

Committee on Natural Resources

Rob Bishop Chairman
Mark-Up Memorandum

July 24, 2017

To: All Natural Resources Committee Members

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

Mark-Up: **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.
July 25-26, 2017, 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, thereby rescinding criminal jurisdiction from the state of Iowa over crimes committed by or against members of the Sac and Fox Tribe on their lands. In doing so, the tribe or the federal government would exercise exclusive jurisdiction under the Major Crimes Act.²

Cosponsors

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

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 84 acres original reservation lands 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 may exercise jurisdiction over crime in tribal communities is extremely complex. The first consideration in determining jurisdiction over a crime is whether or not it

¹ Pub.L. 80-846.

² 18 U.S.C. §1153, 2343.

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

was committed in Indian Country. “Indian Country,” which is defined in 18 U.S.C. 1151,⁴ means all lands and rights-of-way (regardless of who owns them) within the limits of an Indian reservation; the government has interpreted the term to include off-reservation lands held in trust for tribes.

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.⁵ Crimes committed in Indian country in which the offender and victim are non-Indian are under state jurisdiction. Crimes committed by Indians in Indian Country may be subject to the jurisdiction of a tribe (depending on the kind of crime) or the United States. 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 the “inherent power” of tribes 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.

Further discussion of the scope and nature of tribal criminal jurisdiction is available in the hearing memo for H.R. 1074⁸, and on the U.S. Department of Justice website, which includes an Indian Country Criminal Jurisdiction Chart.⁹

Jurisdiction over Crimes in the Sac and Fox Community

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 tribe had largely policed themselves.

⁴ §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 .).

⁵ 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.

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.

⁸ [https://naturalresources.house.gov/uploadedfiles/hearing_memo -- leg_hrg_on h.r. 1074 06.07.17.pdf](https://naturalresources.house.gov/uploadedfiles/hearing_memo_-_leg_hrg_on_h.r._1074_06.07.17.pdf)

⁹ <https://www.justice.gov/sites/default/files/usao-wdod/legacy/2014/03/25/Indian%20Country%20Criminal%20Jurisdiction%20ChartColor2010.pdf>

Congress's transfer of criminal jurisdiction in the Sac and Fox tribal community to the State of Iowa was enacted not long before similar arrangements were made for reservations other states. In 1953, Congress passed a law commonly called Public Law 280,¹⁰ transferring criminal jurisdiction over all crime (regardless of the Indian status of offender and victim) in Indian Country of six states from the federal government to those states.¹¹ In 2010, with the passage of the Tribal Law and Order Act (TLOA),¹² 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.

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

Cost

On June 2, 2017, the CBO estimated that implementing S. 381, a Senate bill identical to H.R. 1074, would have no effect on the federal budget for the period of 2018-2022. However, because of the repeal of Iowa's jurisdiction over criminal offenses, the Sac and Fox Nation would become eligible for funding from the BIA to appropriately run its tribal court, law enforcement, and detention facility. Based on funding supplied to tribes of a similar size, the Sac and Fox tribe would be eligible for funding of up to \$7 million per year from the BIA. The bill would not affect direct spending or revenues. The BIA budget line item requests would likely need an increase as to not lessen services in other regions of the country.

Administration Position

On June 7, 2017, the Bureau of Indian Affairs testified in support of H.R. 1074.¹³ The U.S. Department of Justice did not participate in the hearing but submitted testimony for the record in support of the bill.¹⁴

Anticipated Amendments

None.

¹⁰ Pub. L. 83-280, August 15, 1953, 18 U.S.C. 1162, 28 U.S.C. 1360, and 25 U.S.C. 1321-1326.

¹¹ California, Minnesota, Nebraska, Oregon, Wisconsin, and Alaska. Since 1953, other states have assumed some jurisdiction over crimes committed by tribal members on tribal lands.

¹² P.L. 111-211.

¹³ <https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=402061>.

¹⁴ <https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=402061>.

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.]*