

AMENDMENT TO RULES COMMITTEE PRINT 113-2
OFFERED BY MR. COLE OF OKLAHOMA

Strike section 903 and insert the following:

1 **SEC. 903. TRIBAL JURISDICTION OVER CRIMES OF DOMES-**
2 **TIC VIOLENCE.**

3 (a) JURISDICTION.—

4 (1) IN GENERAL.—Title II of Public Law 90–
5 284 (25 U.S.C. 1301 et seq.) (commonly known as
6 the “Indian Civil Rights Act of 1968”) is amended
7 by adding at the end the following:

8 **“SEC. 204. TRIBAL JURISDICTION OVER CRIMES OF DOMES-**
9 **TIC VIOLENCE.**

10 “(a) DEFINITIONS.—In this section:

11 “(1) DATING VIOLENCE.—The term ‘dating vio-

12 lence’ means violence committed by a person who is

13 or has been in a social relationship of a romantic or

14 intimate nature with the victim, as determined by

15 the length of the relationship, the type of relation-

16 ship, and the frequency of interaction between the

17 persons involved in the relationship.

18 “(2) DOMESTIC VIOLENCE.—The term ‘domes-

19 tic violence’ means violence committed by a current

20 or former spouse or intimate partner of the victim,

1 by a person with whom the victim shares a child in
2 common, by a person who is cohabitating with or
3 has cohabitated with the victim as a spouse or inti-
4 mate partner, or by a person similarly situated to a
5 spouse of the victim under the domestic- or family-
6 violence laws of an Indian tribe that has jurisdiction
7 over the Indian country where the violence occurs.

8 “(3) INDIAN COUNTRY.—The term ‘Indian
9 country’ has the meaning given the term in section
10 1151 of title 18, United States Code.

11 “(4) PARTICIPATING TRIBE.—The term ‘partici-
12 pating tribe’ means an Indian tribe that elects to ex-
13 ercise special domestic violence criminal jurisdiction
14 over the Indian country of that Indian tribe.

15 “(5) PROTECTION ORDER.—The term ‘protec-
16 tion order’—

17 “(A) means any injunction, restraining
18 order, or other order issued by a civil or crimi-
19 nal court for the purpose of preventing violent
20 or threatening acts or harassment against, sex-
21 ual violence against, contact or communication
22 with, or physical proximity to, another person;
23 and

24 “(B) includes any temporary or final order
25 issued by a civil or criminal court, whether ob-

1 tained by filing an independent action or as a
2 pendente lite order in another proceeding, if the
3 civil or criminal order was issued in response to
4 a complaint, petition, or motion filed by or on
5 behalf of a person seeking protection.

6 “(6) SPECIAL DOMESTIC VIOLENCE CRIMINAL
7 JURISDICTION.—The term ‘special domestic violence
8 criminal jurisdiction’ means the criminal jurisdiction
9 that a participating tribe may exercise under this
10 section but could not otherwise exercise.

11 “(7) SPOUSE OR INTIMATE PARTNER.—The
12 term ‘spouse or intimate partner’ has the meaning
13 given the term in section 2266 of title 18, United
14 States Code.

15 “(b) NATURE OF THE CRIMINAL JURISDICTION.—

16 “(1) IN GENERAL.—Notwithstanding any other
17 provision of law, in addition to all powers of self-gov-
18 ernment recognized and affirmed by sections 201,
19 202, and 203, the powers of self-government of a
20 participating tribe include the inherent power of that
21 tribe, which is hereby recognized and affirmed, to
22 exercise special domestic violence criminal jurisdic-
23 tion over all persons.

24 “(2) CONCURRENT JURISDICTION.—The exer-
25 cise of special domestic violence criminal jurisdiction

1 by a participating tribe shall be concurrent with the
2 jurisdiction of the United States, of a State, or of
3 both.

4 “(3) APPLICABILITY.—Nothing in this sec-
5 tion—

6 “(A) creates or eliminates any Federal or
7 State criminal jurisdiction over Indian country;
8 or

9 “(B) affects the authority of the United
10 States or any State government that has been
11 delegated authority by the United States to in-
12 vestigate and prosecute a criminal violation in
13 Indian country.

14 “(4) EXCEPTIONS.—

15 “(A) VICTIM AND DEFENDANT ARE BOTH
16 NON-INDIANS.—

17 “(i) IN GENERAL.—A participating
18 tribe may not exercise special domestic vio-
19 lence criminal jurisdiction over an alleged
20 offense if neither the defendant nor the al-
21 leged victim is an Indian.

22 “(ii) DEFINITION OF VICTIM.—In this
23 subparagraph and with respect to a crimi-
24 nal proceeding in which a participating
25 tribe exercises special domestic violence

1 criminal jurisdiction based on a violation of
2 a protection order, the term ‘victim’ means
3 a person specifically protected by a protec-
4 tion order that the defendant allegedly vio-
5 lated.

6 “(B) DEFENDANT LACKS TIES TO THE IN-
7 DIAN TRIBE.—A participating tribe may exer-
8 cise special domestic violence criminal jurisdic-
9 tion over a defendant only if the defendant—

10 “(i) resides in the Indian country of
11 the participating tribe;

12 “(ii) is employed in the Indian coun-
13 try of the participating tribe; or

14 “(iii) is a spouse, intimate partner, or
15 dating partner of—

16 “(I) a member of the partici-
17 pating tribe; or

18 “(II) an Indian who resides in
19 the Indian country of the partici-
20 pating tribe.

21 “(c) CRIMINAL CONDUCT.—A participating tribe may
22 exercise special domestic violence criminal jurisdiction over
23 a defendant for criminal conduct that falls into one or
24 more of the following categories:

1 “(1) DOMESTIC VIOLENCE AND DATING VIO-
2 LENCE.—An act of domestic violence or dating vio-
3 lence that occurs in the Indian country of the par-
4 ticipating tribe.

5 “(2) VIOLATIONS OF PROTECTION ORDERS.—
6 An act that—

7 “(A) occurs in the Indian country of the
8 participating tribe; and

9 “(B) violates the portion of a protection
10 order that—

11 “(i) prohibits or provides protection
12 against violent or threatening acts or har-
13 assment against, sexual violence against,
14 contact or communication with, or physical
15 proximity to, another person;

16 “(ii) was issued against the defend-
17 ant;

18 “(iii) is enforceable by the partici-
19 pating tribe; and

20 “(iv) is consistent with section
21 2265(b) of title 18, United States Code.

22 “(d) RIGHTS OF DEFENDANTS.—In a criminal pro-
23 ceeding in which a participating tribe exercises special do-
24 mestic violence criminal jurisdiction, the participating
25 tribe shall provide to the defendant—

1 “(1) all applicable rights under this Act;

2 “(2) if a term of imprisonment of any length
3 may be imposed, all rights described in section
4 202(c);

5 “(3) the right to a trial by an impartial jury
6 that is drawn from sources that—

7 “(A) reflect a fair cross section of the com-
8 munity; and

9 “(B) do not systematically exclude any dis-
10 tinctive group in the community, including non-
11 Indians; and

12 “(4) all other rights whose protection is nec-
13 essary under the Constitution of the United States
14 in order for Congress to recognize and affirm the in-
15 herent power of the participating tribe to exercise
16 special domestic violence criminal jurisdiction over
17 the defendant.

18 “(e) PETITIONS TO STAY DETENTION.—

19 “(1) IN GENERAL.—A person who has filed a
20 petition for a writ of habeas corpus in a court of the
21 United States under section 203 may petition that
22 court to stay further detention of that person by the
23 participating tribe.

24 “(2) GRANT OF STAY.—A court shall grant a
25 stay described in paragraph (1) if the court—

1 “(A) finds that there is a substantial likeli-
2 hood that the habeas corpus petition will be
3 granted; and

4 “(B) after giving each alleged victim in the
5 matter an opportunity to be heard, finds by
6 clear and convincing evidence that under condi-
7 tions imposed by the court, the petitioner is not
8 likely to flee or pose a danger to any person or
9 the community if released.

10 “(3) NOTICE.—An Indian tribe that has or-
11 dered the detention of any person has a duty to
12 timely notify such person of his rights and privileges
13 under this subsection and under section 203.

14 “(f) SUBJECT TO REMOVAL.—A criminal prosecution
15 commenced in a tribal court under this section may, pur-
16 suant to section 3245 of title 18, United States Code, be
17 removed to the United States district court embracing the
18 place where the criminal prosecution is pending, and the
19 district court shall have full authority to hear and deter-
20 mine the cause.

21 “(g) GRANTS TO TRIBAL GOVERNMENTS.—The At-
22 torney General may award grants to the governments of
23 Indian tribes (or to authorized designees of those govern-
24 ments)—

1 “(1) to strengthen tribal criminal justice sys-
2 tems to assist Indian tribes in exercising special do-
3 mestic violence criminal jurisdiction, including—

4 “(A) law enforcement (including the capaci-
5 ty of law enforcement or court personnel to
6 enter information into and obtain information
7 from national crime information databases);

8 “(B) prosecution;

9 “(C) trial and appellate courts;

10 “(D) probation systems;

11 “(E) detention and correctional facilities;

12 “(F) alternative rehabilitation centers;

13 “(G) culturally appropriate services and
14 assistance for victims and their families; and

15 “(H) criminal codes and rules of criminal
16 procedure, appellate procedure, and evidence;

17 “(2) to provide indigent criminal defendants
18 with the effective assistance of licensed defense
19 counsel, at no cost to the defendant, in criminal pro-
20 ceedings in which a participating tribe prosecutes a
21 crime of domestic violence or dating violence or a
22 criminal violation of a protection order;

23 “(3) to ensure that, in criminal proceedings in
24 which a participating tribe exercises special domestic
25 violence criminal jurisdiction, jurors are summoned,

1 selected, and instructed in a manner consistent with
2 all applicable requirements; and

3 “(4) to accord victims of domestic violence, dat-
4 ing violence, and violations of protection orders
5 rights that are similar to the rights of a crime victim
6 described in section 3771(a) of title 18, United
7 States Code, consistent with tribal law and custom.

8 “(h) SUPPLEMENT, NOT SUPPLANT.—Amounts
9 made available under this section shall supplement and
10 not supplant any other Federal, State, tribal, or local gov-
11 ernment amounts made available to carry out activities de-
12 scribed in this section.

13 “(i) AUTHORIZATION OF APPROPRIATIONS.—There
14 are authorized to be appropriated \$5,000,000 for each of
15 fiscal years 2014 through 2018 to carry out subsection
16 (g) and to provide training, technical assistance, data col-
17 lection, and evaluation of the criminal justice systems of
18 participating tribes.”.

19 (2) CLERICAL AMENDMENT.—The table of sec-
20 tions for title II of the Indian Civil Rights Act of
21 1968 (25 U.S.C. 1301 et seq.) is amended by insert-
22 ing after the item relating to section 203 the fol-
23 lowing:

“Sec. 204. Tribal jurisdiction over crimes of domestic violence.”.

24 (b) REMOVAL OF CRIMINAL PROSECUTIONS.—

1 (1) IN GENERAL.—Chapter 211 of title 18,
2 United States Code, is amended by adding at the
3 end the following:

4 **“§ 3245. Federal removal jurisdiction to protect the**
5 **rights of defendants under section 204 of**
6 **the Indian Civil Rights Act.**

7 “(a) NOTICE OF REMOVAL.—A defendant desiring to
8 remove a criminal prosecution from a tribal court pursu-
9 ant to section 204(f) of the Indian Civil Rights Act of
10 1968 (25 U.S.C. 1304(f)) shall file in the district court
11 of the United States for the district and division within
12 which such prosecution is pending a notice of removal
13 signed pursuant to Rule 11 of the Federal Rules of Civil
14 Procedure and containing a short and plain statement of
15 the grounds for removal under subsection (b), together
16 with a copy of all process, pleadings, and orders served
17 upon such defendant or defendants in such action.

18 “(b) GROUNDS FOR REMOVAL.—No criminal pros-
19 ecution under section 204 of the Indian Civil Rights Act
20 of 1968 (25 U.S.C. 1304)) shall be removed unless the
21 defendant can prove by clear and convincing evidence that
22 a right guaranteed them under section 204(d) of the In-
23 dian Civil Rights Act of 1968 (25 U.S.C. 1304(d)), has
24 been violated, the tribal court has failed to adequately

1 remedy the violation, and the violation is prejudicial to the
2 defendant.

3 “(c) REQUIREMENTS.—

4 “(1) A notice of removal of a criminal prosecu-
5 tion under section 204(f) of the Indian Civil Rights
6 Act of 1968 (25 U.S.C. 1304)(f)) shall be filed not
7 later than 30 days after the arraignment in the trib-
8 al court, or at any time before trial, whichever is
9 earlier, except that for good cause shown the United
10 States district court may enter an order granting
11 the defendant or defendants leave to file the notice
12 at a later time.

13 “(2) A notice of removal of a criminal prosecu-
14 tion under section 204(f) of the Indian Civil Rights
15 Act of 1968 (25 U.S.C. 1304(f)) shall include all
16 grounds for such removal. A failure to state grounds
17 that exist at the time of the filing of the notice shall
18 constitute a waiver of such grounds, and a second
19 notice may be filed only on grounds not existing at
20 the time of the original notice. For good cause
21 shown, the United States district court may grant
22 relief from the limitations of this paragraph.

23 “(3) The filing of a notice of removal of a
24 criminal prosecution under section 204(f) of the In-
25 dian Civil Rights Act of 1968 (25 U.S.C. 1304(f))

1 shall not prevent the tribal court in which such prosecution is pending from proceeding further, except
2 that a judgment of conviction shall not be entered
3 unless the prosecution is first remanded.
4

5 “(4) The United States district court in which
6 such notice is filed shall examine the notice promptly. If it clearly appears on the face of the notice and
7 any exhibits annexed thereto that removal should
8 not be permitted, the court shall make an order for
9 summary remand.
10

11 “(5) If the United States district court does not
12 order the summary remand of such prosecution, it
13 shall order an evidentiary hearing to be held promptly and, after such hearing, shall make such disposition
14 of the prosecution as justice shall require. If the
15 United States district court determines that removal
16 shall be permitted, it shall so notify the tribal court
17 in which prosecution is pending, which shall proceed
18 no further.
19

20 “(d) WRIT OF HABEAS CORPUS.—If the defendant
21 or defendants are in actual custody on process issued by
22 the tribal court, the district court shall issue its writ of
23 habeas corpus, and the marshal shall thereupon take such
24 defendant or defendants into the marshal’s custody and
25 deliver a copy of the writ to the clerk of such tribal court.

1 “(e) SPECIAL ASSISTANT UNITED STATES ATTOR-
2 NEYS.—To assist in implementing this section and section
3 204(f) of the Indian Civil Rights Act of 1968 (25 U.S.C.
4 1304(f)) and in prosecuting crimes of domestic violence
5 and dating violence in Indian country, each United States
6 Attorney serving a district that includes Indian country
7 is authorized and encouraged to appoint qualified tribal
8 prosecutors as Special Assistant United States Attorneys
9 pursuant to section 13(d) of the Indian Law Enforcement
10 Reform Act (25 U.S.C. 2810(d)) and section 543(a) of
11 title 28, United States Code.”.

12 (2) CLERICAL AMENDMENT.—The table of sec-
13 tions for chapter 211 of title 18, United States
14 Code, is amended by inserting after the item relating
15 to section 3244 the following:

“3245. Federal removal jurisdiction to protect the rights of defendants under
section 204 of the Indian Civil Rights Act..”.

