

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 521

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

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IN THE SENATE OF THE UNITED STATES

MARCH 5 (legislative day, MARCH 3), 1993

Mr. MCCAIN (for himself, Mr. INOUE, and Mr. CAMPBELL) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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## 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 **TITLE I—GENERAL PROVISIONS**

#### 4 **SEC. 101. SHORT TITLE.**

5 This Act may be cited as the “Indian Tribal Justice  
6 Act”.

#### 7 **SEC. 102. FINDINGS.**

8 The Congress finds and declares that—

1           (1) there is a government-to-government rela-  
2           tionship between the United States and each Indian  
3           tribe;

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

8           (3) Indian tribes possess the inherent authority  
9           to establish their own form of government, including  
10          tribal justice systems;

11          (4) tribal justice systems are essential to self-  
12          government and integral to the fulfillment of the  
13          Federal Government's policy of self-determination;

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

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

20 **SEC. 103. DEFINITIONS.**

21          For purposes of this Act:

22               (1) The term "Bureau" means the Bureau of  
23          Indian Affairs of the Department of the Interior.

1           (2) The term “Courts of Indian Offenses”  
2 means the courts established pursuant to part 11 of  
3 title 25, 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  
20 Tribal Justice Support within the Bureau of Indian  
21 Affairs.

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

1           (7) The term “tribal organization” means any  
2 organization defined in section 4(c) of the Indian  
3 Self-Determination and Education Assistance Act.

4           (8) The term “tribal justice system” means the  
5 entire judicial branch of an Indian tribe, including  
6 but not limited to traditional methods and forums  
7 for dispute resolution, lower courts, appellate courts,  
8 alternative dispute resolution systems, and circuit  
9 rider systems, established by inherent tribal author-  
10 ity whether or not they constitute a court of record,  
11 and the employees thereof.

## 12           **TITLE II—TRIBAL JUSTICE** 13           **SYSTEMS**

### 14   **SEC. 201. OFFICE OF TRIBAL JUSTICE SUPPORT.**

15           (a) ESTABLISHMENT.—There is hereby established  
16 within the Bureau the Office of Tribal Justice Support.  
17 The purpose of the Office shall be to further the devel-  
18 opment, operation, and enhancement of tribal justice  
19 systems.

20           (b) TRANSFER OF EXISTING FUNCTIONS AND PER-  
21 SONNEL.—All functions performed before the date of the  
22 enactment of this Act by the Branch of Judicial Services  
23 of the Bureau and all personnel assigned to such Branch  
24 as of the date of the enactment of this Act are hereby  
25 transferred to the Office of Tribal Justice Support. Any

1 reference in any law, regulation, executive order, reorga-  
2 nization plan, or delegation of authority to the Branch of  
3 Judicial Services is deemed to be a reference to the Office  
4 of Tribal Justice Support.

5 (c) FUNCTIONS.—Except as otherwise provided in  
6 title III, in addition to the functions transferred to the  
7 Office pursuant to subsection (b), the Office shall perform  
8 the following functions:

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

12 (2) Provide technical assistance and training to  
13 Indian tribes and tribal organizations upon request.

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

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

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

21 (d) ASSISTANCE TO TRIBES.—(1) The Office shall  
22 provide training and technical assistance to any Indian  
23 tribe or tribal organization upon request. Technical assist-  
24 ance and training which may be provided by the Office

1 shall include, but is not limited to, assistance for the devel-  
2 opment of—

3 (A) tribal codes and rules of procedure;

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

6 (C) methods of reducing case delays;

7 (D) methods of alternative dispute resolution;

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

10 (F) long-range plans for the enhancement of  
11 tribal justice systems.

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

16 (e) INFORMATION CLEARINGHOUSE ON TRIBAL JUS-  
17 TICE SYSTEMS.—The Office shall establish an information  
18 clearinghouse (which shall include an electronic data base)  
19 on tribal justice systems, including, but not limited to, in-  
20 formation on tribal judicial personnel, funding, model trib-  
21 al codes, tribal justice activities, and tribal judicial deci-  
22 sions. The Office shall take such action as may be nec-  
23 essary to ensure the confidentiality of personnel records,  
24 case records, and other matters involving the privacy of  
25 individuals.

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

2 (a) IN GENERAL.—Not later than one year after the  
3 date of the enactment of this Act, the Secretary, in con-  
4 sultation with affected Indian tribes, shall enter into a  
5 contract with a non-Federal entity to conduct a survey of  
6 conditions of tribal justice systems and Courts of Indian  
7 Offenses to determine the resources and funding needed  
8 to provide for expeditious and effective administration of  
9 justice. The Secretary, in like manner, shall annually up-  
10 date the information and findings contained in the survey  
11 required under this section.

12 (b) LOCAL CONDITIONS.—In the course of any an-  
13 nual survey, the non-Federal entity shall document local  
14 conditions on each reservation, including, but not limited  
15 to—

16 (1) the reservation size and population to be  
17 served;

18 (2) the levels of functioning and capacity of the  
19 tribal justice system;

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

21 (4) the facilities, including detention facilities,  
22 and program resources available;

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

25 (6) the training and technical assistance needs  
26 of the tribal justice system.

1           (c) CONSULTATION WITH INDIAN TRIBES.—The  
2 non-Federal entity shall actively consult with Indian tribes  
3 and tribal organizations in the development of the survey,  
4 including updates thereof, of conditions of tribal justice  
5 systems. Indian tribes and tribal organizations shall have  
6 the opportunity to review and make recommendations re-  
7 garding the findings of the survey, including updates  
8 thereof, prior to final publication of the survey, or any up-  
9 date thereof. After Indian tribes and tribal organizations  
10 have reviewed and commented on the results of the survey,  
11 or any update thereof, the non-Federal entity shall report  
12 its findings, together with the comments and recommenda-  
13 tions of the Indian tribes and tribal organizations, to the  
14 Secretary, the Committee on Indian Affairs of the Senate,  
15 and the Subcommittee on Native American Affairs of the  
16 Committee on Natural Resources of the House of Rep-  
17 resentatives.

18 **SEC. 203. BASE SUPPORT FUNDING FOR TRIBAL JUSTICE**

19                           **SYSTEMS.**

20           (a) IN GENERAL.—Pursuant to the Indian Self-De-  
21 termination and Education Assistance Act, the Secretary  
22 is authorized to enter into contracts, grants, or agree-  
23 ments with Indian tribes and tribal organizations, for the  
24 development, enhancement, and continuing operation of  
25 tribal justice systems on Indian reservations.

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

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

7 (2) the employment of judicial personnel;

8 (3) training programs and continuing education  
9 for tribal judicial personnel;

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

13 (5) the development, revision, and publication  
14 of tribal codes, rules of practice, rules of procedure,  
15 and standards of judicial performance and conduct;

16 (6) the development and operation of records  
17 management systems;

18 (7) the construction or renovation of facilities  
19 for tribal justice systems;

20 (8) membership and related expenses for par-  
21 ticipation in national and regional organizations of  
22 tribal justice systems and other professional organi-  
23 zations; and

1           (9) the development and operation of other in-  
2           novative and culturally relevant programs and  
3           projects, including programs and projects for—

4                   (A) alternative dispute resolution;

5                   (B) tribal victims assistance or victims  
6           services;

7                   (C) tribal probation services or diversion  
8           programs;

9                   (D) multidisciplinary investigations of child  
10          abuse; and

11                  (E) tribal traditional justice systems or  
12          traditional methods of dispute resolution.

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

19          (2) The Secretary shall develop appropriate case load  
20          and staffing criteria for tribal justice systems that take  
21          into account unique reservation conditions. In the develop-  
22          ment of these criteria, the Secretary shall consult with In-  
23          dian tribes and tribal organizations and shall refer to com-  
24          parable relevant criteria developed by the Judicial Con-

1 ference of the United States, the National Center for State  
2 Courts, and the American 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 and staffing criteria developed  
7 under this paragraph;

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 tribal judicial systems under this section, the Sec-  
20 retary shall ensure equitable distribution of funds.

## 21 **TITLE III—TRIBAL JUDICIAL** 22 **CONFERENCES**

### 23 **SEC. 301. ESTABLISHMENT; FUNDING.**

24 (a) ESTABLISHMENT.—In any case in which two or  
25 more governing bodies of Indian tribes establish a regional

1 or national judicial conference, such conference shall be  
2 considered a tribal organization and eligible to contract  
3 for funds under this title, if each member tribe served by  
4 the conference has adopted a tribal resolution which au-  
5 thorizes the tribal judicial conference to receive and ad-  
6 minister funds under this title. At the written request of  
7 any tribal judicial conference, a contract entered into pur-  
8 suant to this title shall authorize the conference to receive  
9 funds and perform any or all of the duties of the Bureau  
10 and the Office under sections 201 and 202 of this Act  
11 on behalf of the members of such conference.

12 (b) CONTRACT AUTHORITY.—Pursuant to the Indian  
13 Self-Determination and Education Assistance Act, the  
14 Secretary is authorized to enter into contracts, grants, or  
15 agreements with a tribal judicial conference for the devel-  
16 opment, enhancement, and continuing operation of tribal  
17 justice systems of Indian tribes which are members of  
18 such conference.

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

# 1       **TITLE IV—AUTHORIZATIONS**

## 2       **SEC. 401. TRIBAL JUSTICE SYSTEMS.**

3       (a) OFFICE.—There are authorized to be appro-  
4       priated to carry out the provisions of sections 201, 202,  
5       and 301(a) of this Act, \$7,000,000 for each of the fiscal  
6       years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

7       (b) BASE SUPPORT FUNDING FOR TRIBAL JUSTICE  
8       SYSTEMS AND JUDICIAL CONFERENCES.—There are au-  
9       thorized to be appropriated to carry out the provisions of  
10      section 203 of this Act, \$50,000,000 for each of the fiscal  
11      years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

12      (c) ADMINISTRATIVE EXPENSES FOR OFFICE.—  
13      There are authorized to be appropriated, for the adminis-  
14      trative expenses of the Office, \$500,000 for each of the  
15      fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and  
16      2000.

17      (d) ADMINISTRATIVE EXPENSES FOR TRIBAL JUDI-  
18      CIAL CONFERENCES.—There are authorized to be appro-  
19      priated, for the administrative expenses of tribal judicial  
20      conferences, \$500,000 for each of the fiscal years 1994,  
21      1995, 1996, 1997, 1998, 1999, and 2000.

22      (e) SURVEY.—For carrying out the survey under sec-  
23      tion 202, there is authorized to be appropriated, in addi-  
24      tion to the amount authorized under subsection (a) of this  
25      section, \$400,000.

1 (f) NO OFFSET.—No Federal agency shall offset  
2 funds made available pursuant to this Act for tribal justice  
3 systems against funds otherwise made available for or in  
4 connection with tribal justice systems.

5 (g) ALLOCATION OF FUNDS.—In allocating funds ap-  
6 propriated pursuant to the authorization contained in sub-  
7 section (a) of this section among the Bureau, Office, tribal  
8 governments, and tribal judicial conferences, the Secretary  
9 shall take such action as may be necessary to ensure that  
10 such allocation is carried out in a manner that is fair and  
11 equitable, and is proportionate to base support funding  
12 under section 203 received by the Bureau, Office, tribal  
13 governments, and tribal government members comprising  
14 a judicial conference.

## 15 **TITLE V—DISCLAIMERS**

### 16 **SEC. 501. TRIBAL AUTHORITY.**

17 Nothing in this Act shall be construed to—

18 (1) encroach upon or diminish in any way the  
19 inherent sovereign authority of each tribal govern-  
20 ment to determine the role of the tribal court within  
21 the tribal government or to enact and enforce tribal  
22 laws;

23 (2) diminish in any way the authority of tribal  
24 governments to appoint personnel;

1           (3) impair the rights of each tribal government  
2           to determine the nature of its own legal system or  
3           the apportionment of authority within the tribal gov-  
4           ernment;

5           (4) alter in any way traditional dispute resolu-  
6           tion forum;

7           (5) imply that any tribal court is an instrumen-  
8           tality of the United States; or

9           (6) diminish the trust responsibility of the  
10          United States to Indian tribal governments and trib-  
11          al court systems of such governments.

12 **SEC. 502. INDIAN PRIORITY SYSTEM.**

13          Nothing in this Act shall affect the eligibility of a  
14          tribal government to receive funding through the Indian  
15          priority system of the Bureau for support of the tribe's  
16          court system.

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