

AMENDMENT TO RULES COMMITTEE PRINT 113-2
OFFERED BY MR. ISSA OF CALIFORNIA

Strike section 903 and insert the following (and conform the table of contents accordingly):

1 **SEC. 903. TRIBAL JURISDICTION OVER CRIMES OF DOMESTIC**
2 **VIOLENCE.**

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

7 **“SEC. 204. TRIBAL JURISDICTION OVER CRIMES OF DOMESTIC**
8 **VIOLENCE.**

9 “(a) DEFINITIONS.—In this section:

10 “(1) DATING VIOLENCE.—The term ‘dating violence’ means violence committed by a person who is
11 or has been in a social relationship of a romantic or
12 intimate nature with the victim, as determined by
13 the length of the relationship, the type of relationship,
14 and the frequency of interaction between the
15 persons involved in the relationship.
16

17 “(2) DOMESTIC VIOLENCE.—The term ‘domestic violence’ means violence committed by a current
18 or former spouse or intimate partner of the victim,
19

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 pendent 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 and 203, the powers of self-government of a partici-
20 pating tribe include the inherent power of that tribe,
21 which is hereby recognized and affirmed, to exercise
22 special domestic violence criminal jurisdiction over
23 all persons.

24 “(2) APPLICABILITY.—Nothing in this sec-
25 tion—

1 “(A) creates or eliminates any Federal or
2 State criminal jurisdiction over Indian country;
3 or

4 “(B) affects the authority of the United
5 States or any State government that has been
6 delegated authority by the United States to in-
7 vestigate and prosecute a criminal violation in
8 Indian country.

9 “(3) EXCEPTIONS.—

10 “(A) VICTIM AND DEFENDANT ARE BOTH
11 NON-INDIANS.—

12 “(i) IN GENERAL.—A participating
13 tribe may not exercise special domestic vio-
14 lence criminal jurisdiction over an alleged
15 offense if neither the defendant nor the al-
16 leged victim is an Indian.

17 “(ii) DEFINITION OF VICTIM.—In this
18 subparagraph and with respect to a crimi-
19 nal proceeding in which a participating
20 tribe exercises special domestic violence
21 criminal jurisdiction based on a violation of
22 a protection order, the term ‘victim’ means
23 a person specifically protected by a protec-
24 tion order that the defendant allegedly vio-
25 lated.

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

5 “(i) resides in the Indian country of
6 the participating tribe;

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

9 “(iii) is a spouse, intimate partner, or
10 dating partner of—

11 “(I) a member of the partici-
12 pating tribe; or

13 “(II) an Indian who resides in
14 the Indian country of the partici-
15 pating tribe.

16 “(c) CERTIFICATION BY PARTICIPATING TRIBES.—

17 “(1) ELECTION.—An Indian tribe seeking to
18 exercise special domestic violence criminal jurisdic-
19 tion shall, prior to exercising such jurisdiction, sub-
20 mit to the Attorney General a certification stating
21 that the criminal justice system of the tribe has ade-
22 quate safeguards in place to protect all rights of de-
23 fendants under this section.

24 “(2) NOTICE.—A tribe seeking to exercise spe-
25 cial domestic violence criminal jurisdiction shall,

1 prior to exercising this jurisdiction, give notice to the
2 public of its intention to exercise special domestic vi-
3 olence criminal jurisdiction through—

4 “(A) an official website belonging to the
5 tribe;

6 “(B) local newspaper, radio, or television
7 outlets; and

8 “(C) a notice published in the Federal
9 Register.

10 “(d) RULE OF CONSTRUCTION.—Nothing in this sec-
11 tion may be construed—

12 “(1) to affect any jurisdiction of a participating
13 tribe, other than the special domestic violence juris-
14 diction of that tribe, that such tribe possessed prior
15 to the date of enactment of this section; or

16 “(2) to affect any criminal jurisdiction over In-
17 dian country of the United States, of a State, or of
18 both.

19 “(e) CONCURRENCE OF JURISDICTION.—The exercise
20 of special domestic violence jurisdiction shall be concur-
21 rent with any jurisdiction of the United States, of a State,
22 or of both.

23 “(f) CRIMINAL CONDUCT.—A participating tribe may
24 exercise special domestic violence criminal jurisdiction over

1 a defendant for criminal conduct that falls into one or
2 more of the following categories:

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

7 “(2) VIOLATIONS OF PROTECTION ORDERS.—
8 An act that—

9 “(A) occurs in the Indian country of the
10 participating tribe; and

11 “(B) violates the portion of a protection
12 order that—

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

18 “(ii) was issued against the defend-
19 ant;

20 “(iii) is enforceable by the partici-
21 pating tribe; and

22 “(iv) is consistent with section
23 2265(b) of title 18, United States Code.

24 “(g) RIGHTS OF DEFENDANTS.—In a criminal pro-
25 ceeding in which a participating tribe exercises special do-

1 mestic violence criminal jurisdiction, the participating
2 tribe shall afford defendants—

3 “(1) all applicable rights under this Act in the
4 same manner that State courts in similar cases af-
5 ford criminal defendants the corresponding rights
6 under the Constitution and laws of the United
7 States, as those rights are interpreted by the courts
8 of the United States and—

9 “(A) shall not deny or abridge any right
10 described in sections 201 through 203;

11 “(B) shall not violate the right of the peo-
12 ple to be secure in their persons, houses, pa-
13 pers, and effects against unreasonable search
14 and seizures;

15 “(C) shall not issue warrants, but upon
16 probable cause, supported by oath or affirma-
17 tion, and particularly describing the place to be
18 searched and the person or thing to be seized;

19 “(D) shall not subject any person for the
20 same offense to be twice put in jeopardy;

21 “(E) shall not compel any person to be a
22 witness against himself;

23 “(F) shall not deny to any person the right
24 to a speedy and public trial;

1 “(G) shall not deny to any person the right
2 to be informed of the nature and cause of the
3 accusation;

4 “(H) shall not deny to any person the
5 right to be confronted with the witnesses
6 against him;

7 “(I) shall not deny to any person the right
8 to have compulsory process for obtaining wit-
9 nesses in his favor;

10 “(J) shall not require excessive bail;

11 “(K) shall not impose excessive fines;

12 “(L) shall not inflict cruel and unusual
13 punishments;

14 “(M) shall not deny to any person the
15 equal protection of its laws;

16 “(N) shall not deprive any person of lib-
17 erty or property without due process of law;

18 “(O) shall not enforce any bill of attainder
19 or ex post facto law;

20 “(P) shall not deny to any person accused
21 of an offense punishable by imprisonment the
22 right, upon request, to a trial by jury of not
23 less than six persons;

1 “(Q) shall not deny to any person the right
2 to have the assistance of counsel for his de-
3 fense;

4 “(R) shall provide to the defendant the
5 right to effective assistance of counsel at least
6 equal to that guaranteed by the United States
7 Constitution;

8 “(S) shall, if a term of imprisonment of
9 any length is or may be imposed, provide an in-
10 digent defendant, at the expense of the tribal
11 government, the assistance of a defense attor-
12 ney licensed to practice law by any jurisdiction
13 in the United States that applies appropriate
14 professional licensing standards and effectively
15 ensures the competence and professional re-
16 sponsibility of its licensed attorneys;

17 “(T) shall require that the judge presiding
18 over a criminal proceeding—

19 “(i) has sufficient legal training to
20 preside over criminal proceedings; and

21 “(ii) is licensed to practice law by any
22 jurisdiction in the United States;

23 “(U) shall make publicly available, prior to
24 charging the defendant, the criminal laws (in-
25 cluding regulations and interpretative docu-

1 ments), rules of evidence, and rules of criminal
2 procedure (including rules governing the recusal
3 of judges in appropriate circumstances) of the
4 tribal government;

5 “(V) shall maintain a record of the crimi-
6 nal proceeding, including an audio or other re-
7 cording of the trial proceeding; and

8 “(W) shall not deny to any person the
9 right to a trial by an impartial jury that is
10 drawn from sources that—

11 “(i) reflect a fair cross section of the
12 community; and

13 “(ii) do not systematically exclude any
14 distinctive group in the community, includ-
15 ing non-Indians;

16 “(2) if a term of imprisonment of any length
17 may be imposed, all rights described in section
18 202(c);

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

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

23 “(B) do not systematically exclude any dis-
24 tinctive group in the community, including non-
25 Indians; and

1 “(4) all other rights whose protection is nec-
2 essary under the Constitution of the United States
3 in order for Congress to recognize and affirm the in-
4 herent power of the participating tribe to exercise
5 special domestic violence criminal jurisdiction over
6 the defendant.

7 “(h) PETITIONS TO STAY DETENTION.—

8 “(1) IN GENERAL.—A person who has filed a
9 petition for a writ of habeas corpus in a court of the
10 United States under section 203 may petition that
11 court to stay further detention of that person by the
12 participating tribe.

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

15 “(A) finds that there is a substantial likeli-
16 hood that the habeas corpus petition will be
17 granted; and

18 “(B) after giving each alleged victim in the
19 matter an opportunity to be heard, finds by
20 clear and convincing evidence that under condi-
21 tions imposed by the court, the petitioner is not
22 likely to flee or pose a danger to any person or
23 the community if released.

24 “(3) NOTICE.—An Indian tribe that has or-
25 dered the detention of any person has a duty to

1 timely notify such person of his rights and privileges
2 under this subsection and under section 203.

3 “(i) SUBJECT TO REMOVAL.—A defendant charged
4 with a crime under this section may petition the appro-
5 priate Federal district for removal pursuant to section
6 3245 of title 18, United States Code.

7 “(j) GRANTS TO TRIBAL GOVERNMENTS.—

8 “(1) GRANTS AUTHORIZED.—The Attorney
9 General may award grants to the governments of In-
10 dian tribes (or to authorized designees of those gov-
11 ernments)—

12 “(A) to strengthen tribal criminal justice
13 systems to assist Indian tribes in exercising
14 special domestic violence criminal jurisdiction,
15 including—

16 “(i) law enforcement (including the
17 capacity of law enforcement or court per-
18 sonnel to enter information into and obtain
19 information from national crime informa-
20 tion databases);

21 “(ii) prosecution;

22 “(iii) trial and appellate courts;

23 “(iv) probation systems;

24 “(v) detention and correctional facili-
25 ties;

1 “(vi) alternative rehabilitation centers;

2 “(vii) culturally appropriate services

3 and assistance for victims and their fami-

4 lies; and

5 “(viii) criminal codes and rules of

6 criminal procedure, appellate procedure,

7 and evidence;

8 “(B) to provide indigent criminal defend-

9 ants with the effective assistance of licensed de-

10 fense counsel, at no cost to the defendant, in

11 criminal proceedings in which a participating

12 tribe prosecutes a crime of domestic violence or

13 dating violence or a criminal violation of a pro-

14 tection order;

15 “(C) to ensure that, in criminal pro-

16 ceedings in which a participating tribe exercises

17 special domestic violence criminal jurisdiction,

18 jurors are summoned, selected, and instructed

19 in a manner consistent with all applicable re-

20 quirements; and

21 “(D) to accord victims of domestic vio-

22 lence, dating violence, and violations of protec-

23 tion orders rights that are similar to the rights

24 of a crime victim described in section 3771(a)

1 of title 18, United States Code, consistent with
2 tribal law and custom.

3 “(2) SUPPLEMENT, NOT SUPPLANT.—Amounts
4 made available under this subsection shall supple-
5 ment and not supplant any other Federal, State,
6 tribal, or local government amounts made available
7 to carry out activities described in this subsection.

8 “(3) PROHIBITION ON LOBBYING ACTIVITY.—
9 Amounts authorized to be appropriated under this
10 subsection may not be used by any grant recipient
11 to—

12 “(A) lobby any representative of the De-
13 partment of Justice regarding the award of
14 grant funding under this subsection; or

15 “(B) lobby any representative of a Federal,
16 State, local, or tribal government regarding the
17 award of grant funding under this subsection.

18 “(4) AUTHORIZATION OF APPROPRIATIONS.—
19 There are authorized to be appropriated \$5,000,000
20 for each of fiscal years 2014 through 2018 to carry
21 out this subsection and to provide training, technical
22 assistance, data collection, and evaluation of the
23 criminal justice systems of participating tribes.”.

24 (b) CLERICAL AMENDMENT.—The table of sections
25 for title II of the Indian Civil Rights Act of 1968 (25

1 U.S.C. 1301 et seq.) is amended by inserting after the
2 item relating to section 203 the following:

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

3 **SEC. 904. REMOVAL OF CRIMINAL PROSECUTIONS.**

4 (a) IN GENERAL.—Chapter 211 of title 18, United
5 States Code, is amended by adding at the end the fol-
6 lowing:

7 **“§ 3245. Removal criminal prosecutions brought**
8 **under section 204 of the Indian Civil**
9 **Rights Act**

10 “(a) NOTICE OF REMOVAL.—A defendant charged
11 with a crime pursuant to section 204 of the Indian Civil
12 Rights Act of 1968 shall file in the district court of the
13 United States for the district and division within which
14 such prosecution is pending a notice of removal signed
15 pursuant to Rule 11 of the Federal Rules of Civil Proce-
16 dure and containing a short and plain statement of the
17 grounds for removal under subsection (b), together with
18 a copy of all process, pleadings, and orders served upon
19 such defendant or defendants in such action.

20 “(b) GROUNDS FOR REMOVAL.—No case shall be re-
21 moved unless the defendant has proven by a preponder-
22 ance of the evidence that a right guaranteed them under
23 section 202 of the Indian Civil Rights Act of 1968 (25
24 U.S.C. 1302), has been violated, the tribal court has failed

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

3 “(c) REQUIREMENTS.—

4 “(1) A notice of removal of a criminal prosecu-
5 tion for domestic violence shall be filed not later
6 than 30 days after the arraignment in the Tribal
7 court, or at any time before trial, whichever is ear-
8 lier, except that for good cause shown the United
9 States district court may enter an order granting
10 the defendant or defendants leave to file the notice
11 at a later time.

12 “(2) A notice of removal of a criminal prosecu-
13 tion for domestic violence shall include all grounds
14 for such removal. A failure to state grounds that
15 exist at the time of the filing of the notice shall con-
16 stitute a waiver of such grounds, and a second no-
17 tice may be filed only on grounds not existing at the
18 time of the original notice. For good cause shown,
19 the United States district court may grant relief
20 from the limitations of this paragraph.

21 “(3) The filing of a notice of removal of a
22 criminal prosecution for domestic violence shall not
23 prevent the Tribal court in which such prosecution
24 is pending from proceeding further, except that a

1 judgment of conviction shall not be entered unless
2 the prosecution is first remanded.

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

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

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

24 “(e) REVIEW OF JUDGMENT AND SENTENCE.—

1 “(1) IN GENERAL.—Not later than 60 days
2 after the date on which a tribal court enters a final
3 judgment against a defendant in a criminal pro-
4 ceeding in which a participating tribe exercises spe-
5 cial domestic violence jurisdiction, the defendant
6 may petition the United States district court for the
7 district and division embracing the tribal court for
8 review of the final judgment against the defendant.

9 “(2) NOTICE TO DEFENDANT.—When the tribal
10 court enters a final judgment, the tribal court shall
11 inform the defendant of the right to petition for re-
12 view of the final judgment under this subsection.

13 “(3) RELEASE OR DETENTION PENDING AP-
14 PEAL.—Section 3143(b) of this title shall apply in
15 the case of a defendant under this subsection.

16 “(f) REMOVAL BY PARTICIPATING TRIBE AND
17 UNITED STATES ATTORNEY.—At the request of a partici-
18 pating tribe that is prosecuting a case pursuant to section
19 204 of the Indian Civil Rights Act of 1968 (25 U.S.C.
20 1304), the United States Attorney for the district where
21 the case is pending may, upon written request of the par-
22 ticipating tribe, remove the case to the United States dis-
23 trict court for that district.

24 “(g) DEFINITION.—In this section, the term ‘domes-
25 tic violence’ has the meaning given such term in section

1 40002 of the Violence Against Women Act of 1994 (42
2 U.S.C. 13925).”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 for chapter 211 of title 18, United States Code, is amend-
5 ed by inserting after the item relating to section 3244 the
6 following:

“3245. Removal criminal prosecutions brought under section 204 of the Indian
Civil Rights Act.”.

7 (c) HABEAS CORPUS.—

8 (1) IN GENERAL.—Chapter 153 of title 28,
9 United States Code, is amended—

10 (A) in section 2241(c)—

11 (i) in paragraph (5), by striking the
12 period at the end and inserting the fol-
13 lowing: “; or”; and

14 (ii) by adding at the end the fol-
15 lowing:

16 “(6) He is in custody for an act done or omit-
17 ted and to which the special domestic violence juris-
18 diction under section 204 of Public Law 90–284 ex-
19 tends.”.

20 (B) by adding at the end the following:

21 **“§ 2257. Special domestic violence jurisdiction**

22 “For purposes of this chapter, an Indian tribe that
23 is exercising special domestic violence jurisdiction under

1 section 204 of Public Law 90–284 shall be treated as a
2 State.”.

3 (2) CLERICAL AMENDMENT.—The table of sec-
4 tions for chapter 153 of title 28, United States
5 Code, is amended by inserting after the item relating
6 to section 2256 the following:

“2257. Special domestic violence jurisdiction.”.

