

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

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; REMOVAL OF CRIMINAL**
3 **PROSECUTIONS.**

4 (a) TRIBAL JURISDICTION OVER CRIMES OF DOMESTIC
5 VIOLENCE.—

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

10 **“SEC. 204. TRIBAL JURISDICTION OVER CRIMES OF DOMESTIC**
11 **VIOLENCE.**

12 “(a) DEFINITIONS.—In this section:

13 “(1) DATING VIOLENCE.—The term ‘dating violence’ means violence committed by a person who is
14 or has been in a social relationship of a romantic or
15 intimate nature with the victim, as determined by
16 the length of the relationship, the type of relation-
17

1 ship, and the frequency of interaction between the
2 persons involved in the relationship.

3 “(2) DOMESTIC VIOLENCE.—The term ‘domes-
4 tic violence’ means violence committed by a current
5 or former spouse or intimate partner of the victim,
6 by a person with whom the victim shares a child in
7 common, by a person who is cohabitating with or
8 has cohabitated with the victim as a spouse or inti-
9 mate partner, or by a person similarly situated to a
10 spouse of the victim under the domestic- or family-
11 violence laws of an Indian tribe that has jurisdiction
12 over the Indian country where the violence occurs.

13 “(3) INDIAN COUNTRY.—The term ‘Indian
14 country’ has the meaning given the term in section
15 1151 of title 18, United States Code.

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

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

22 “(A) means any injunction, restraining
23 order, or other order issued by a civil or crimi-
24 nal court for the purpose of preventing violent
25 or threatening acts or harassment against, sex-

1 ual violence against, contact or communication
2 with, or physical proximity to, another person;
3 and

4 “(B) includes any temporary or final order
5 issued by a civil or criminal court, whether ob-
6 tained by filing an independent action or as a
7 pendente lite order in another proceeding, if the
8 civil or criminal order was issued in response to
9 a complaint, petition, or motion filed by or on
10 behalf of a person seeking protection.

11 “(6) SPECIAL DOMESTIC VIOLENCE CRIMINAL
12 JURISDICTION.—The term ‘special domestic violence
13 criminal jurisdiction’ means the criminal jurisdiction
14 that a participating tribe may exercise under this
15 section but could not otherwise exercise.

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

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

21 “(1) IN GENERAL.—Notwithstanding any other
22 provision of law, in addition to all powers of self-gov-
23 ernment recognized and affirmed by sections 201,
24 202, and 203, the powers of self-government of a
25 participating tribe include the inherent power of that

1 tribe, which is hereby recognized and affirmed, to
2 exercise special domestic violence criminal jurisdic-
3 tion over all persons.

4 “(2) CONCURRENT JURISDICTION.—The exer-
5 cise of special domestic violence criminal jurisdiction
6 by a participating tribe shall be concurrent with the
7 jurisdiction of the United States, of a State, or of
8 both.

9 “(3) APPLICABILITY.—Nothing in this sec-
10 tion—

11 “(A) creates or eliminates any Federal or
12 State criminal jurisdiction over Indian country;
13 or

14 “(B) affects the authority of the United
15 States or any State government that has been
16 delegated authority by the United States to in-
17 vestigate and prosecute a criminal violation in
18 Indian country.

19 “(4) EXCEPTIONS.—

20 “(A) VICTIM AND DEFENDANT ARE BOTH
21 NON-INDIANS.—

22 “(i) IN GENERAL.—A participating
23 tribe may not exercise special domestic vio-
24 lence criminal jurisdiction over an alleged

1 offense if neither the defendant nor the al-
2 leged victim is an Indian.

3 “(ii) DEFINITION OF VICTIM.—In this
4 subparagraph and with respect to a crimi-
5 nal proceeding in which a participating
6 tribe exercises special domestic violence
7 criminal jurisdiction based on a violation of
8 a protection order, the term ‘victim’ means
9 a person specifically protected by a protec-
10 tion order that the defendant allegedly vio-
11 lated.

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

16 “(i) resides in the Indian country of
17 the participating tribe;

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

20 “(iii) is a spouse, intimate partner, or
21 dating partner of—

22 “(I) a member of the partici-
23 pating tribe; or

1 “(II) an Indian who resides in
2 the Indian country of the partici-
3 pating tribe.

4 “(c) CERTIFICATION BY PARTICIPATING TRIBES.—

5 “(1) ELECTION.—An Indian tribe seeking to
6 exercise special domestic violence criminal jurisdic-
7 tion shall, prior to exercising this jurisdiction, sub-
8 mit to the Attorney General a certification stating
9 that all rights of defendants under this section will
10 be protected.

11 “(2) NOTICE.—An Indian tribe shall give notice
12 to the public of its intention to exercise special do-
13 mestic violence criminal jurisdiction through—

14 “(A) an official website belonging to the
15 Indian tribe;

16 “(B) local newspaper, radio, or television
17 outlets; and

18 “(C) a notice that is published in the Fed-
19 eral Register.

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

24 “(1) DOMESTIC VIOLENCE AND DATING VIO-
25 LENCE.—An act of domestic violence or dating vio-

1 lence that occurs in the Indian country of the par-
2 ticipating tribe.

3 “(2) VIOLATIONS OF PROTECTION ORDERS.—

4 An act that—

5 “(A) occurs in the Indian country of the
6 participating tribe; and

7 “(B) violates the portion of a protection
8 order that—

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

14 “(ii) was issued against the defend-
15 ant;

16 “(iii) is enforceable by the partici-
17 pating tribe; and

18 “(iv) is consistent with section
19 2265(b) of title 18, United States Code.

20 “(e) RIGHTS OF DEFENDANTS.—In a criminal pro-
21 ceeding in which a participating tribe exercises special do-
22 mestic violence criminal jurisdiction, the participating
23 tribe shall afford defendants—

24 “(1) all applicable rights under this Act in the
25 same manner that State courts in similar cases af-

1 ford criminal defendants the corresponding rights
2 under the Constitution and laws of the United
3 States, as those rights are interpreted by the courts
4 of the United States and—

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

7 “(B) shall not violate the right of the peo-
8 ple to be secure in their persons, houses, pa-
9 pers, and effects against unreasonable search
10 and seizures;

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

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

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

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

21 “(G) shall not deny to any person the right
22 to be informed of the nature and cause of the
23 accusation;

1 “(H) shall not deny to any person the
2 right to be confronted with the witnesses
3 against him;

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

7 “(J) shall not require excessive bail;

8 “(K) shall not impose excessive fines;

9 “(L) shall not inflict cruel and unusual
10 punishments;

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

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

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

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

21 “(Q) shall not deny to any person the right
22 to have the assistance of counsel for his de-
23 fense;

24 “(R) shall provide to the defendant the
25 right to effective assistance of counsel at least

1 equal to that guaranteed by the United States
2 Constitution;

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

12 “(T) shall require that the judge presiding
13 over a criminal proceeding—

14 “(i) has sufficient legal training to
15 preside over criminal proceedings; and

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

18 “(U) shall make publicly available, prior to
19 charging the defendant, the criminal laws (in-
20 cluding regulations and interpretative docu-
21 ments), rules of evidence, and rules of criminal
22 procedure (including rules governing the recusal
23 of judges in appropriate circumstances) of the
24 tribal government;

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

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

7 “(i) reflect a fair cross section of the
8 community; and

9 “(ii) do not systematically exclude any
10 distinctive group in the community, includ-
11 ing non-Indians;

12 “(2) if a term of imprisonment of any length
13 may be imposed, all rights described in section
14 202(c);

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

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

19 “(B) do not systematically exclude any dis-
20 tinctive group in the community, including non-
21 Indians; and

22 “(4) all other rights whose protection is nec-
23 essary under the Constitution of the United States
24 in order for Congress to recognize and affirm the in-
25 herent power of the participating tribe to exercise

1 special domestic violence criminal jurisdiction over
2 the defendant.

3 “(f) PETITIONS TO STAY DETENTION.—

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

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

11 “(A) finds that there is a substantial likeli-
12 hood that the habeas corpus petition will be
13 granted; and

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

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

24 “(g) SUBJECT TO REMOVAL.—A criminal prosecution
25 commenced in a tribal court under this section may, pur-

1 suant to section 3245 of title 18, United States Code, be
2 removed to the United States district court embracing the
3 place where the criminal prosecution is pending, and the
4 district court shall have full authority to hear and deter-
5 mine the cause.

6 “(h) GRANTS TO TRIBAL GOVERNMENTS.—The At-
7 torney General may award grants to the governments of
8 Indian tribes (or to authorized designees of those govern-
9 ments)—

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

13 “(A) law enforcement (including the capac-
14 ity of law enforcement or court personnel to
15 enter information into and obtain information
16 from national crime information databases);

17 “(B) prosecution;

18 “(C) trial and appellate courts;

19 “(D) probation systems;

20 “(E) detention and correctional facilities;

21 “(F) alternative rehabilitation centers;

22 “(G) culturally appropriate services and
23 assistance for victims and their families; and

24 “(H) criminal codes and rules of criminal
25 procedure, appellate procedure, and evidence;

1 “(2) to provide indigent criminal defendants
2 with the effective assistance of licensed defense
3 counsel, at no cost to the defendant, in criminal pro-
4 ceedings in which a participating tribe prosecutes a
5 crime of domestic violence or dating violence or a
6 criminal violation of a protection order;

7 “(3) to ensure that, in criminal proceedings in
8 which a participating tribe exercises special domestic
9 violence criminal jurisdiction, jurors are summoned,
10 selected, and instructed in a manner consistent with
11 all applicable requirements; and

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

17 “(i) SUPPLEMENT, NOT SUPPLANT.—Amounts made
18 available under this section shall supplement and not sup-
19 plant any other Federal, State, tribal, or local government
20 amounts made available to carry out activities described
21 in this section.

22 “(j) PROHIBITION ON LOBBYING ACTIVITY.—
23 Amounts authorized to be appropriated under this section
24 may not be used by any grant recipient to—

1 “(1) lobby any representative of the Depart-
2 ment of Justice regarding the award of grant fund-
3 ing under this section; or

4 “(2) lobby any representative of a Federal,
5 State, local, or tribal government regarding the
6 award of grant funding under this section.

7 “(k) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated \$5,000,000 for each of
9 fiscal years 2014 through 2018 to carry out subsection
10 (g) and to provide training, technical assistance, data col-
11 lection, and evaluation of the criminal justice systems of
12 participating tribes.”.

13 (2) CLERICAL AMENDMENT.—The table of sec-
14 tions for title II of the Indian Civil Rights Act of
15 1968 (25 U.S.C. 1301 et seq.) is amended by insert-
16 ing after the item relating to section 203 the fol-
17 lowing:

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

18 (b) REMOVAL OF CRIMINAL PROSECUTIONS.—

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

1 **“§ 3245. Federal removal jurisdiction to protect the**
2 **rights of defendants under section 204 of**
3 **the Indian Civil Rights Act.**

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

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

24 “(c) REQUIREMENTS.—

25 “(1) A notice of removal of a criminal prosecu-
26 tion under section 204(g) of the Indian Civil Rights

1 Act of 1968 (25 U.S.C. 1304)(g)) shall be filed not
2 later than 30 days after the arraignment in the trib-
3 al court, or at any time before trial, whichever is
4 earlier, except that for good cause shown the United
5 States district court may enter an order granting
6 the defendant or defendants leave to file the notice
7 at a later time.

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

18 “(3) The filing of a notice of removal of a
19 criminal prosecution under section 204(g) of the In-
20 dian Civil Rights Act of 1968 (25 U.S.C. 1304(g))
21 shall not prevent the tribal court in which such pros-
22 ecution is pending from proceeding further, except
23 that a judgment of conviction shall not be entered
24 unless the prosecution is first remanded.

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

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

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

22 “(e) SPECIAL ASSISTANT UNITED STATES ATTOR-
23 NEYS.—To assist in implementing this section and section
24 204(g) of the Indian Civil Rights Act of 1968 (25 U.S.C.
25 1304(g)) and in prosecuting crimes of domestic violence

1 and dating violence in Indian country, each United States
2 Attorney serving a district that includes Indian country
3 is authorized and encouraged to appoint qualified tribal
4 prosecutors as Special Assistant United States Attorneys
5 pursuant to section 13(d) of the Indian Law Enforcement
6 Reform Act (25 U.S.C. 2810(d)) and section 543(a) of
7 title 28, United States Code.

8 “(f) REMOVAL BY PARTICIPATING TRIBE AND
9 UNITED STATES ATTORNEY.—At the request of a partici-
10 pating tribe that is prosecuting a case pursuant to section
11 204 of the Indian Civil Rights Act of 1968 (25 U.S.C.
12 1304), the United States Attorney for the district where
13 the case is pending may, upon written request of the par-
14 ticipating tribe, remove the case to the United States dis-
15 trict court for that district.”.

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

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

