

RESOLUTION OF THE

NAABIK'ÍYÁTI' STANDING COMMITTEE OF THE  
23RD NAVAJO NATION COUNCIL - Fourth Year, 2018

AN ACTION

RELATING TO THE NAABIK'ÍYÁTI' COMMITTEE OPPOSING H.R. 4864  
TITLED "NO HAVEN FOR DANGEROUS FUGITIVES ACT OF 2018"

WHEREAS:

- A. The Navajo Nation established the Naabik'íyáti' Committee as a Navajo Nation Council standing committee and as such empowered Naabik'íyáti' Committee to coordinate with all committees, Chapters, branches and entities concerned with all Navajo appearances and testimony before Congressional committees, and departments of the United States government. See 2 N.N.C. §§ 164 (A)(9), 700 (A), 701 (A)(8) (2015); See also CO-45-12.
- B. The Navajo Nation has a government-to-government relationship with the United States of America, Treaty of 1868, Aug. 12, 1868, 15 Stat. 667.
- C. On January 19, 2016, H.R. 4864 titled "No Haven for Dangerous Fugitives Act of 2018" was introduced to the House of Representatives by Representative Kristi Noem from South Dakota. H.R. 4864 seeks to amend 18 U.S.C § 1073 by inserting language that will permit federal authorities to enter tribal reservation boundaries including the Navajo Nation, in order to arrest persons avoiding arrest, prosecution, confinement, testimony or service. See H.R. 4864, 115<sup>th</sup> Cong. (2018) attached hereto as **Exhibit A**.
- D. Currently, 18 U.S.C. § 1073 is only applicable to "[w]hoever moves or travels in interstate or foreign commerce[.]" See 18 U.S.C. § 1073 attached hereto as **Exhibit B**.
- E. The Navajo Nation opposes H.R. 4864 for the following reasons:

1. The Act will permit federal authorities to enter into Indian Country as defined in 18 U.S.C. § 1151 in order to enforce violations of 18 U.S.C. § 1073.
2. The Act violates the Treaty of 1868 which contains specific provisions for federal officials to provide notice and request from the Navajo Nation, the delivery of "bad men" to federal law enforcement. See Treaty of 1868, Aug. 12, 1868, 15 Stat. 667.
3. The Act will override the Navajo Nation's extradition laws and procedure which requires the approval of the Navajo Nation President. See generally 17 N.N.C. §§ 1951-59. See also 7 N.N.C. §607-08.
4. The Act violates the inherent sovereign right of the Navajo Nation to self-determination and self-government over its lands and citizens.
5. The Act ignores the mutual respect of governing sovereigns and weakens the government-to-government relationship between tribal nations, including the Navajo Nation, and the United States Government.

**THEREFORE, BE IT RESOLVED:**

- A. The Navajo Nation hereby strongly opposes H.R. 4864 titled "No Haven for Dangerous Fugitives Act of 2018" for the reasons stated herein.
- B. The Navajo Nation hereby authorizes the President of the Navajo Nation, the Speaker of the Navajo Nation Council and the Navajo Nation Washington Office, and their designees, to advocate the Navajo Nation's opposition to H.R. 4864 titled "No Haven for Dangerous Fugitives Act of 2018" and to advocate for continued government-to-government relationship between the Navajo Nation and United States Government and the inherent right of the Navajo Nation to self-determination and self-governance.

**CERTIFICATION**

I, hereby certify that the foregoing resolution was duly considered by the Naabik'iyáti' Committee of the 23<sup>rd</sup> 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 12 in Favor and 00 Opposed, on this 22<sup>nd</sup> day of February, 2018.

A handwritten signature in black ink, appearing to read 'LoRenzo C. Bates', written in a cursive style.

LoRenzo C. Bates, Chairperson  
Naabik'iyáti' Committee

Motion: Honorable Steven Begay  
Second: Honorable Herman M. Daniels

Chairperson Bates not voting

115TH CONGRESS  
2D SESSION

# H. R. 4864

To amend title 18, United States Code, to penalize unlawful flight to avoid prosecution into or from Indian country.

## IN THE HOUSE OF REPRESENTATIVES

JANUARY 19, 2018

Mrs. NOEM (for herself and Mr. GOWDY) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Natural Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

## A BILL

To amend title 18, United States Code, to penalize unlawful flight to avoid prosecution into or from Indian country.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “No Haven for Dan-  
5 gerous Fugitives Act of 2018”.

6 **SEC. 2. FLIGHT TO AVOID PROSECUTION OR GIVING TESTI-**  
7 **MONY.**

8 Section 1073 of title 18, United States Code, is  
9 amended by inserting after “Whoever moves or travels in

1 interstate or foreign commerce” the following: “or is  
2 present within the special maritime and territorial juris-  
3 diction of the United States, or enters or leaves Indian  
4 country (as such term is defined in section 1151),”.

5 **SEC. 3. SENSE OF CONGRESS.**

6       It is the sense of Congress that Federal, State, and  
7 local governments should respect Tribal sovereignty at all  
8 times, including by engaging in all reasonable efforts to  
9 reach extradition agreements with Indian Tribes.

○

**18 USC 1073: Flight to avoid prosecution or giving testimony**  
Text contains those laws in effect on January 31, 2018

From Title 18-CRIMES AND CRIMINAL PROCEDURE  
PART I-CRIMES  
CHAPTER 49-FUGITIVES FROM JUSTICE

Jump To:

[Source Credit](#)  
[Amendments](#)  
[Effective Date](#)  
[Miscellaneous](#)

## §1073. Flight to avoid prosecution or giving testimony

Whoever moves or travels in interstate or foreign commerce with intent either (1) to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which he flees, for a crime, or an attempt to commit a crime, punishable by death or which is a felony under the laws of the place from which the fugitive flees, or (2) to avoid giving testimony in any criminal proceedings in such place in which the commission of an offense punishable by death or which is a felony under the laws of such place, is charged, or (3) to avoid service of, or contempt proceedings for alleged disobedience of, lawful process requiring attendance and the giving of testimony or the production of documentary evidence before an agency of a State empowered by the law of such State to conduct investigations of alleged criminal activities, shall be fined under this title or imprisoned not more than five years, or both. For the purposes of clause (3) of this paragraph, the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

Violations of this section may be prosecuted only in the Federal judicial district in which the original crime was alleged to have been committed, or in which the person was held in custody or confinement, or in which an avoidance of service of process or a contempt referred to in clause (3) of the first paragraph of this section is alleged to have been committed, and only upon formal approval in writing by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or an Assistant Attorney General of the United States, which function of approving prosecutions may not be delegated.

(June 25, 1948, ch. 645, 62 Stat. 755 ; Apr. 6, 1956, ch. 177, §1, 70 Stat. 100 ; Pub. L. 87-368, Oct. 4, 1961, 75 Stat. 795 ; Pub. L. 91-452, title III, §302, Oct. 15, 1970, 84 Stat. 932 ; Pub. L. 100-690, title VII, §7020(b), Nov. 18, 1988, 102 Stat. 4396 ; Pub. L. 103-322, title XXXIII, §§330004(19), 330016(1)(K), Sept. 13, 1994, 108 Stat. 2142 , 2147; Pub. L. 104-294, title VI, §607(e), Oct. 11, 1996, 110 Stat. 3511 .)

### HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §408e (May 18, 1934, ch. 302, 48 Stat. 782 ; Aug. 2, 1946, ch. 735, 60 Stat. 789 ).

Said section 408e was rewritten and the phrase "offenses as they are defined either at common law or by the laws of the place from which the fugitive flees" were inserted to remove the ambiguity discussed in the opinion of the Circuit Court of Appeals, Third Circuit, in *Brandenburg v. U.S.*, decided September 6, 1944, not yet reported [144 F2d 656], reversing the conviction of the appellant. The court held that Congress intended the enumerated offenses to mean those as defined at common law. The effect of the rewritten section is to make the statute applicable whether the offense committed is one defined at common law or by the law of the state from which the fugitive flees.

The words "offense punishable by imprisonment in a penitentiary" were substituted for "felony" to make the statute uniformly applicable and to include crimes of the grade of felony even where, as in New Jersey, they are denominated as misdemeanor, high misdemeanor or otherwise.

Words "from any State, Territory, or possession of the United States or the District of Columbia" were omitted in view of definitive section 10 of this title.

Words "upon conviction thereof" were deleted as surplusage since punishment cannot be imposed until a conviction is secured.



Minor changes were made in phraseology.

### AMENDMENTS

1996-Pub. L. 104-294 inserted at end of first par. "For the purposes of clause (3) of this paragraph, the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States."

1994-Pub. L. 103-322, §330016(1)(K), substituted "fined under this title" for "fined not more than \$5,000".

Pub. L. 103-322, §330004(19), struck out "or which, in the case of New Jersey, is a high misdemeanor under the laws of said State," before "or (2) to avoid" and "or which in the case of New Jersey, is a high misdemeanor under the laws of said State," before "is charged, or (3)".

1988-Pub. L. 100-690 inserted ", the Deputy Attorney General, the Associate Attorney General," after "the Attorney General".

1970-Pub. L. 91-452 inserted cl. (3) and ", or in which an avoidance of service of process or a contempt referred to in clause (3) of the first paragraph of this section is alleged to have been committed," after "in custody or confinement".

1961-Pub. L. 87-368 substituted "a crime, or an attempt to commit a crime, punishable by death or which is a felony under the laws of the place from which the fugitive flees, or which, in the case of New Jersey, is a high misdemeanor under the laws of said State" for "murder, kidnaping, burglary, robbery, mayhem, rape, assault with a dangerous weapon, arson punishable as a felony, or extortion accompanied by threats of violence, or attempt to commit any of the foregoing offenses as they are defined either at common law or by the laws of the place from which the fugitive flees", "death or which is a felony under the laws of such place, or which in the case of New Jersey, is a high misdemeanor under the laws of said State," for "imprisonment in a penitentiary", and required that prosecutions must be upon the formal written approval of the Attorney General or an Assistant Attorney General, which function may not be delegated.

1956-Act Apr. 6, 1956, inserted ", arson punishable as a felony" after "assault with a dangerous weapon".

### EFFECTIVE DATE OF 1956 AMENDMENT

Act Apr. 6, 1956, ch. 177, §2, 70 Stat. 100, provided that: "The amendment made by the first section of this Act [amending this section] shall take effect on the thirtieth day after the date of enactment of this Act [April 6, 1956]."

### PARENTAL KIDNAPING AND INTERSTATE OR INTERNATIONAL FLIGHT TO AVOID PROSECUTION UNDER APPLICABLE STATE FELONY STATUTES

Pub. L. 96-611, §10, Dec. 28, 1980, 94 Stat. 3573, provided that:

"(a) In view of the findings of the Congress and the purposes of sections 6 to 10 of this Act set forth in section 302 [probably means section 7 of Pub. L. 96-611, set out as a note under section 1738A of Title 28, Judiciary and Judicial Procedure], the Congress hereby expressly declares its intent that section 1073 of title 18, United States Code, apply to cases involving parental kidnaping and interstate or international flight to avoid prosecution under applicable State felony statutes.

"(b) The Attorney General of the United States, not later than 120 days after the date of the enactment of this section [Dec. 28, 1980] (and once every 6 months during the 3-year period following such 120-day period), shall submit a report to the Congress with respect to steps taken to comply with the intent of the Congress set forth in subsection (a). Each such report shall include-

"(1) data relating to the number of applications for complaints under section 1073 of title 18, United States Code in cases involving parental kidnaping;

"(2) data relating to the number of complaints issued in such cases; and

"(3) such other information as may assist in describing the activities of the Department of Justice in conformance with such intent."

**NAVAJO NATION**

RCS# 813

Naa'bik'iyati Committee

2/22/2018  
05:37:28 PM

Amd# to Amd#

Legislation 0052-18: Opposing

PASSED

MOT Begay, S

H.R. 4864 Titled "No Haven for

SEC Daniels

Dangerous Fugitives Act of 2018"

**Yea : 12**

**Nay : 0**

**Excused : 0**

**Not Voting : 12**

**Yea : 12**

Begay, K  
Begay, S  
BeGaye, N

Bennett  
Chee  
Damon

Daniels  
Filfred  
Slim

Smith  
Witherspoon  
Yazzie

**Nay : 0**

**Excused : 0**

**Not Voting : 12**

Bates  
Begay, NM  
Brown

Crotty  
Hale  
Jack

Perry  
Pete  
Phelps

Shepherd  
Tso  
Tsosie