

United States Code Annotated
Title 25. Indians (Refs & Annos)
Chapter 15. Constitutional Rights of Indians (Refs & Annos)
Subchapter I. Generally (Refs & Annos)

25 U.S.C.A. § 1302

§ 1302. Constitutional rights

Effective: July 29, 2010

Currentness

(a) In general

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 (except as provided in subsection (b));

(7)(A) require excessive bail, impose excessive fines, or inflict cruel and unusual punishments;

(B) except as provided in subparagraph (C), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 1 year or a fine of \$5,000, or both;

(C) subject to subsection (b), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 3 years or a fine of \$15,000, or both; or

(D) impose on a person in a criminal proceeding a total penalty or punishment greater than imprisonment for a term of 9 years;

(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.

(b) Offenses subject to greater than 1-year imprisonment or a fine greater than \$5,000

A tribal court may subject a defendant to a term of imprisonment greater than 1 year but not to exceed 3 years for any 1 offense, or a fine greater than \$5,000 but not to exceed \$15,000, or both, if the defendant is a person accused of a criminal offense who--

(1) has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or

(2) is being prosecuted for an offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States.

(c) Rights of defendants

In a criminal proceeding in which an Indian tribe, in exercising powers of self-government, imposes a total term of imprisonment of more than 1 year on a defendant, the Indian tribe shall--

(1) provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; and

(2) at the expense of the tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;

(3) require that the judge presiding over the criminal proceeding--

(A) has sufficient legal training to preside over criminal proceedings; and

(B) is licensed to practice law by any jurisdiction in the United States;

(4) prior to charging the defendant, make publicly available the criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances) of the tribal government; and

(5) maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.

(d) Sentences

In the case of a defendant sentenced in accordance with subsections (b) and (c), a tribal court may require the defendant--

(1) to serve the sentence--

(A) in a tribal correctional center that has been approved by the Bureau of Indian Affairs for long-term incarceration, in accordance with guidelines to be developed by the Bureau of Indian Affairs (in consultation with Indian tribes) not later than 180 days after July 29, 2010;

(B) in the nearest appropriate Federal facility, at the expense of the United States pursuant to the Bureau of Prisons tribal prisoner pilot program described in section 304(c) of the Tribal Law and Order Act of 2010;

(C) in a State or local government-approved detention or correctional center pursuant to an agreement between the Indian tribe and the State or local government; or

(D) in an alternative rehabilitation center of an Indian tribe; or

(2) to serve another alternative form of punishment, as determined by the tribal court judge pursuant to tribal law.

(e) Definition of offense

In this section, the term “offense” means a violation of a criminal law.

(f) Effect of section

Nothing in this section affects the obligation of the United States, or any State government that has been delegated authority by the United States, to investigate and prosecute any criminal violation in Indian country.

CREDIT(S)

(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; Pub.L. 111-211, Title II, § 234(a), July 29, 2010, 124 Stat. 2279.)

Notes of Decisions (519)

25 U.S.C.A. § 1302, 25 USCA § 1302

Current through P.L.118-5. Some statute sections may be more current, see credits for details.

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