Testimony of Lavern Jefferson, Treasurer
Sac and Fox of the Mississippi in Iowa
Before the United States Senate Committee on Indian Affairs
September 14, 2016

Chairman Barrasso, Vice Chairman Tester, and Members of the Committee:

Good afternoon. I am Lavern Jefferson, Treasurer of the Sac and Fox Tribe of the Mississippi in Iowa, also known as the Meskwaki Nation. Thank you for this opportunity to testify today in support of S. 3216, which would repeal a 1948 act of Congress that conferred jurisdiction to the State of Iowa over offenses committed by or against Indians on our Settlement.

The history of my tribe, like many tribes in the United States, is complicated and unique, and its present criminal justice system is a subject that cannot be understood unless I tell you a little of the historical dimensions of how we got to where we are now.

While our lands are held presently in trust by the federal government, we do not live on a reservation. On July 13, 1857, the Meskwaki Nation of Iowa was the only Indian Tribe to purchase land in Iowa for the establishment of the Meskwaki Indian Settlement. Not being considered citizens of the United States, my ancestors could not hold title to land. Because of this, the Iowa Legislature consented to the Governor of Iowa holding our land in state trust.

Between 1856 and 1896, the Tribe acquired more land in Tama County with funds generated through the sale of pelts and horses, charitable contributions, and treaty annuities. By 1896, the Governor of Iowa held title to 2,720 acres of land in trust for the benefit of the Tribe. Finally, in 1896 the federal government agreed to accept this land into trust. We are one of the few, and perhaps the only, tribe in this nation who settled on a piece of land. The fact that we were never placed on a reservation remains a very important part of our history and heritage. Due to the State of Iowa's aid in holding land for the tribe, the Meskwaki and the State have enjoyed a progressive and positive relationship that has endured over the years.

For generations, we took care of our own criminal issues and problems and shared jurisdiction over crimes committed on the Settlement with the federal government. This all changed in 1948, when the federal government—in the era of termination and assimilation, and at a time when our tribe did not have formal mechanisms for law enforcement on the Settlement nor was the tribe

financially in a position to create a criminal justice system similar to what existed elsewhere in the state—passed a one-sentence law to give the State of Iowa criminal jurisdiction over the Settlement.

A precursor to the well-known Public Law 280, the Act of June 30, 1948 states:

> That jurisdiction is hereby conferred on the State of Iowa over offenses committed by or against Indians on the Sac and Fox Indian Reservation in that State to the same extent as its courts have jurisdiction generally over offenses committed within said State outside any Indian reservation; provided however, that nothing herein contained shall deprive the courts of the United States of jurisdiction over offense defined by the laws of the United States committed by or against Indians on Indian reservations.

The law is a descendent of the Kansas Act, which sought to address reported gaps in jurisdiction over crimes committed between Indians occurring in Indian country within Kansas. Prior to enactment of the Kansas Act there was a concern that if the State did not step into the gap to prosecute criminal offenses on Indian land, criminal conduct would go unchecked. Enactment of the Kansas Act led to the passage of similar laws including the 1948 Act (which is virtually identical to the Kansas Act). This is no accident—a letter written by the head of an agency under the Bureau of Indian Affairs after the passage of the Kansas Act states "that the Indian Office in Washington [BIA] is planning to recommend similar legislation for Indian areas in other states when the plan has been tried out in Kansas."

Eight years after passage of the Kansas Act, Congress moved forward on the bill that our tribe seeks to repeal today. In the corresponding committee report the House Committee on Public Lands wrote, "The need of this legislation arises from the fact that in certain instances, Indian tribes do not enforce the laws covering offenses committed by Indians; under the present law the State has no jurisdiction to enforce laws designed to protect the Indians from crime perpetrated by or against Indians; and law and order should be established on the reservation when the tribal laws for the discipline of its members have broken down."

Additionally, an accompanying letter from Under Secretary of the Interior Oscar L. Chapman said, "On the Sac and Fox Indian Reservation in Iowa … the old tribal laws and customs for the disciplines of its members have broken down completely. There is no Indian court. A number of years ago, an Indian judge was employed by the federal government but, because of factionalism and the close blood and marital relationship among the members of the tribe, the

Indian judge did not satisfactorily perform the duties of his office, and the position was abolished. The employment of Indian police on the reservation met with similar difficulties."

Sixty-eight years after passage of the 1948 Act, the Settlement is a much different place. The Meskawki Nation operates and maintains a fully functional criminal justice system.

We have a full time police department consisting of 10 officers. The Meskwaki Nation Police Department is the primary law enforcement agency dispatched to all emergency and non-emergency complaints involving potential criminal violations which occur on the Settlement. All tribal police officers are certified by the State of Iowa—this enables and allows them to arrest non-natives who commit crimes on the Settlement.

The Tribe has a fully functioning court system. Our trial court is composed of full time judges all of whom are law trained and members of a state bar. The Court handles both civil and criminal cases and has adopted court rules. There are approximately 30 lawyers who are admitted to practice before the Sac and Fox of the Mississippi in Iowa Court.

The Tribe appoints indigent defendants with court appointed lawyers at tribal expense. **Appeals are heard by a Court of Appeals** composed of judges who are all attorneys as well.

The Tribe employees a full time prosecutor who is a licensed attorney. The Prosecutor handles all criminal prosecutions on behalf of the Tribe in tribal court. In addition, the prosecutor regularly works closely with the tribal police department on criminal cases and investigations. The tribal prosecutor is available 24 hours a day to render advice to the Tribal Police Department including the drafting of search warrants and subpoenas.

Offenders are offered various forms of rehabilitation and punishment and those convicted of crimes are regularly placed on probation, working with a **full time probation officer** who sets up and coordinates community service, performs drug tests, conducts unannounced home visits and takes other steps to assure that probationers are complying with court sentencing orders.

Despite making great strides and progress in developing its own criminal justice system, the ramifications of the 1948 Act continue to plague effective law enforcement and the implementation of a criminal justice system on the Meskwaki Settlement.

The 1948 Act has created a dual-concurrent criminal justice system composed of both tribal and state justice systems. Because a criminal case can be brought both in state court and in tribal court, a Native American defendant who commits an offense on the Settlement must face the possibility of two prosecutions by the state and the tribe. This is exceedingly unfair, and violates basic notions of justice and fair play. This also produces an absurd and unduly burdensome application of criminal laws.

Consider a case where a non-native and native both commit the same offense on the Settlement. The non-native is prosecuted once in state court, as Tribal courts have no jurisdiction over non-natives. The native, however, is prosecuted twice (Once in State Court and once in Tribal Court) for the very same offense. The native defendant is therefore penalized more harshly and is subjected to greater fines, costs and receives two criminal convictions for committing one offense. There have been occasions where defendants had to report to two probation officers.

If Congress repeals the 1948 statute, the role of the state criminal justice system in Indian country would be limited to non-Indian v. non-Indian crimes only—or similar to the situation on most reservations today.

This Committee has taken great strides to eliminate some of the unjust vestiges of the Termination Era, and I applaud you for your effort. We urge you to take similar action here.

Earlier this year the State of Iowa approved legislation calling on Congress to repeal this unjust and outdated law. Congress should heed the State's call and take swift action on this important bill. By doing so, you will promote better law enforcement on our Settlement and strengthen our ability to chart our own course as a sovereign nation.

This Committee has taken great strides to eliminate some of the unjust vestiges of the Termination Era, and the Meskwaki Nation applauds you for your effort.

We urge you to take similar action here.

Thank you again for this opportunity, and I am happy to answer any questions you may have.