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678. The General Crimes Act—18 U.S.C. § 1152

Under 18 U.S.C. § 1152 the "general laws of the United States as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, . . . extend to the Indian country." The "laws" thus extended are those applicable within the Special Maritime and Territorial Jurisdiction of the United States, as defined in 18 U.S.C. § 7, popularly known as "federal enclave laws." See *United States v. Markiewicz*, 978 F.2d 786 (2d Cir. 1991), cert. denied, sub nom. *Beglen v. United States*, 113 S. Ct. 1065 (1993). Among these statutes are: arson, 18 U.S.C. § 81; assault, 18 U.S.C. § 113; maiming, 18 U.S.C. § 114; theft, 18 U.S.C. § 661; receiving stolen property, 18 U.S.C. § 662; murder, 18 U.S.C. § 1111; manslaughter, 18 U.S.C. § 1112, and sexual offenses, 18 U.S.C. § 2241 et. seq. The Assimilative Crimes Act, 18 U.S.C. § 13, is also one of those extended to the Indian country by 18 U.S.C. § 1152, allowing the borrowing of state law when there is no applicable federal statute. *Williams v. United States*, 327 U.S. 711 (1946); *Duro v. Reina*, 495 U.S. 676, 680 n. 1 (1990).

There are four exceptions to the coverage of § 1152, three of them legislative and the fourth judicially created. The second paragraph of 18 U.S.C. § 1152 specifies the three legislative exceptions:

This section shall not extend [1] to offenses committed by one Indian against the person or property of another Indian, nor [2] to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or [3] to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.

← → ↻ <https://www.justice.gov/usam/criminal-resource-manual-678-general-crimes-act-18-usc-1152> ☆ ☰

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such offenses is or may be secured to the Indian tribes respectively.

It should be emphasized that these exceptions apply only to those laws extended to Indian country by section 1152—the so-called "federal enclave laws." The exceptions do not exempt Indians from the general criminal laws of the United States that apply to acts that are federal crimes regardless of where committed, such as bank robbery, counterfeiting, sale of drugs, and assault on a federal officer. *See United States v. Young*, 936 F.2d 1050 (9th Cir. 1991)(assault on federal officer and firearms); *United States v. Blue*, 722 F.2d 383 (8th Cir. 1983)(narcotics); *United States v. Smith*, 562 F.2d 453 (7th Cir. 1977), *cert. denied*, 434 U.S. 1072 (1978)(assault on federal officer). Despite the explicit holdings in three Circuits that jurisdiction exists over violation of statutes of general applicability, one court of appeals recently held that such statutes do not automatically apply to offenses in Indian country involving only Indians unless there is an independent federal interest to be protected. *See United States v. Markiewicz*, 978 F.2d 786 (2d Cir. 1992), *cert. denied, sub nom., Beglen v. United States*, 113 S. Ct. 1065 (1993). The court went on to hold that each of the statutes charged in the case, 18 U.S.C. § 1163 (theft of tribal funds), 18 U.S.C. § 844(i) (arson of property in interstate commerce), 18 U.S.C. § 1513 (witness tampering), 18 U.S.C. § 402 (contempt), 18 U.S.C. § 1621 (perjury), and 18 U.S.C. § 2101 (riot), reflected such an independent interest or that its violation had not occurred in Indian country. *Markiewicz* was explicitly rejected in *United States v. Begay*, 42 F.3d 486 (9th Cir. 1994), which held that 18 U.S.C. § 371 (conspiracy) applied in Indian country even though it is not a crime enumerated in 18 U.S.C. § 1153. *See also United States v. Yannott*, 42 F.3d 999 (6th Cir. 1994)(18 U.S.C. § 922).

The exceptions stated in the second paragraph of § 1152 also do not apply to violations of § 1153, *United States v. Wheeler*, 435 U.S. 313 (1978), or the liquor law provisions, 18 U.S.C. §§ 1154, 1161. *United States v. Cowboy*, 694 F.2d 1234 (10th Cir. 1982).

The fourth exception to the broad coverage of § 1152 was created by the Supreme Court. Notwithstanding its literal terms, the Supreme Court significantly narrowed the reach of 18 U.S.C. § 1152 in *United States v. McBratney*, 104 U.S. 621 (1882), holding that, absent treaty provisions to the contrary, the state has exclusive jurisdiction over a crime committed in the Indian country by a non-Indian against another non-Indian. *Accord, Draper v. United States*, 164 U.S. 240 (1896). Subsequent decisions have acknowledged the rule. *See, e.g., United States v. Wheeler*, 435 U.S. 313, 325 n. 21 (1978); *United States v. Antelope*, 430 U.S. 641, 643 n. 2 (1977); *Williams v. United States*, 327 U.S. 711, 714 (1946).

[cited in Criminal Resource Manual 685; Criminal Resource Manual 688; USAM 9-20.100]

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