Sac and Fox Tribe of the Mississippi of Iowa live on what is known as the Meskwaki Settlement in Tama County, Iowa, which houses more than 1,300 enrolled members.³ The tribe purchased this land in Iowa in 1857, but the land was not placed into trust until 1896. Pursuant to an act of Congress, all crimes on the tribe's land, regardless of the Indian status of the offender or victim, fall under the jurisdiction of the State of Iowa. H.R. 1074 would rescind this act and thereby put crimes committed by or against Indians on the tribe's lands under federal or tribal jurisdiction in a manner similar to the jurisdictional arrangement in most (but not all) Indian communities.

Criminal Jurisdiction in Indian Country

Determining who has criminal jurisdiction over offenders in tribal communities may be extremely complex. The first consideration is whether a crime has occurred in Indian Country or on land under the jurisdiction of a state. In general, crimes committed by or against Indians in Indian Country are under the jurisdiction of the United States, pursuant to one or more federal statutes.⁴ Indian Country is a term defined in 18 U.S.C. 1151⁵, and it includes all lands and rights-of-way (regardless of who owns them) within the limits of an Indian reservation, and the government has interpreted the term to include off-reservation lands held in trust for tribes. Crimes committed in Indian country in which the offender and victim are non-Indian remain under State jurisdiction. Crimes committed by Indians in Indian Country may be subject to the jurisdiction of both a tribe and the United States, and crimes committed by non-Indians against Indians are under federal but not tribal jurisdiction.⁶ One exception to this latter rule is found in Title IX of the Violence Against Women Reauthorization Act of 2013 (VAWA).⁷ In VAWA, Congress recognized "inherent power" of a tribe to exercise criminal jurisdiction over non-Indians who commit certain domestic violence crimes against Indian spouses, dating partners, or those with whom the offender has a certain relationship. The constitutionality of these provisions has not yet been tested before the Supreme Court.

The scope and nature of tribal criminal jurisdiction is unique. Because they are not deemed to be parties to the U.S. Constitution, tribes are not required to adhere to the requirements contained in the Bill of Rights guaranteeing certain rights to defendants. Moreover, federal courts have opined that an individual may be prosecuted separately by a tribe

³ Meskwaki Official Site: <http://www.meskwaki.org>

⁴ The General Crimes Act (18 U.S.C. § 1152) endows the federal government with jurisdiction to prosecute certain federal crimes committed by non-Indians against Indians in Indian country. These crimes include assault, domestic violence, illegal gun possession, stalking, murder or manslaughter (including attempts), aggravated sexual abuse, sexual abuse, sexual abuse of a minor or ward, and abusive sexual contact. The Assimilative Crimes Act (18 U.S.C. § 13) authorizes the federal government to try non-Indians in federal court for violation of applicable state law.

⁵ **§1151. Indian country defined**

Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. (June 25, 1948, ch. 645, 62 Stat. 757 ; May 24, 1949, ch. 139, §25, 63 Stat. 94 .)

⁶ In *Oliphant v. Suquamish Indian tribe*, 435 U.S. 191 (1978), the Supreme Court held that tribes lack inherent authority over non-Indians.

⁷ Publ. L. 113-4, March 7, 2013, 127 Stat. 54

and by the federal government for the same crime without violating the Constitution's proscription against double jeopardy, as long as the tribe is exercising an "inherent" power and not one delegated by the federal government.

While Congress enacted the Indian Civil Rights Act⁸ to require tribes to guarantee to defendants basic protections resembling those in the Bill of Rights, individuals in a tribe's jurisdiction generally do not have to seek review of their tribal, conviction, or sentence in federal or state court except in narrow circumstances (e.g., a defendant always has a right to file a *habeas corpus* petition with a federal court, which may determine whether or not the person is Indian or if the crime of which he is accused occurred in the Indian Country of the tribe).⁹ Tribal sentencing powers are limited,¹⁰ many tribes lack financial resources to operate fully functioning justice systems, and tribes are not required by federal law to maintain separation between the political and judicial branches of their governments.

State Jurisdiction over Crimes in Certain Tribal Communities

In 1948, Congress granted jurisdiction over all crimes committed by or against Indians on the Sac and Fox Reservation to the state of Iowa. At this time, there was no mechanism in the federal government concerning criminal jurisdiction on the tribe's land, and up until that point the Sac and Fox Tribe had largely policed themselves.

In 1953, Congress passed a law commonly called Public Law 280,¹¹ transferring criminal jurisdiction over all crimes (regardless of the Indian status of offender and victim) in Indian Country of several states from the federal government to those states.¹² In 2010, with the passage of the Tribal Law and Order Act (TLOA)¹³, tribes residing in these "mandatory P.L. 280 states" could request U.S. Department of Justice to re-assume federal criminal jurisdiction over that tribe in Indian country, though States would exercise concurrent jurisdiction, and tribes would exercise concurrent jurisdiction where applicable.

H.R. 1074

H.R. 1074 would strike the original act outlining the state of Iowa's broad criminal and civil jurisdiction over any crimes, regardless of the Indian status of the offender or victim, on the Sac and Fox Tribe of the Mississippi reservation. Enactment of this bill would thus place the tribe on the same footing as most tribes in non-P.L. 280 states. Accordingly, it is expected that the federal government would have criminal jurisdiction over crimes (especially major crimes) by or against Indians on the tribe's lands, the tribe would have jurisdiction over Indian offenders for crimes over which it exercises jurisdiction (including limited jurisdiction over non-Indians in

⁸ 25 U.S.C. 1301 et seq.

⁹ See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978)

¹⁰ "[The Tribal Law and Order Act] ... restored limited felony sentencing authority to tribes that meet certain conditions.

Specifically, TLOA allows tribes to impose sentences of up to three years' imprisonment and/or a \$15,000 fine per offense for a combined maximum sentence of nine years per criminal proceeding. 25 U.S.C. 1302(b)."

<https://www.justice.gov/tribal/file/796981/download>

¹¹ Pub. L. 83-280, August 15, 1953, 18 U.S.C. 1162, 28 U.S.C. 1360, and 25 U.S.C. 1321-1326.

¹² California, Minnesota, Nebraska, Oregon, Wisconsin, and Alaska. Since 1953, other states have assumed some jurisdiction over crimes committed by tribal members on tribal lands.

¹³ P.L. 111-211.

certain domestic violence crimes), and the state of Iowa would retain exclusive jurisdiction over crimes where both offender and victim are non-Indians.

Cost

Unknown at this time.

Administration Position

Unknown at this time.

Effect on Current Law (Ramseyer)

Showing current law as amended by H.R. 1074

[new text is highlighted in yellow; text to be deleted is bracketed and highlighted in blue]

An Act to confer jurisdiction on the State of Iowa over offenses committed by or against Indians on the Sac and Fox Indian Reservation (62 Stat. 1161, chapter 759).

[Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That jurisdiction is hereby conferred on the State of Iowa over offenses committed by or against Indians on the Sac and Fox Indian Reservation in that State to the same extent as its courts have jurisdiction generally over offenses committed within said State outside of any Indian reservation: Provided, however, That nothing herein contained shall deprive the courts of the United States of jurisdiction over offenses defined by the laws of the United States committed by or against Indians on Indian reservations.]