

for “Illegal Trafficking in Native American Remains and Cultural Items” in item 1170.

1990—Pub. L. 101-647, title XXXV, §3536, Nov. 29, 1990, 104 Stat. 4925, struck out item 1157 “Livestock sold or removed”.

Pub. L. 101-644, title I, §104(b), Nov. 29, 1990, 104 Stat. 4663, substituted “Misrepresentation of Indian produced goods and products” for “Misrepresentation in sale of products” in item 1159.

Pub. L. 101-630, title IV, §404(a)(2), Nov. 28, 1990, 104 Stat. 4548, as amended, effective on the date section 404(a)(2) of Pub. L. 101-630 took effect, by Pub. L. 103-322, title XXXIII, §330011(d), Sept. 13, 1994, 108 Stat. 2144, as amended by Pub. L. 104-294, title VI, §604(b)(25), Oct. 11, 1996, 110 Stat. 3508, added item 1169.

Pub. L. 101-601, §4(b), Nov. 16, 1990, 104 Stat. 3052, added item 1170.

1988—Pub. L. 100-497, §24, Oct. 17, 1988, 102 Stat. 2488, added items 1166, 1167, and 1168.

1960—Pub. L. 86-634, §3, July 12, 1960, 74 Stat. 469, added items 1164 and 1165.

1956—Act Aug. 1, 1956, ch. 822, §1, 70 Stat. 792, added item 1163.

1953—Act Aug. 15, 1953, ch. 502, §1, 67 Stat. 586, added item 1161.

Act Aug. 15, 1953, ch. 505, §1, 67 Stat. 588, added item 1162.

§ 1151. Indian country defined

Except as otherwise provided in sections 1154 and 1156 of this title, the term “Indian country”, as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

(June 25, 1948, ch. 645, 62 Stat. 757; May 24, 1949, ch. 139, §25, 63 Stat. 94.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on sections 548 and 549 of title 18, and sections 212, 213, 215, 217, 218 of title 25, Indians, U.S. Code, 1940 ed. (R.S. §§2142, 2143, 2144, 2145, 2146; Feb. 18, 1875, ch. 80, §1, 18 Stat. 318; Mar. 4, 1909, ch. 321, §§328, 329, 35 Stat. 1151; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; June 28, 1932, ch. 284, 47 Stat. 337).

This section consolidates numerous conflicting and inconsistent provisions of law into a concise statement of the applicable law.

R.S. §§2145, 2146 (U.S.C., title 25, §§217, 218) extended to the Indian country with notable exceptions the criminal laws of the United States applicable to places within the exclusive jurisdiction of the United States. Crimes of Indians against Indians, and crimes punishable by tribal law were excluded.

The confusion was not lessened by the cases of *U.S. v. McBratney*, 104 U.S. 622 and *Draper v. U.S.*, 17 S.Ct. 107, holding that crimes in Indian country by persons not Indians are not cognizable by Federal courts in absence of reservation or cession of exclusive jurisdiction applicable to places within the exclusive jurisdiction of the United States. Because of numerous statutes applicable only to Indians and prescribing punishment for crimes committed by Indians against Indians, “Indian country” was defined but once. (See act June 30, 1834, ch. 161, §1, 4, Stat. 729, which was later repealed.)

Definition is based on latest construction of the term by the United States Supreme Court in *U.S. v.*

McGowan, 58 S.Ct. 286, 302 U.S. 535, following *U.S. v. Sandoval*, 34 S.Ct. 1, 5, 231 U.S. 28, 46. (See also *Donnelly v. U.S.*, 33 S.Ct. 449, 228 U.S. 243; and *Kills Plenty v. U.S.*, 133 F.2d 292, certiorari denied, 1943, 63 S.Ct. 1172). (See reviser’s note under section 1153 of this title.)

Indian allotments were included in the definition on authority of the case of *U.S. v. Pelican*, 1913, 34 S.Ct. 396, 232 U.S. 442, 58 L.Ed. 676.

1949 ACT

This section [section 25], by adding to section 1151 of title 18, U.S.C., the phrase “except as otherwise provided in sections 1154 and 1156 of this title”, incorporates in this section the limitations of the term “Indian country” which are added to sections 1154 and 1156 by sections 27 and 28 of this bill.

AMENDMENTS

1949—Act May 24, 1949, incorporated the limitations of term “Indian country” which are contained in sections 1154 and 1156 of this title.

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94-297, §1, May 29, 1976, 90 Stat. 585, provided: “That this Act [amending sections 113, 1153, and 3242 of this title] may be cited as the ‘Indian Crimes Act of 1976.’”

§ 1152. Laws governing

Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.

This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.

(June 25, 1948, ch. 645, 62 Stat. 757.)

HISTORICAL AND REVISION NOTES

Based on sections 215, 217, 218 of title 25, U.S.C., 1940 ed., Indians (R.S. 2144, 2145, 2146; Feb. 18, 1875, ch. 80, §§1, 18 Stat. 318).

Section consolidates said sections 217 and 218 of title 25, U.S.C., 1940 ed., Indians, and omits section 215 of said title as covered by the consolidation.

See reviser’s note under section 1153 of this title as to effect of consolidation of sections 548 and 549 of title 18, U.S.C., 1940 ed.

Minor changes were made in translations and phraseology.

§ 1153. Offenses committed within Indian country

(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in section 1365 of this title), an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing

any of the above offenses, within the exclusive jurisdiction of the United States.

(b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

(June 25, 1948, ch. 645, 62 Stat. 758; May 24, 1949, ch. 139, §26, 63 Stat. 94; Pub. L. 89-707, §1, Nov. 2, 1966, 80 Stat. 1100; Pub. L. 90-284, title V, §501, Apr. 11, 1968, 82 Stat. 80; Pub. L. 94-297, §2, May 29, 1976, 90 Stat. 585; Pub. L. 98-473, title II, §1009, Oct. 12, 1984, 98 Stat. 2141; Pub. L. 99-303, May 15, 1986, 100 Stat. 438; Pub. L. 99-646, §87(c)(5), Nov. 10, 1986, 100 Stat. 3623; Pub. L. 99-654, §3(a)(5), Nov. 14, 1986, 100 Stat. 3663; Pub. L. 100-690, title VII, §7027, Nov. 18, 1988, 102 Stat. 4397; Pub. L. 103-322, title XVII, §170201(e), title XXXIII, §330021(1), Sept. 13, 1994, 108 Stat. 2043, 2150; Pub. L. 109-248, title II, §215, July 27, 2006, 120 Stat. 617.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §§548, 549 (Mar. 4, 1909, ch. 321, §§328, 329, 35 Stat. 1151; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; June 28, 1932, ch. 284, 47 Stat. 337).

Section consolidates said sections 548 and 549 of title 18, U.S.C., 1940 ed. Section 548 of said title covered 10 crimes. Section 549 of said title covered the same except robbery and incest.

The 1932 amendment of section 548 of title 18, U.S.C., 1940 ed., constituting the last paragraph of the section, is omitted and section 549 of said title to which it applied likewise is omitted. The revised section therefore suffices to cover prosecution of the specific offenses committed on all reservations as intended by Congress.

Words "Indian country" were substituted for language relating to jurisdiction extending to reservations and rights-of-way, in view of definitive section 1151 of this title.

Paul W. Hyatt, president, board of commissioners, Idaho State Bar, recommended that said section 548 be considered with other sections in title 25, Indians, U.S.C., 1940 ed., and revised to insure certainty as to questions of jurisdiction, and punishment on conviction. Insofar as the recommendation came within the scope of this revision, it was followed.

The proviso in said section 548 of title 18, U.S.C., 1940 ed., which provided that rape should be defined in accordance with the laws of the State in which the offense was committed, was changed to include burglary so as to clarify the punishment for that offense.

Venue provisions of said section 548 of title 18, U.S.C., 1940 ed., are incorporated in section 3242 of this title.

Section 549 of title 18, U.S.C., 1940 ed., conferred special jurisdiction on the United States District Court for South Dakota of all crimes of murder, manslaughter, rape, assault with intent to kill, assault with a dangerous weapon, arson, burglary, and larceny committed within the limits of any Indian reservation within the State, whether by or against Indians or non-Indians. The Act of February 2, 1903, 32 Stat. 793, from which said section 549 was derived, accepted the cession by South Dakota of such jurisdiction.

The effect of revised sections 1151, 1152, and 1153 of this title is to deprive the United States District Court for the District of South Dakota of jurisdiction of offenses on Indian reservations committed by non-Indians against non-Indians and to restore such jurisdiction to the courts of the State of South Dakota as in other States. This reflects the views of the United States attorney, George Philip, of the district of South Dakota.

Minor changes were made in translation and phraseology.

1949 ACT

This section [section 26] removes an ambiguity in section 1153 of title 18, U.S.C., by eliminating the provision that the crime of rape in the Indian country is to be punished in accordance with the law of the State where the offense was committed, leaving the definition of the offense to be determined by State law, but providing that punishment of rape of an Indian by an Indian is to be by imprisonment at the discretion of the court. The offense of rape, other than rape of an Indian by an Indian within the Indian country, is covered by section 2031 of title 18, U.S.C., and the offense of burglary by sections 1152 and 3242 of such title.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-248 inserted "felony child abuse or neglect," after "years."

1994—Subsec. (a). Pub. L. 103-322 substituted "kidnapping" for "kidnaping" and inserted "(as defined in section 1365 of this title), an assault against an individual who has not attained the age of 16 years" after "serious bodily injury".

1988—Subsec. (a). Pub. L. 100-690 substituted "maiming, a felony under chapter 109A, incest" for "maiming" and all that follows through "incest", thus clarifying execution of amendment by Pub. L. 99-646 and Pub. L. 99-654 but resulting in no change in text. See 1986 Amendment note below.

1986—Pub. L. 99-646 and Pub. L. 99-654 which directed that section be amended identically by substituting in first par. "a felony under chapter 109A," for "rape, involuntary sodomy, carnal knowledge of any female, not his wife, who has not attained the age of sixteen years, assault with intent to commit rape," and by striking out in second and third pars. "involuntary sodomy," was executed by making the substitution in subsec. (a) for "rape, involuntary sodomy, felonious sexual molestation of a minor, carnal knowledge of any female, not his wife, who has not attained the age of sixteen years, assault with intent to commit rape," to reflect the probable intent of Congress in view of prior amendment of this section by Pub. L. 99-303, but amendment to second and third pars. could not be executed because such pars. were struck out by Pub. L. 99-303.

Pub. L. 99-303 inserted section catchline which had been eliminated by general amendment by section 1009 of Pub. L. 98-473, designated first par. as subsec. (a) and inserted "felonious sexual molestation of a minor," struck out second par. which provided that, as used in this section, the offenses of burglary, involuntary sodomy, and incest be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense, and struck out third par. and restated the provisions thereof in a new subsec. (b), substituting "Any offense referred to in subsection (a) of this section that is" for "In addition to the offenses of burglary, involuntary sodomy, and incest, any other of the above offenses which are".

1984—Pub. L. 98-473 amended section generally, inserting offenses of maiming, involuntary sodomy and a felony committed under section 661 of this title and striking out reference to larceny in first par., and inserting "involuntary sodomy," after "burglary" in third par.

1976—Pub. L. 94-297 made changes in phraseology, added offense of kidnapping to the enumerated list of offenses subjecting any Indian to the same laws and penalties as all other persons, struck out applicability to assault with a dangerous weapon and assault resulting in serious bodily injury from paragraph covering the offenses of burglary and incest only, and substituted paragraph, relating to offenses in addition to offenses of burglary and incest, for paragraph relating to offenses of rape and assault with intent to commit rape.

1968—Pub. L. 90-284 inserted offense of assault resulting in serious bodily injury.

1966—Pub. L. 89-707 inserted offenses of carnal knowledge and assault with intent to commit rape, defined and proscribed the punishment for assault with intent to commit rape in accordance with the laws of the State in which the offense was committed, and required assault with a dangerous weapon and incest to be defined and punished in accordance with the laws of the State in which the offense was committed.

1949—Act May 24, 1949, struck out provision that the crime of rape is to be punished in accordance with the law of the State where the offense was committed and in lieu inserted provision leaving punishment up to the discretion of the court.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendments by Pub. L. 99-646 and Pub. L. 99-654 effective, respectively, 30 days after Nov. 10, 1986, and 30 days after Nov. 14, 1986, see section 87(e) of Pub. L. 99-646 and section 4 of Pub. L. 99-654, set out as an Effective Date note under section 2241 of this title.

§ 1154. Intoxicants dispensed in Indian country

(a) Whoever sells, gives away, disposes of, exchanges, or barter any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or other intoxicating liquor of any kind whatsoever, except for scientific, sacramental, medicinal or mechanical purposes, or any essence, extract, bitters, preparation, compound, composition, or any article whatsoever, under any name, label, or brand, which produces intoxication, to any Indian to whom an allotment of land has been made while the title to the same shall be held in trust by the Government, or to any Indian who is a ward of the Government under charge of any Indian superintendent, or to any Indian, including mixed bloods, over whom the Government, through its departments, exercises guardianship, and whoever introduces or attempts to introduce any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or intoxicating liquor of any kind whatsoever into the Indian country, shall, for the first offense, be fined under this title or imprisoned not more than one year, or both; and, for each subsequent offense, be fined under this title or imprisoned not more than five years, or both.

(b) It shall be a sufficient defense to any charge of introducing or attempting to introduce ardent spirits, ale, beer, wine, or intoxicating liquors into the Indian country that the acts charged were done under authority, in writing, from the Department of the Army or any officer duly authorized thereunto by the Department of the Army, but this subsection shall not bar the prosecution of any officer, soldier, sutler or storekeeper, attaché, or employee of the Army of the United States who barter, donates, or furnishes in any manner whatsoever liquors, beer, or any intoxicating beverage whatsoever to any Indian.

(c) The term "Indian country" as used in this section does not include fee-patented lands in non-Indian communities or rights-of-way through Indian reservations, and this section does not apply to such lands or rights-of-way in the absence of a treaty or statute extending the Indian liquor laws thereto.

(June 25, 1948, ch. 645, 62 Stat. 758; May 24, 1949, ch. 139, §27, 63 Stat. 94; Pub. L. 103-322, title

XXXIII, §330016(1)(G), (I), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on sections 241, 242, 244a, 249, 254 of title 25, U.S.C., 1940 ed., Indians (R.S. §2139; Feb. 27, 1877, ch. 69, §1, 19 Stat. 244; July 4, 1884, ch. 180, §1, 23 Stat. 94; July 23, 1892, ch. 234, 27 Stat. 260; Mar. 2, 1917, ch. 146, §17, 39 Stat. 983; June 13, 1932, ch. 245, 47 Stat. 302; Mar. 5, 1934, ch. 43, 48 Stat. 396; June 27, 1934, ch. 846, 48 Stat. 1245; June 15, 1938, ch. 435, §1, 52 Stat. 696).

Section consolidates sections 241, 242, 244a, and 249 of title 25, U.S.C., 1940 ed., Indians. The portion of section 241 of said title which defined the substantive offense became subsection (a); the portion relating to the scope of the term "Indian country" was omitted as unnecessary in view of definition of "Indian country" in section 1151 of this title; the portion of section 241 of said title excepting liquors introduced by the War Department became subsection (c), as limited by section 249 of said title; the portion respecting making complaint in county of offense, and with reference to arraignment, was omitted as covered by rule 5 of the Federal Rules of Criminal Procedure; and the remainder of section 241 of said title was incorporated in section 1156 of this title.

Section 254 of title 25, U.S.C., 1940 ed., Indians, was omitted as covered by this section and section 1156 of this title. That section was enacted in 1934 and excluded from the Indian liquor laws lands outside reservations where the land was no longer held by Indians under a trust patent or a deed or patent containing restrictions against alienation. Such enactment was prior to the June 15, 1938, amendment of section 241 of title 25, U.S.C., 1940 ed., Indians, in which the term "Indian country" was defined as including allotments where the title was held in trust by the Government or where it was inalienable without the consent of the United States. This provision, by implication, excluded cases where there was no trust or restriction on alienation and thereby achieved the same result as section 254 of title 25, U.S.C., 1940 ed., Indians. That amendment also repealed the act of Jan. 30, 1897, referred to in section 254 of title 25, U.S.C., 1940 ed., Indians. Insofar as the reference in section 254 of said title to "special Indian liquor laws" included section 244 of title 25, U.S.C., 1940 ed., Indians, the definition of Indian country in section 1151 of this title covers section 254 of title 25, U.S.C., 1940 ed., Indians.

Words "or agent" were deleted as there have been no Indian agents since 1908. See section 64 of title 25, U.S.C., 1940 ed., Indians, and note thereunder.

Mandatory punishment provisions were rephrased in the alternative and provision for commitment for non-payment of fine was deleted. This change was also recommended by United States District Judge T. Blake Kennedy on the ground that, otherwise, section would be practically meaningless since, in most cases, offenders cannot pay a fine.

The exception of intoxicating liquor for scientific, sacramental, medicinal or mechanical purposes was inserted for the same reason that makes this exception appropriate to section 1262 of this title.

Minor changes were made in phraseology.

1949 ACT

Subsection (a) of this section [section 27(a)] substitutes "Department of the Army" for "War Department", in subsection (b) of section 1154 of title 18, U.S.C., to conform to such redesignation by act July 26, 1947 (ch. 343, title 11, §205(a), 61 Stat. 501 (5 U.S.C., 1946 ed., §181-1)). Subsection (b) of this section [section 27(b)] adds subsection (c) to such section 1154 in order to conform it and section 1156 more closely to the laws relating to intoxicating liquor in the Indian country as they have heretofore been construed.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-322 substituted "fined under this title" for "fined not more than \$500" after