

ation as of the date that such land is transferred to the Secretary.

(Pub. L. 106-568, title XIV, §1405, Dec. 27, 2000, 114 Stat. 2940.)

§ 1300n-4. Membership rolls

(a) Compilation of tribal membership roll

Not later than 1 year after December 27, 2000, the Secretary shall, after consultation with the Tribe, compile a membership roll of the Tribe.

(b) Criteria for membership

(1) Until a tribal constitution is adopted under section 1300n-6 of this title, an individual shall be placed on the Graton membership roll if such individual is living, is not an enrolled member of another federally recognized Indian tribe, and if—

(A) such individual's name was listed on the Graton Indian Rancheria distribution list compiled by the Bureau of Indian Affairs and approved by the Secretary on September 17, 1959, under Public Law 85-671;

(B) such individual was not listed on the Graton Indian Rancheria distribution list, but met the requirements that had to be met to be listed on the Graton Indian Rancheria distribution list;

(C) such individual is identified as an Indian from the Graton, Marshall, Bodega, Tomales, or Sebastopol, California, vicinities, in documents prepared by or at the direction of the Bureau of Indian Affairs, or in any other public or California mission records; or

(D) such individual is a lineal descendant of an individual, living or dead, identified in subparagraph (A), (B), or (C).

(2) After adoption of a tribal constitution under section 1300n-6 of this title, such tribal constitution shall govern membership in the Tribe.

(c) Conclusive proof of Graton Indian ancestry

For the purpose of subsection (b) of this section, the Secretary shall accept any available evidence establishing Graton Indian ancestry. The Secretary shall accept as conclusive evidence of Graton Indian ancestry information contained in the census of the Indians from the Graton, Marshall, Bodega, Tomales, or Sebastopol, California, vicinities, prepared by or at the direction of Special Indian Agent John J. Terrell in any other roll or census of Graton Indians prepared by or at the direction of the Bureau of Indian Affairs and in the Graton Indian Rancheria distribution list compiled by the Bureau of Indian Affairs and approved by the Secretary on September 17, 1959.

(Pub. L. 106-568, title XIV, §1406, Dec. 27, 2000, 114 Stat. 2940.)

REFERENCES IN TEXT

Public Law 85-671, referred to in subsec. (b)(1)(A), is Pub. L. 85-671, Aug. 18, 1958, 72 Stat. 619, which is not classified to the Code.

§ 1300n-5. Interim government

Until the Tribe ratifies a final constitution consistent with section 1300n-6 of this title, the Tribe's governing body shall be an Interim Trib-

al Council. The initial membership of the Interim Tribal Council shall consist of the members serving on December 27, 2000, who have been elected under the tribal constitution adopted May 3, 1997. The Interim Tribal Council shall continue to operate in the manner prescribed under such tribal constitution. Any vacancy on the Interim Tribal Council shall be filled by individuals who meet the membership criteria set forth in section 1300n-4(b) of this title and who are elected in the same manner as are Tribal Council members under the tribal constitution adopted May 3, 1997.

(Pub. L. 106-568, title XIV, §1407, Dec. 27, 2000, 114 Stat. 2941.)

§ 1300n-6. Tribal constitution

(a) Election; time; procedure

After the compilation of the tribal membership roll under section 1300n-4(a) of this title, upon the written request of the Interim Tribal Council, the Secretary shall conduct, by secret ballot, an election for the purpose of ratifying a final constitution for the Tribe. The election shall be held consistent with sections 476(c)(1) and 476(c)(2)(A) of this title. Absentee voting shall be permitted regardless of voter residence.

(b) Election of tribal officials; procedures

Not later than 120 days after the Tribe ratifies a final constitution under subsection (a) of this section, the Secretary shall conduct an election by secret ballot for the purpose of electing tribal officials as provided in such tribal constitution. Such election shall be conducted consistent with the procedures specified in subsection (a) of this section except to the extent that such procedures conflict with the tribal constitution.

(Pub. L. 106-568, title XIV, §1408, Dec. 27, 2000, 114 Stat. 2941.)

CHAPTER 15—CONSTITUTIONAL RIGHTS OF INDIANS

SUBCHAPTER I—GENERALLY

- Sec. 1301. Definitions.
- 1302. Constitutional rights.
- 1303. Habeas corpus.

SUBCHAPTER II—MODEL CODE GOVERNING COURTS OF INDIAN OFFENSES

- 1311. Model code.
- 1312. Authorization of appropriations.

SUBCHAPTER III—JURISDICTION OVER CRIMINAL AND CIVIL ACTIONS

- 1321. Assumption by State of criminal jurisdiction.
- 1322. Assumption by State of civil jurisdiction.
- 1323. Retrocession of jurisdiction by State.
- 1324. Amendment of State constitutions or statutes to remove legal impediment; effective date.
- 1325. Abatement of actions.
- 1326. Special election.

SUBCHAPTER IV—EMPLOYMENT OF LEGAL COUNSEL

- 1331. Approval.

SUBCHAPTER V—MATERIALS AND PUBLICATIONS

- 1341. Authorization of Secretary.

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

Section 8077(d) of Pub. L. 101-511, 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

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;

(7) 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 ¹ a fine of \$5,000, or both;

(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.

(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.)

AMENDMENTS

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.

PURPOSE OF 1986 AMENDMENT

Section 4217 of Pub. L. 99-570 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”.

§ 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.)

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

¹ So in original. Probably should be “or”.