

United States case law requiring free counsel for indigents does not necessarily mean it is repugnant to modern judicial standards when viewed in the context of Indian court practices. In most Indian tribes there is no organized bar association. Thus, attorneys are not generally available to represent defendants. In addition, the prosecution in tribal courts is often informal and may be presented without the assistance of professional attorneys. Finally, the tribal cases generally deal with traditional and customary law where the expertise or trained counsel is not essential.

Section 102(8) protects the individual against tribal officials by requiring equal protection and due process principles.

Section 102(10) secures the right to a jury trial of not less than six persons to any person accused of an offense punishable by imprisonment.

The Federal right to a jury trial for all suits at common law involving more than \$20.00 is generally considered a burden in modern judicial practice. The six rather than twelve-man jury is more adaptable to the nature of Indian tribal proceedings which often have an informal character.

The Department of Justice believes that enactment of title I of this bill into law is extremely desirable.

Title II of the bill would authorize and direct the Secretary of the Interior to recommend to the Congress for enactment a model code to govern the administration of justice by courts of Indian offenses. The code would provide for the same constitutional rights of criminal defendants as presently are recognized in Federal courts, and would also make provision for judges of the courts of Indian offenses.

Apparently the code to be formulated would be made applicable only to those courts of Indian offenses governed by the Department of the Interior's law and order regulations (25 C.F.R. 11.1 *et seq.*), and not to tribal courts operating under tribal codes. There is some basis for suggesting that after the model code proposed by the bill is drafted, congressional action on it should be in the form of a mere recommendation that Indian tribes adopt the code, rather than imposition of its provisions by statute. The Department of Justice expresses no view on this matter. In any event tribes now administering their laws through tribal courts would be free to adopt the model code if they found its provisions constructive and desirable.

So far as the Department of Justice is aware there is general agreement on the desirability of the provisions of title II dealing with establishing qualifications for and the training of judges of courts of Indian offenses. Indeed, the Department suggests that the Congress in the future should explore means of making legal training available for judges of tribal courts other than those designated as courts of Indian offenses.

Title III of the bill would give the consent of the United States to assumption by States of civil and criminal jurisdiction on Indian reservations to the extent determined by a State and consented to by the tribe occupying the affected Indian country, would authorize acceptance by the United States of retrocessions of any measure of the jurisdiction which may have been acquired by States under Public Law 280, 83d Congress (act of Aug. 13, 1953, 67 Stat. 588), as amended; 18 U.S.C. 1162 and 28 U.S.C. 1360, and would repeal Section 7 of Public Law 280 which authorized States to assume civil and criminal jurisdiction over tribes without their consent.

In general, States at the present time do not have jurisdiction over criminal offenses committed on Indian reservations by or against Indians, or over civil causes of action which arise on Indian reservations between Indians or as to which Indians are parties. However, Public Law 280, as amended, granted to six States (Alaska, California, Minnesota, Nebraska, Oregon and Wisconsin), with certain exceptions, jurisdiction with respect to criminal offenses and civil causes of action arising in Indian country within such States. Section 7 of the Public Law, which title III would repeal, gave consent to States not having jurisdiction to assume it at such times and in such manner as the people of the State determined. It appears that three States (Florida and Montana, and Washington as to certain reservations) have assumed jurisdiction over Indian reservations within their boundaries under the last mentioned provision.

A principal effect of title III would be to substitute for the present section 7 of Public Law 280 provisions (subsections 301(a) and 302(a)) requiring tribal consent to assumption of Indian country jurisdiction. The President, in his March 6, 1968 message, urged the Congress to enact legislation providing for tribal consent before extensions of jurisdiction take place. The Department of Justice also urges the enactment of such legislation.