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**Bill Analysis 2017 Regular Session**

**SPONSOR:** Representative Debbie Rodella

**SHORT TITLE:** Native American Sentencing Disparity

**SYNOPSIS OF BILL:** Requests Congress to enact legislation addressing the disparity between federal and state court criminal sentences and the disparate effect on Native Americans and people of color.

**STRENGTHS:** One of the strengths of this legislation is that it seeks to change the conversation around criminal justice reform by addressing racial inequity in sentencing. Because federal courts often exercise jurisdiction over cases involving Native Americans on tribal lands, Native Americans are disproportionately represented in the federal criminal court system. Native American offenders account for a small but increasing portion of federal offenders, up by 18.2% over the last five years. Federal courts often have longer sentences and stricter mandatory minimums than state courts, which suggests Native Americans may be disproportionately affected.

**WEAKNESSES:** Despite a widespread perception of sentencing disparity, data from federal courts does not show a disparity in sentencing within the federal court system. This legislation seeks a comparative analysis of federal sentencing to state sentencing. However, there is a need for better data collection within state courts, particularly for Native American defendants; therefore it is difficult to accurately compare federal and state court sentences for Native Americans. By seeking to standardize federal sentences with state sentences, there is also a danger that 1) states with sentencing guidelines harsher than the federal system may have the unintended effect of making all sentences harsher; and 2) using state sentences as a starting point may diminish tribal sovereignty by undermining the federal trust responsibility to Indian tribes.

**ADDITIONAL INFO:** In 2015, the U.S. Sentencing Commission created the Tribal Issues Advisory Group. One of the stated purposes of the TIAG was to determine: “whether there are disparities in the application of the federal sentencing guidelines to American Indian defendants, and, if so, how to address them; [and] the impact of the federal sentencing guidelines on offenses committed in Indian Country in comparison with analogous offenses prosecuted in state courts and tribal courts.” In its report to the U.S. Sentencing Commission, the Group acknowledged a widespread perception of disparity in sentencing, but concluded that sentencing data does not currently exist that would allow for a meaningful analysis of sentencing disparity. TIAG recommended “federal agencies and the states should capture more and better criminal sentencing data to enable comprehensive and meaningful comparisons between sentencing systems, and doing so would advance the federal government’s trust responsibility to Indian tribes and nations.” Report of the Tribal Issues Advisory Group, May 16, 2016 (available at [www.ussc.gov](http://www.ussc.gov)).

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<p>If the effect of the requested legislation were to in fact reduce lengthy federal sentences and restore discretion to the courts by abolishing mandatory minimums, the savings cost could be reallocated to prevention strategies with proven results (i.e. education, healthcare, job training)</p>	<p>N/A</p>	<p>If the legislation proposed by this memorial were in fact to reduce lengthy sentences through diversion and other mechanisms at the federal level, this would have a positive fiscal impact on the federal court system.</p>	<p>Unfortunately the data is not strong enough to accurately analyze sentencing disparities in federal court versus state court for Native Americans.</p> <p>This points to a general need at the state and local level for better data collection within the criminal justice system.</p> <p>Absent the data to make this argument, reducing federal sentences and doing away with mandatory minimums would address the root issues this memorial seeks to address.</p>	<p><b>B</b></p>