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SECTION-BY-SECTION ANALYSIS OF S. 1843, AS AMENDED

TITLE I

Section 101 contains the definition of certain items, "Indian tribe" is defined to mean any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government. The term "self-government" means and includes all governmental units (executive, judicial, legislative, and other tribunals, bodies, officers, etc.) by and through which powers are executed as to individual Indians. "Indian court" is defined to mean any Indian tribal court or court of Indian offense.

Section 102 enumerates the constitutional rights guaranteed to Indians by this act by placing limitations on tribal government units exercising powers of self-government in their dealings with individual Indians. Specifically, section 102 (1) through (10) prohibits Indian tribes in exercising powers of self-government from doing the following:

(1) Making or enforcing any law prohibiting the free exercise of religion, or abridging the freedom of speech, press, or assembly, or the right of the people peaceably to assemble and to petition governmental units for a redress of grievances;

(2) Violating or abusing individual Indians in their person, home, or possession, and securing protection to individual Indians against abuses in the search and seizure of their persons, homes, and possessions;

(3) Subjecting any person for the same offense to be twice put in jeopardy;

(4) Compelling any person in any criminal case to be a witness against himself;

(5) Taking any private property for a public use without just compensation;

(6) Denying 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 witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense at his own expense;

(7) Requiring excessive bail or fines and inflicting cruel and unusual punishment. (The penalty of a \$500 fine or imprisonment for a term of 6 months or both would remain the maximum limitation as to punishment for any one offense);

(8) Denying to any individual Indian within its jurisdiction equal protection of the laws or deprive any person or liberty or property without due process of law;

(9) Passing any bill of attainder or ex post facto law; or

(10) Denying 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.

Section 103 provides that 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 a detention by order of a tribal court.

Section 104 provides that the provisions of title I shall take effect upon the expiration of 1 year following the date of its enactment.

TITLE II

Title II directs the Secretary of the Interior to prepare and recommend to the Congress a model code governing the administration of justice by Courts of Indian Offenses on Indian Reservations.

Section 201 directs the Secretary to include provisions in the model code which would:

(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 U.S. Constitution as any citizen being tried in a Federal court for a similar offense;

(2) Assure that any individual being tried for an offense by a court of Indian offenses will be advised and made aware of his rights under the Constitution and any applicable tribal constitution;

(3) Establish proper qualifications for the office of judge in the court of Indian offenses; and