

RESOLUTION OF THE
NAVAJO NATION COUNCIL

22nd NAVAJO NATION COUNCIL -- Third Year, 2013

AN ACT

RELATING TO LAW AND ORDER AND NAABIK'ÍYÁTI'; AMENDING
EXTRADITION AND DETENTION PROVISIONS OF TITLE 7 AND TITLE
17 OF THE NAVAJO NATION CODE

BE IT ENACTED:

Section One. Findings and purpose

A. The Navajo Nation under its Criminal Code has jurisdiction over crimes committed within the Navajo Nation. 17 N.N.C. §101 et seq.

B. The federal government, under federal laws such as the *Major Crimes Act*, prosecutes criminal offenses committed within Indian Country. 18 U.S.C. §1153. Crimes enumerated under the *Major Crimes Act* are murder, manslaughter, kidnapping, maiming, incest, assault within intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary and robbery. Other crimes prosecuted by the federal government within Indian Country include domestic violence, embezzlement, drug trafficking, conspiracy, hunting and fishing violations and felon in possession of firearm.

C. The extradition and detainer statutes implement the sovereign right of the Navajo Nation, as set out in Article I of the Treaty of 1868, not to release tribal defendants to other sovereigns except in accordance with appropriate procedures.

D. For purposes of ensuring the safety of communities and law enforcement personnel, as well as protecting rights of the accused, it is necessary that Navajo Nation procedures for state and federal requests for extraditing and detaining individuals be amended.

Section Two. Amending Title 7 of the Navajo Nation Code

The Navajo Nation hereby amends Title 7 of the Navajo Nation Code as follows:

**Title 7. Courts and Procedure
Chapter 5. Procedure
Subchapter 1. Generally**

§ 607. Extradition

Any person lawfully arrested for violating Navajo Nation criminal law(s) or detained by Navajo Nation Court order shall not be released to any other jurisdiction, including the federal government, except pursuant to formal extradition procedures as set forth in 17 N.N.C. §§ 1951 et seq. No Indian, whether an adult or juvenile, shall be removed from the Navajo Nation by state or other tribal nation law enforcement except pursuant to the extradition procedures set forth in 17 N.N.C. §§ 1951-1959. No Indian, whether an adult or juvenile, shall be released by Navajo Nation officials to state or other tribal nation jurisdiction, except pursuant to the procedures as set forth in 17 N.N.C. §§ 1951-1959.

§ 608. Federal Detainer

An Indian, whether adult or juvenile, who is detained by the Navajo Department of Corrections and who is the subject of a federal detainer request, shall be released by the Department of Corrections to the federal government pursuant to the federal detainer statute, 17 N.N.C. §§ 1962 - 1966.

Section Three. Amending Title 17 of the Navajo Nation Code

The Navajo Nation hereby amends Title 17 of the Navajo Nation Code as follows:

Title 17. Law and Order
Chapter 5. Procedures

Subchapter 7. Extradition Statute and Federal Detainer Statute

§ 1951. ~~Persons committing crime outside Indian Country-~~
~~Apprehension on Reservation~~ Extradition Statute - Policy
Statement

~~Whenever the President of the Navajo Nation is informed and believes that a person has committed a crime outside of Indian Country and is present in Navajo "Indian Country" and using it as an asylum from prosecution by the state, the President of the Navajo Nation may order any Navajo police officer to apprehend such person, and deliver him or her to proper state authorities at the Reservation boundary.~~

A. The Navajo Nation desires to strengthen the mutual respect of governing sovereigns and seeks to reinforce the essential government-to-government relationships between the Navajo Nation, other tribal nations and state governments through this extradition protocol.

B. Pursuant to the Treaty of 1868 which, pursuant to Article VI of the United States Constitution is the supreme law of the land the Navajo Nation possesses paramount power over its lands and citizens and as a responsible government has an obligation to turn over "bad men" to the proper authorities. All Indians accused of violating criminal laws of other tribal nations or state governments are subject to this protocol.

C. Consistent with the long-standing federal policy of tribal self-determination and self-government, other tribal nations and state governments and all their instrumentalities must comply with this extradition protocol, which is an expression of the Navajo Nation's inherent right to self-govern.

§ 1952. Hearing; release Extradition

~~If any person being arrested as provided in 17 N.N.C. §1951 so demands, he or she shall be taken by the arresting police officer to the nearest Court of the Navajo Nation, where the judge shall hold a hearing, and if it appears that there is no probable cause to believe the Indian guilty of the crime with which he or she is charged off the Reservation, or if it appears that the Indian probably will not receive a fair trial in the state court, the judge shall order the Indian released from custody.~~

No Indian, whether an adult or juvenile, shall be removed from the Navajo Nation by state or other tribal nation law enforcement except pursuant to the procedures set forth in this extradition statute. No Indian, whether an adult or juvenile, shall be released by Navajo Nation officials to state or other tribal nation jurisdiction, except pursuant to the procedures as set forth in this extradition statute.

§ 1953. Office of the Prosecutor Indians Committing Crime under State or other Tribal Nation Law - Apprehension within Navajo Nation

~~The Office of the Prosecutor of the Navajo Nation shall represent the interests of the Navajo Nation at the hearing authorized under Section 1952 of this Title.~~

A. Whenever the President of the Navajo Nation or the Vice-President of the Navajo Nation, if delegated by the President, is informed and believes that an Indian, whether an adult or juvenile, has committed a crime or juvenile delinquency offense under state or other tribal nation law and is present within the Navajo Nation, upon an extradition request by a state or other tribal nation law enforcement agency, the President or Vice-President may order any Navajo police officer to apprehend such person, and deliver him or her to proper authorities in accordance with this extradition statute.

B. Any Indian who is arrested as a result of fresh pursuit may be removed from the Nation if authorized by and pursuant to a duly-approved cross-commission or mutual aid agreement.

C. No waiver of extradition of an Indian required by a state or other tribal nation will be effective to authorize removal of that Indian from the Navajo Nation. Any removal of an Indian from the Navajo Nation must be in accordance with this extradition statute.

§ 1954. Right to Legal Counsel and Extradition Hearing

Any Indian, whether an adult or juvenile, arrested pending extradition and prior to being delivered to state or other tribal nation custody, shall immediately be informed by personnel of the Navajo Division of Public Safety of his or her right to legal counsel in English and Navajo. Such person, whether with or without legal counsel's advice and prior to being delivered to state or other tribal nation custody, may exercise his or her right to waive or demand an extradition hearing. Waiver of the right to a hearing must be made knowingly, intelligently, and voluntarily. When requested, without regard to indigency, the Office of Navajo Public Defender or other Navajo Nation Bar Association-licensed counsel is empowered to provide legal advice on the person's rights.

§ 1955. Notice to Court or Prosecutor

A. If an Indian with a pending Navajo criminal charge or delinquency offense is extradited to state or other tribal nation authorities under this extradition statute, or is removed outside of such procedures and the Office of the Chief Prosecutor has been informed under Subsection B of this Section, the Office of the Prosecutor shall provide written notice to the Navajo District or Family Court prior to the next hearing in that person's case.

B. When a Navajo Nation criminal investigator, police officer, or corrections officer knows or is informed that an Indian has been removed by state or other tribal nation law enforcement from the Navajo Nation without following the extradition statute, he or she shall immediately inform the Office of the Chief Prosecutor.

§ 1956. Extradition Hearing; release

If any Indian sought for extradition demands a hearing, the Office of the Prosecutor shall file a Petition for Extradition in the nearest Navajo Nation District Court, to which the person shall be taken by the Navajo Division of Public Safety. There a judge shall hold a hearing, and if it appears that there is no probable cause to believe the Indian committed the crime or juvenile delinquency offense with which he or she is charged, or if it appears that the Indian will not receive a fair trial in the state or other tribal nation court, the judge shall order the Indian released from custody.

§ 1957. Office of the Prosecutor

The Office of the Prosecutor of the Navajo Nation shall represent the interests of the Navajo Nation at the hearing authorized under Section 1956.

§ 1958. Rules of Procedure for Extradition

The President of the Navajo Nation and the Navajo Nation Supreme Court shall promulgate rules of procedure for extradition with the concurrence of the Law and Order Committee of the Navajo Nation Council. Such rules shall set out the procedure for the Office of the Prosecutor, the President of the Navajo Nation, the Office of Navajo Public Defender, the Navajo Division of Public Safety, and the Navajo Nation Courts to follow in processing requests for extradition, provided that such rules are not inconsistent with this extradition statute or with 7 N.N.C. § 607.

§ 1959. Civil Fine for Violation of Extradition Statute

Any Navajo government official who knowingly violates any section of this extradition statute may be subject to a civil fine of up to \$2,500. Any Indian who is subjected to removal from the jurisdiction of the Navajo Nation in violation of any section of this extradition statute shall have the right to file a petition alleging a violation with or without the concurrence of the Chief Prosecutor. Any petition alleging a knowing

violation of this extradition statute, whether filed by the Chief Prosecutor or a person subjected to removal, shall name the Navajo government official in his or her individual capacity, and the sovereign immunity of the Navajo Nation shall not apply. A Navajo Nation Court may award up to \$2,500 as restitution to the person subjected to wrongful removal in lieu of a civil fine to be paid to the court.

§ 1960. Reserved

§ 1961. Reserved

§ 1962. Federal Detainer Statute - Policy Statement

This federal detainer statute seeks to implement policy and procedures that will meet the common goals between the Navajo Nation and the federal government of maintaining public safety on the Navajo Nation, of observing the right to due process for persons charged with federal and Navajo crimes, of keeping violent offenders out of Navajo communities, and of protecting those responsible for enforcing criminal laws. The policy and procedures set out in this statute reflect that there are certain crimes that can be prosecuted concurrently under Navajo Nation law and under 18 U.S.C. §§ 1151 and 1152 and other federal laws concerning generally applicable federal offenses.

§ 1963. Federal Detainer Form

If a Navajo Nation law enforcement officer, including those possessing a Special Law Enforcement Commission, makes an arrest, he or she shall arrest an Indian under Navajo Nation law and take him or her into Navajo Nation custody, if there is probable cause that a Navajo Nation offense has occurred. Once the Indian is in Navajo Nation custody, federal law enforcement may request transfer of the Indian to federal custody by submitting to the director of Navajo Department of Corrections, or his or her designee, a detainer request form providing the name of the requesting federal agency; the request date; the name of the inmate who is the subject of the detainer request; that inmate's date of birth; social security number, if known; and photograph or other reliable identifiers; the requesting agency's investigation number; the federal criminal case number; the code number(s) and brief description of the felony

charge(s); and the name, badge number and contact numbers for the requesting agent or officer, and a copy of the federal arrest warrant and charging document (indictment or complaint).

§ 1964. Federal Detainer Procedures

A. Upon receipt of a request for detainer, the Director of the Navajo Department of Corrections, or his or her designee, shall place a copy of the request in the inmate's file, with a cover sheet alerting any Corrections personnel that a detainer hold is in place over that inmate, and that the inmate is not to be released from Corrections custody except pursuant to the federal detainer statute. Upon acceptance of the detainer, Corrections personnel shall contact the federal agent identified in the detainer request form and inform the agent that the inmate is ready for transfer of custody. If the inmate waives his or her right to a hearing pursuant to Section 1965, federal custody must be affected by 5 p.m. the next business day, after notice by the Department of Corrections, by a federal agent or by a Navajo Division of Public Safety criminal investigator or police officer who has federal officer status by virtue of a BIA Special Law Enforcement Commission. The federal custodian will transport the inmate off the Navajo Nation and into United States Marshal Service custody for a prompt initial appearance before a federal Magistrate Judge.

B. If an inmate requests a detainer hearing, and the transfer is authorized, federal officials must take custody by 5 p.m. the next business day after the Navajo District Court Judge's order authorizing transfer of custody.

§ 1965. Right to Legal Counsel and Detainer Hearing

A. Upon submission of a federal detainer request, the inmate shall be given written notice of such request. Corrections personnel shall immediately inform the inmate of his or her right to legal counsel in English and Navajo. With or without such legal counsel, an inmate may exercise his or her right to waive or demand a detainer hearing. Waiver of the right to a hearing must be made knowingly, intelligently, and voluntarily. When requested, without regard to indigency, the Office of

Navajo Public Defender or other Navajo Nation Bar Association-licensed counsel is empowered to provide legal advice on the person's rights.

B. If the inmate demands a hearing, the Office of the Prosecutor shall file a Petition for Detainer in the nearest Navajo Nation District Court, to which the person shall be taken by the Navajo Division of Public Safety. The Office of the Prosecutor of the Navajo Nation shall represent the interests of the Navajo Nation at a detainer hearing. A properly authenticated Juvenile Information, Returned Grand Jury Indictment or Criminal Complaint authorized by a federal judge shall be proof of probable cause.

§ 1966. Prosecutor Discretion

If tribal charges are pending against an inmate for whom a detainer request has been submitted or who has been transferred to federal custody, the Office of the Prosecutor shall have discretion to file for dismissal of the pending tribal charges against the inmate.

Section Four. Effective date

The Navajo Nation Council hereby declares that the effective date of these amendments shall be in accordance with the applicable provisions of Navajo law and subject to the signing of the legislation by the Navajo Nation President, or in the event of a veto, upon its override by the Navajo Nation Council.

Section Five. Codification

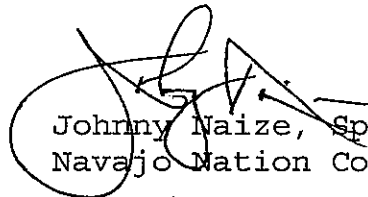
The provisions of these amendments amending sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall include these amendments in the next codification or supplement of the Navajo Nation Code, to the extent practicable.

Section Six. Savings Clause

Should any provision of these amendments be determined invalid by the Navajo Nation Supreme Court, or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, or any other court of competent jurisdiction, those portions of the amendments which are not determined invalid shall remain the law of the Navajo Nation.

CERTIFICATION


I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 19 in favor and 0 opposed, this 16th day of July 2013.


Johnny Naize, Speaker
Navajo Nation Council
July 19, 13
Date

Motion: Honorable Duane Tsinigine
Second: Honorable Joshua Lavar Butler

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C) (10), on this _____ day of JUL 23 2013 2013.



Ben Shelly, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this _____ day of _____ 2013, for the reason(s) expressed in the attached letter to the Speaker.

Ben Shelly, President
Navajo Nation

**LAW AND ORDER COMMITTEE
22nd NAVAJO NATION COUNCIL**

THIRD YEAR 2013

COMMITTEE REPORT

Mr. Speaker,

The **LAW AND ORDER COMMITTEE** to whom has been assigned:

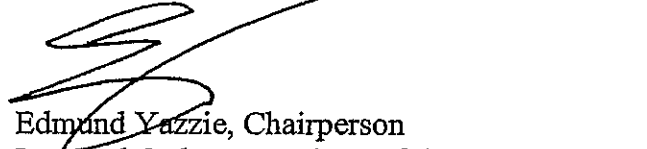
Legislation # 0049-13:

An Action Relating to Law and Order, and Naabik'Iyati: Amending Extradition and Detention Provisions of title 7 and Title 17 of the Navajo Nation Code. (*Prime Sponsor: Russell Begaye*)

Has had it under consideration and report the same with a **DO PASS**, with no amendments;

and therefore referred to **NAABIK'IYATI COMMITTEE**.

Respectfully submitted,



Edmund Yazzie, Chairperson
Law and Order Committee of the
22nd Navajo Nation Council

Date: March 4, 2013

The vote was 3 in favor and 0 opposed

Motion: Alton Joe Shepherd

Second: Russell Begaye

Directives included in Main motion:

(1) Provide a summary highlighting the incident causing the NN in collaboration with USDOJ to amend the Navajo Nation Extradition Policy.

NAA'BIK'IYATI COMMITTEE
22nd NAVAJO NATION COUNCIL

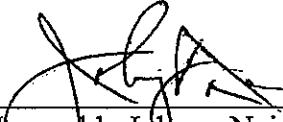
THIRD YEAR 2013

Legislation No. 0049-13:

Relating to Law and Order and Naabik'iyati'; Amending Extradition and Detention Provisions of Title 7 and Title 17 of the Navajo Nation Code. (*Sponsors: Honorable Russell Begaye, Honorable Alton Joe Shepherd, Honorable Duane Tsinigine, Honorable Elmer P. Begay*)

Has had it under consideration and report the same with a **DO PASS**, with no amendments and therefore referred to **NAVAJO NATION COUNCIL**.

Respectfully submitted,



Honorable Johnny Naize, Chairperson
22nd Navajo Nation Council

Adopted 17/11

Not Adopted: _____

Date: June 27, 2013
The vote was 14 in favor and 0 opposed
Motion: Nelson Begaye
Second: Elmer P. Begay