Public Law 101-379
101st Congress

An Act

To clarify and strengthen the authority for certain Department of the Interior law enforcement services, activities, and officers in Indian country, and for other purposes.

Aug. 18, 1990
[H.R. 498]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Indian Law Enforcement Reform Act.

SHORT TITLE

SECTION 1. This Act may be cited as the "Indian Law Enforcement Reform Act".

25 USC 2801 note.

DEFINITIONS

SEC. 2. For purposes of this Act—

25 USC 2801.

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

(2) The term "employee of the Bureau" includes an officer of the Bureau.

(3) The term "enforcement of a law" includes the prevention, detection, and investigation of an offense and the detention or confinement of an offender.

(4) The term "Indian country" has the meaning given that term in section 1151 of title 18, United States Code.

(5) The term "Indian tribe" has the meaning given that term in section 201 of the Act of April 11, 1968 (82 Stat. 77; 25 U.S.C. 1301).

(6) The term "offense" means an offense against the United States and includes a violation of a Federal regulation relating to part or all of Indian country.

(7) The term "Secretary" means the Secretary of the Interior.

(8) The term "Division of Law Enforcement Services" means the entity established within the Bureau under section 3(b).

(9) The term "Branch of Criminal Investigations" means the entity the Secretary is required to establish within the Division of Law Enforcement Services under section 3(d)(1).

INDIAN LAW ENFORCEMENT RESPONSIBILITIES

SEC. 3. (a) The Secretary, acting through the Bureau, shall be responsible for providing, or for assisting in the provision of, law enforcement services in Indian country as provided in this Act.

25 USC 2802.

(b) There is hereby established within the Bureau a Division of Law Enforcement Services which, under the supervision of the Secretary, or an individual designated by the Secretary, shall be responsible for—

(1) carrying out the law enforcement functions of the Secretary in Indian country, and

(2) implementing the provisions of this section.

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(c) Subject to the provisions of this Act and other applicable Federal or tribal laws, the responsibilities of the Division of Law Enforcement Services in Indian country shall include—

(1) the enforcement of Federal law and, with the consent of the Indian tribe, tribal law;

(2) in cooperation with appropriate Federal and tribal law enforcement agencies, the investigation of offenses against criminal laws of the United States;

(3) the protection of life and property;

(4) the development of methods and expertise to resolve conflicts and solve crimes;

(5) the provision of criminal justice remedial actions, correctional and detention services, and rehabilitation;

(6) the reduction of recidivism and adverse social effects;

(7) the development of preventive and outreach programs which will enhance the public conception of law enforcement responsibilities through training and development of needed public service skills;

(8) the assessment and evaluation of program accomplishments in reducing crime; and

(9) the development and provision of law enforcement training and technical assistance.

Establishment.

(d)(1) The Secretary shall establish within the Division of Law Enforcement Services a separate Branch of Criminal Investigations which, under such inter-agency agreement as may be reached between the Secretary and appropriate agencies or officials of the Department of Justice and subject to such guidelines as may be adopted by relevant United States attorneys, shall be responsible for the investigation, and presentation for prosecution, of cases involving violations of sections 1152 and 1153 of title 18, United States Code, within Indian country.

(2) The Branch of Criminal Investigations shall not be primarily responsible for the routine law enforcement and police operations of the Bureau in Indian country.

Regulations.

(3) The Secretary shall prescribe regulations which shall establish a procedure for active cooperation and consultation of the criminal investigative employees of the Bureau assigned to an Indian reservation with the governmental and law enforcement officials of the Indian tribe located on such reservation.

(4)(i) Criminal investigative personnel of the Branch shall be subject only to the supervision and direction of law enforcement personnel of the Branch or of the Division. Such personnel shall not be subject to the supervision of the Bureau of Indian Affairs Agency Superintendent or Bureau of Indian Affairs Area Office Director. Nothing in this paragraph is intended to prohibit cooperation, coordination, or consultation, as appropriate, with nonlaw enforcement Bureau of Indian Affairs personnel at the agency or area levels, or prohibit or restrict the right of a tribe to contract the investigative program under the authority of Public Law 93-638 or to maintain its own criminal investigative operations.

(ii) At the end of one year following the date of establishment of the separate Branch of Criminal Investigations, any tribe may, by resolution of the governing body of the tribe, request the Secretary to reestablish line authority through the Agency Superintendent or Bureau of Indian Affairs Area Office Director. In the absence of good cause to the contrary, the Secretary, upon receipt of such

resolution, shall reestablish the line authority as requested by the tribe.

(e)(1) The Secretary shall establish appropriate standards of education, experience, training, and other relevant qualifications for law enforcement personnel of the Division of Law Enforcement Services who are charged with law enforcement responsibilities pursuant to section 4.

(2) The Secretary shall also provide for the classification of such positions within the Division of Law Enforcement Services at GS grades, as provided in section 5104 of title 5, United States Code, consistent with the responsibilities and duties assigned to such positions and with the qualifications established for such positions.

(3) In classifying positions in the Division of Law Enforcement Services under paragraph (2), the Secretary shall ensure that such positions are classified at GS grades comparable to those for other Federal law enforcement personnel in other Federal Agencies in light of the responsibilities, duties, and qualifications required of such positions.

LAW ENFORCEMENT AUTHORITY

SEC. 4. The Secretary may charge employees of the Bureau with law enforcement responsibilities and may authorize those employees to— 25 USC 2803.

(1) carry firearms;

(2) execute or serve warrants, summonses, or other orders relating to a crime committed in Indian country and issued under the laws of—

(A) the United States (including those issued by a Court of Indian Offenses under regulations prescribed by the Secretary), or

(B) an Indian tribe if authorized by the Indian tribe;

(3) make an arrest without a warrant for an offense committed in Indian country if—

(A) the offense is committed in the presence of the employee, or

(B) the offense is a felony and the employee has reasonable grounds to believe that the person to be arrested has committed, or is committing, the felony;

(4) offer and pay a reward for services or information, or purchase evidence, assisting in the detection or investigation of the commission of an offense committed in Indian country or in the arrest of an offender against the United States;

(5) make inquiries of any person, and administer to, or take from, any person an oath, affirmation, or affidavit, concerning any matter relevant to the enforcement or carrying out in Indian country of a law of either the United States or an Indian tribe that has authorized the employee to enforce or carry out tribal laws;

(6) wear a prescribed uniform and badge or carry prescribed credentials;

(7) perform any other law enforcement related duty; and

(8) when requested, assist (with or without reimbursement) any Federal, tribal, State, or local law enforcement agency in the enforcement or carrying out of the laws or regulations the agency enforces or administers.

ASSISTANCE BY OTHER AGENCIES

Contracts.
25 USC 2804.

SEC. 5. (a) The Secretary may enter into an agreement for the use (with or without reimbursement) of the personnel or facilities of a Federal, tribal, State, or other government agency to aid in the enforcement or carrying out in Indian country of a law of either the United States or an Indian tribe that has authorized the Secretary to enforce tribal laws. The Secretary may authorize a law enforcement officer of such an agency to perform any activity the Secretary may authorize under section 4.

(b) Any agreement entered into under this section relating to the enforcement of the criminal laws of the United States shall be in accord with any agreement between the Secretary and the Attorney General of the United States.

(c) The Secretary may not use the personnel of a non-Federal agency under this section in an area of Indian country if the Indian tribe having jurisdiction over such area of Indian country has adopted a resolution objecting to the use of the personnel of such agency. The Secretary shall consult with Indian tribes before entering into any agreement under subsection (a) with a non-Federal agency that will provide personnel for use in any area under the jurisdiction of such Indian tribes.

(d) Notwithstanding the provisions of section 1535 of title 31, United States Code, the head of a Federal agency with law enforcement personnel or facilities may enter into an agreement (with or without reimbursement) with the Secretary under subsection (a).

(e) The head of a Federal agency with law enforcement personnel or facilities may enter into an agreement (with or without reimbursement) with an Indian tribe relating to—

(1) the law enforcement authority of the Indian tribe, or

(2) the carrying out of a law of either the United States or the Indian tribe.

(f) While acting under authority granted by the Secretary under subsection (a), a person who is not otherwise a Federal employee shall be considered to be—

(1) an employee of the Department of the Interior only for purposes of—

(A) the provisions of law described in section 3374(c)(2) of title 5, United States Code, and

(B) sections 111 and 1114 of title 18, United States Code, and

(2) an eligible officer under subchapter III of chapter 81 of title 5, United States Code.

REGULATIONS

25 USC 2805.

SEC. 6. After consultation with the Attorney General of the United States, the Secretary may prescribe under this Act regulations relating to the enforcement of criminal laws of the United States and regulations relating to the consideration of applications for contracts awarded under the Indian Self-Determination Act to perform the functions of the Branch of Criminal Investigations.

JURISDICTION

25 USC 2806.

SEC. 7. (a) The Secretary shall have investigative jurisdiction over offenses against criminal laws of the United States in Indian coun-

try subject to an agreement between the Secretary and the Attorney General of the United States.

(b) In exercising the investigative authority conferred by this section, the employees of the Bureau shall cooperate with the law enforcement agency having primary investigative jurisdiction over the offense committed.

(c) This Act does not invalidate or diminish any law enforcement commission or other delegation of authority issued under the authority of the Secretary before the date of enactment of this Act.

(d) The authority provided by this Act is in addition to, and not in derogation of, any authority that existed before the enactment of this Act. The provisions of this Act alter neither the civil or criminal jurisdiction of the United States, Indian tribes, States, or other political subdivisions or agencies, nor the law enforcement, investigative, or judicial authority of any Indian tribe, State, or political subdivision or agency thereof, or of any department, agency, court, or official of the United States other than the Secretary.

UNIFORM ALLOWANCE

SEC. 8. Notwithstanding the limitation in section 5901(a) of title 5, United States Code, the Secretary may provide a uniform allowance for uniformed law enforcement officers under section 4 of this Act of not more than $400 a year. 25 USC 2807.

SOURCE OF FUNDS

SEC. 9. Any expenses incurred by the Secretary under this Act shall be paid from funds appropriated under the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13). 25 USC 2808.

REPORTS TO TRIBES

SEC. 10. (a) In any case in which law enforcement officials of the Bureau or the Federal Bureau of Investigation decline to initiate an investigation of a reported violation of Federal law in Indian country, or terminate such an investigation without referral for prosecution, such officials are authorized to submit a report to the appropriate governmental and law enforcement officials of the Indian tribe involved that states, with particularity, the reason or reasons why the investigation was declined or terminated. 25 USC 2809.

(b) In any case in which a United States attorney declines to prosecute an alleged violation of Federal criminal law in Indian country referred for prosecution by the Federal Bureau of Investigation or the Bureau, or moves to terminate a prosecution of such an alleged violation, the United States attorney is authorized to submit a report to the appropriate governmental and law enforcement officials of the Indian tribe involved that states, with particularity, the reason or reasons why the prosecution was declined or terminated.

(c) In any case—

(1) in which the alleged offender is an Indian, and

(2) for which a report is submitted under subsection (a) or (b), the report made to the Indian tribe may include the case file, including evidence collected and statements taken, which might support an investigation or prosecution of a violation of tribal law.

(d) Nothing in this section shall require any Federal agency or official to transfer or disclose any confidential or privileged commu-

nication, information, or sources to the officials of any Indian tribe. Federal agencies authorized to make reports pursuant to this section shall, by regulations, adopt standards for the protection of such communications, information, or sources.

EASTERN BAND OF CHEROKEE INDIANS

SEC. 11. Notwithstanding any other provision of law, the Eastern Band of Cherokee Indians is hereby authorized to sell and transfer, without further approval of the United States, all its interests in the business operating as Carolina Mirror Inc., including lands, leasehold interests, and improvements which are located in Wilkes County, North Carolina, and Harris County, Texas. Nothing in this section is intended to authorize the Band to sell any Eastern Cherokee lands which are held in trust by the United States or any lands comprising the Eastern Cherokee Indian Reservation.

ALASKA NATIVES COMMISSION

42 USC 2991a note.

SEC. 12. (a)(1) The Congress has conducted a preliminary review of the social and economic circumstances of Alaska Natives and of governmental policies and programs affecting Alaska Natives and finds that—

(A) in this period of rapid cultural change, there is, among Alaska Natives, a growing social and economic crisis characterized by, among other things, alcohol abuse and violence, grave health problems, low levels of educational achievement, joblessness, a lack of employment opportunities, and a growing dependency upon transfer payments;

(B) these conditions exist even though public policies and programs adopted in recent decades have been intended to assist Alaska Natives in protecting their traditional cultures and subsistence economies and in encouraging economic self-sufficiency and individual, group, village, and regional self-determination; and

(C) Alaska Natives and the State of Alaska have expressed a need for a review of public policies and programs and a desire to make such policies and programs more effective in accomplishing their intentions.

(2) The Congress hereby declares that it is timely and essential to conduct, in cooperation with the State of Alaska and with the participation of Alaska Natives, a comprehensive review of Federal and State policies and programs affecting Alaska Natives in order to identify specific actions that may be taken by the United States and the State of Alaska to help assure that public policy goals are more fully realized among Alaska Natives.

Establishment.

(b)(1) There is hereby established a Commission to be known as the "Joint Federal-State Commission on Policies and Programs Affecting Alaska Natives" (hereafter referred to in this section as the "Commission").

President.

(2)(A) The Commission shall consist of the following members:

(i) seven individuals appointed by the President, at least three of whom shall be Alaska Natives and not more than two of whom may be officers or employees of the Federal Government,

(ii) seven individuals appointed by the Governor of the State of Alaska,

(iii) the president of the senate of the State of Alaska or a designated representative of such president,

(iv) the speaker of the house of representatives of the State of Alaska or a designated representative of such speaker,

(v) the chairman of the Select Committee on Indian Affairs of the Senate or a designated representative of such chairman,

(vi) the ranking minority member of the Select Committee on Indian Affairs of the Senate or a designated representative of such member,

(vii) the chairman of the Committee on Energy and Natural Resources of the Senate or a designated representative of such chairman,

(viii) the ranking minority member of the Committee on Energy and Natural Resources of the Senate or a designated representative of such member,

(ix) the chairman of the Committee on Interior and Insular Affairs of the House of Representatives or a designated representative of such chairman,

(x) the ranking minority member of the Committee on Interior and Insular Affairs of the House of Representatives or a designated representative of such member, and

(xi) each Member of Congress who represents the people of the State of Alaska and is not described in any of the preceding paragraphs, or a designated representative of such Member.

(B) The Commission shall hold its first meeting by no later than the date that is thirty days after the date on which all members of the Commission who are to be appointed have been appointed.

(C) Each member of the Commission who is appointed to the Commission under clause (i) or (ii) of subparagraph (A) shall be entitled to one vote which shall be equal to the vote of every other member of the Commission who is appointed to the Commission under clause (i) or (ii) of subparagraph (A). The members of the Commission described in a clause of subparagraph (A) other than clause (i) or (ii) shall be ex officio, nonvoting members of the Commission.

(D) Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(E) In making appointments to the Commission, the President and the Governor of Alaska shall give careful consideration to recommendations received from Alaska Native village, regional, and State organizations.

(F) At the time appointments are made under subparagraph (A), the President shall designate an individual appointed under subparagraph (A)(i) to be cochairman of the Commission and the Governor of the State of Alaska shall designate an individual appointed under subparagraph (A)(ii) to be the other cochairman of the Commission.

(G) Eight voting members of the Commission shall constitute a quorum for the transaction of business.

(H) The Commission may adopt such rules (consistent with the other provisions of this section) as may be necessary to establish its procedures and to govern the manner of its operations, organization (including task forces), and personnel.

(3)(A) Each member of the Commission not otherwise employed by the United States Government or the State of Alaska shall receive compensation at a rate equal to the daily rate for GS-18 of the

General Schedule under section 5332 of title 5, United States Code, for each day, including traveltime, such member is engaged in the actual performance of duties (including service on a task force) authorized by the Commission.

(B) Except as provided in subparagraph (C), a member of the Commission who is otherwise an officer or employee of the United States Government or the State of Alaska shall serve on the Commission without additional compensation.

(C) All members of the Commission shall be reimbursed for travel and per diem in lieu of subsistence expenses during the performance of duties of the Commission while away from home or their regular place of business, in accordance with subchapter I of chapter 57 of title 5, United States Code.

(D) Notwithstanding the other provisions of this section, no individual appointed to the Commission by the Governor of the State of Alaska under paragraph (2)(A)(ii) shall participate in the proceedings of the Commission, vote on business of the Commission, or receive any compensation or expense reimbursement under this section until the State of Alaska and the President have concluded an equitable agreement to share the expenses incurred by the Commission. In the event that such an agreement is not reached within a reasonable period of time, the members of the Commission described in any clause of subparagraph (A) of paragraph (2) other than clause (ii) shall proceed with the work of the Commission without the participation of the individuals appointed under paragraph (2)(A)(ii) and the quorum required for the transaction of the business of the Commission shall be 4 members of the Commission appointed under paragraph (2)(A)(i).

(5) The principal office of the Commission shall be in the State of Alaska.

(c) The Commission shall—

(1) conduct a comprehensive study of—

(A) the social and economic status of Alaska Natives, and

(B) the effectiveness of those policies and programs of the United States, and of the State of Alaska, that affect Alaska Natives,

(2) conduct public hearings on the subjects of such study,

(3) recommend specific actions to the Congress and to the State of Alaska that—

(A) help to assure that Alaska Natives have life opportunities comparable to other Americans, while respecting their unique traditions, cultures, and special status as Alaska Natives,

(B) address, among other things, the needs of Alaska Natives for self-determination, economic self-sufficiency, improved levels of educational achievement, improved health status, and reduced incidence of social problems,

(4) in developing those recommendations, respect the important cultural differences which characterize Alaska Native groups,

(5) submit, by no later than the date that is eighteen months after the date of the first meeting of the Commission, a report on the study, together with the recommendations developed under paragraph (3), to the President, the Congress, the Governor of the State of Alaska, and the legislature of the State of Alaska, and

(6) make such report available to Alaska Native villages and organizations and to the public.

(d)(1)(A) Subject to such rules and regulations as may be adopted by the Commission, the co-chairmen of the Commission shall have the power to—

(i) appoint, terminate, and fix the compensation (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, or of any other provision of law, relating to the number, classification, and General Schedule rates) of an Executive Director of the Commission and of such other personnel as the cochairmen deem advisable to assist in the performance of the duties of the Commission, at rates not to exceed a rate equal to the maximum rate for GS-18 of the General Schedule under section 5332 of such title; and

(ii) procure, as authorized by section 3109 of title 5, United States Code, temporary and intermittent services to the same extent as is authorized by law for agencies in the executive branch, but at rates not to exceed the daily equivalent of the maximum annual rate of basic pay in effect for grade GS-18 of such General Schedule.

(B) Service of an individual as a member of the Commission shall not be considered as service or employment bringing such individual within the provisions of any Federal law relating to conflicts of interest or otherwise imposing restrictions, requirements, or penalties in relation to the employment of persons, the performance of services, or the payment or receipt of compensation in connection with claims, proceedings, or matters involving the United States. Service as a member of the Commission, or as an employee of the Commission, shall not be considered service in an appointive or elective position in the Government for purposes of section 8344 of title 5, United States Code, or comparable provisions of Federal law.

(2)(A) The Commission is authorized to—

(i) hold such hearings and sit and act at such times,

(ii) take such testimony,

(iii) have such printing and binding done,

(iv) enter into such contracts and other arrangements,

(v) make such expenditures, and

(vi) take such other actions,

as the Commission may deem advisable. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(B) The Commission is authorized to establish task forces which include individuals appointed by the Commission who are not members of the Commission only for the purpose of gathering information on specific subjects identified by the Commission as requiring the knowledge and expertise of such individuals. Any task force established by the Commission shall be chaired by a voting member of the Commission who shall preside at any task force hearing authorized by the Commission. No compensation (other than compensation under subsection (b)(3)(A) to a member of the Commission) may be paid to members of a task force solely for their service on the task force, but the Commission may authorize the reimbursement of members of a task force for travel and per diem in lieu of subsistence expenses during the performance of duties while away from the home, or regular place of business, of the member, in accordance

with subchapter I of chapter 57 of title 5, United States Code. The Commission shall not authorize the appointment of personnel to act as staff for the task force, but may permit the use of Commission staff and resources by a task force for the purpose of compiling data and information. Such data and information shall be for the exclusive use of the Commission.

Gifts and property.

(3) The Commission is authorized to accept gifts of property, services, or funds and to expend funds derived from sources other than the Federal Government, including the State of Alaska, private nonprofit organizations, corporations, or foundations which are determined appropriate and necessary to carry out the provisions of this section.

(4) The provisions of the Federal Advisory Committee Act shall not apply to the Commission established under this section.

(5)(A) The Commission is authorized to secure directly from any officer, department, agency, establishment, or instrumentality of the Federal Government such information as the Commission may require for the purpose of this section, and each such officer, department, agency, establishment, or instrumentality is authorized and directed to furnish, to the extent permitted by law, such information, suggestions, estimates, and statistics directly to the Commission, upon request made by a cochairman of the Commission.

(B) Upon the request of both cochairmen of the Commission, the head of any Federal department, agency, or instrumentality is authorized to make any of the facilities and services of such department, agency, or instrumentality available to the Commission and detail any of the personnel of such department, agency, or instrumentality to the Commission, on a nonreimbursable basis, to assist the Commission in carrying out its duties under this section.

(C) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(e) The Commission shall cease to exist on the date that is one hundred eighty days after the date on which the Commission submits the report required under subsection (c)(5). All records, documents, and materials of the Commission shall be transferred to the National Archives and Records Administration on the date on which the Commission ceases to exist.

Appropriation authorization.

(f)(1) There are authorized to be appropriated to the Commission $700,000 to carry out the provisions of this section. Such sum shall remain available, without fiscal year limitation, until expended.

(2) Until funds are appropriated under the authority of paragraph (1), salaries and other expenses incurred by the Commission shall be paid from the contingent fund of the Senate upon vouchers

approved by the cochairman of the Commission. The total amount of funds paid from such contingent fund shall be reimbursed to such contingent fund from funds appropirated under the authority of paragraph (1).

Approved August 18, 1990.

LEGISLATIVE HISTORY—H.R. 498:

HOUSE REPORTS: No. 101-60 (Comm. on Interior and Insular Affairs).
SENATE REPORTS: No. 101-167 (Select Comm. on Indian Affairs).
CONGRESSIONAL RECORD:
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