

# CONGRESS SHOULD RECOGNIZE TRIBAL CRIMINAL JURISDICTION OVER NON-INDIANS COMMITTING DRUG OFFENSES IN INDIAN COUNTRY

December 2023

**Background.** The national opioid and fentanyl crisis disproportionately affects Tribal nations and the health, safety, and welfare of Native peoples. In significant part, this is because Tribal governments face unique challenges in addressing these issues due to jurisdictional limitations imposed by federal law, which does not recognize tribal authority to prosecute and punish non-Indians for drug trafficking offenses committed within Indian Country. To help address the issue, the Senate Committee on Indian Affairs held a hearing an Oversight Hearing on November 8, 2023 titled, *“Fentanyl in Native Communities: Native Perspectives on Addressing the Growing Crisis.”*

## A PROPOSED SOLUTION – AMEND THE INDIAN CIVIL RIGHTS ACT TO RECOGNIZE TRIBAL GOVERNMENT AUTHORITY TO PROSECUTE NON-INDIAN DRUG TRAFFICKERS, WITH THE OPTION OF INCARCERATION IN FEDERAL PRISON

Congress has previously acted to strengthen Tribal authority in matters of criminal jurisdiction involving non-Indians, including—

- Public Law 99-570 (1986), which increased penalties for drug trafficking, acknowledging the need for severe deterrents against the proliferation of drugs in Indian Country
- Tribal Law and Order Act of 2010 (Pub. L. 111-211), which provided for the enhancement of Tribal justice systems and the enforcement of criminal laws within Tribal lands; and
- Violence Against Women Act Reauthorization Act of 2022 (Pub. L. 117-103), which expanded Tribal jurisdiction to include non-Indian perpetrators in cases of domestic violence.

Despite these measures, however, the issue of drug trafficking and related crimes by non-Indians in Indian Country persists, with current statutes providing inadequate mechanisms for Tribal governments to exercise their authority effectively in these matters.

**The Reason Why Native People are Targeted by Drug Dealers.** Drug traffickers have historically targeted Native people living on Tribal lands. For example, in the 1990s, non-Indian methamphetamine producers often set up clandestine labs on Tribal lands, exploiting the fact that the Tribes lacked the authority to prosecute them, thereby creating illicit havens that undermined community safety and sovereignty for Indian and non-Indian alike. *In short, non-Indian drug dealers today know that Tribal governments cannot arrest them or punish them, and so they prey on Native people with impunity.*

**One Critical Solution Where Many Solutions Are Needed.** The fentanyl crisis is at an epidemic level throughout the United States. But Congress has authority right now to take action to support the ability of Tribal governments to be part of the fight against drug trafficking by recognizing Tribal authority to prosecute and punish non-Indian drug traffickers, including providing access to federal prison for convicted offenders.

1 118<sup>th</sup> Congress  
2 1<sup>st</sup> Session

3 **S.** \_\_\_\_\_  
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5 To recognize Indian tribal government authority to prosecute Drug Trafficking and  
6 Drug-related Offenses occurring in Indian Country, and for other purposes.  
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9 **IN THE SENATE OF THE UNITED STATES**

10 December \_\_, 2023

11 \_\_\_\_\_ introduced the following bill; which was read twice and referred to  
12 the Committee on Indian Affairs  
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17 **A BILL**

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

20 **SECTION 1. TRIBAL JURISDICTION OVER DRUG-RELATED OFFENSES.**

21 DEFINITIONS.—Section 1304 of Title 25 is amended as follows:

22 (a) Adding a new subsection (a)(5)(J) under the definition of “covered offenses”  
23 for “Drug-related offenses”;

24 (b) Adding a new subsection (a)(6A) for “Drug-related offenses”.—

25 The term “drug-related offense” means any violation of the criminal law  
26 of the Indian tribe that has jurisdiction over the Indian Country where the  
27 violation occurs that is committed by a person who has given, sold or  
28 distributed, or intends to give, sell, or distribute, a controlled or  
29 counterfeit substance (as defined in section 102 of the Controlled  
30 Substances Act (21 U.S.C. 802)).

31 **SECTION 2. BUREAU OF PRISONS TRIBAL PRISONER PROGRAM.**

32 INCARCERATION BY BUREAU OF PRISONS.—Section 1302a of Title 25 is amended as  
33 follows:

34 (a) Amending section 2(D) by adding at the end thereof, “provided, that the  
35 Attorney General is authorized to approve confinement of any offender  
36 convicted in tribal court of a drug-related offense.