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 VIOLENCE.
2
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
8    “SEC. 204. TRIBAL JURISDICTION OVER CRIMES OF DOMESTIC VIOLENCE.
9
10    “(a) DEFINITIONS.—In this section:
11
12    “(1) DATING VIOLENCE.—The term ‘dating vio-
13    lence’ 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    ship, and the frequency of interaction between the
18    persons involved in the relationship.
19
20    “(2) DOMESTIC VIOLENCE.—The term ‘domes-
21    tic violence’ means violence committed by a current
22    or former spouse or intimate partner of the victim,
by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim under the domestic- or family-violence laws of an Indian tribe that has jurisdiction over the Indian country where the violence occurs.

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

“(4) PARTICIPATING TRIBE.—The term ‘participating tribe’ means an Indian tribe that elects to exercise special domestic violence criminal jurisdiction over the Indian country of that Indian tribe.

“(5) PROTECTION ORDER.—The term ‘protection order’—

“(A) means any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and

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

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

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

“(b) NATURE OF THE CRIMINAL JURISDICTION.—

“(1) IN GENERAL.—Notwithstanding any other
provision of law, in addition to all powers of self-gov-
ernment recognized and affirmed by sections 201
and 203, the powers of self-government of a partici-
pating tribe include the inherent power of that tribe,
which is hereby recognized and affirmed, to exercise
special domestic violence criminal jurisdiction over
all persons.

“(2) APPLICABILITY.—Nothing in this sec-
tion—
“(A) creates or eliminates any Federal or State criminal jurisdiction over Indian country; or

“(B) affects the authority of the United States or any State government that has been delegated authority by the United States to investigate and prosecute a criminal violation in Indian country.

“(3) EXCEPTIONS.—

“(A) Victim and defendant are both non-Indians.—

“(i) In general.—A participating tribe may not exercise special domestic violence criminal jurisdiction over an alleged offense if neither the defendant nor the alleged victim is an Indian.

“(ii) Definition of victim.—In this subparagraph and with respect to a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction based on a violation of a protection order, the term ‘victim’ means a person specifically protected by a protection order that the defendant allegedly violated.
“(B) DEFENDANT LACKS TIES TO THE INDIAN TRIBE.—A participating tribe may exercise special domestic violence criminal jurisdiction over a defendant only if the defendant—

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

“(ii) is employed in the Indian country of the participating tribe; or

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

“(I) a member of the participating tribe; or

“(II) an Indian who resides in the Indian country of the participating tribe.

“(c) CERTIFICATION BY PARTICIPATING TRIBES.—

“(1) ELECTION.—An Indian tribe seeking to exercise special domestic violence criminal jurisdiction shall, prior to exercising such jurisdiction, submit to the Attorney General a certification stating that the criminal justice system of the tribe has adequate safeguards in place to protect all rights of defendants under this section.

“(2) NOTICE.—A tribe seeking to exercise special domestic violence criminal jurisdiction shall,
prior to exercising this jurisdiction, give notice to the
public of its intention to exercise special domestic vi-
olence criminal jurisdiction through—

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

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

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

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

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

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

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

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

“(1) **DOMESTIC VIOLENCE AND DATING VIOLENCE.**—An act of domestic violence or dating violence that occurs in the Indian country of the participating tribe.

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

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

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

“(i) prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person;

“(ii) was issued against the defendant;

“(iii) is enforceable by the participating tribe; and

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

“(g) **RIGHTS OF DEFENDANTS.**—In a criminal proceeding in which a participating tribe exercises special do-
mestic violence criminal jurisdiction, the participating

tribe shall afford defendants—

“(1) all applicable rights under this Act in the

same manner that State courts in similar cases af-

ford criminal defendants the corresponding rights

under the Constitution and laws of the United

States, as those rights are interpreted by the courts

of the United States and—

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

“(B) shall not violate the right of the peo-

ple to be secure in their persons, houses, pa-

pers, and effects against unreasonable search

and seizures;

“(C) shall not issue warrants, but upon

probable cause, supported by oath or affirma-

tion, and particularly describing the place to be

searched and the person or thing to be seized;

“(D) shall not subject any person for the

same offense to be twice put in jeopardy;

“(E) shall not compel any person to be a

witness against himself;

“(F) shall not deny to any person the right
to a speedy and public trial;
“(G) shall not deny to any person the right to be informed of the nature and cause of the accusation;

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

“(I) shall not deny to any person the right to have compulsory process for obtaining witnesses in his favor;

“(J) shall not require excessive bail;

“(K) shall not impose excessive fines;

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

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

“(N) shall not deprive any person of liberty or property without due process of law;

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

“(P) shall not deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons;
“(Q) shall not deny to any person the right to have the assistance of counsel for his defense;

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

“(S) shall, if a term of imprisonment of any length is or may be imposed, provide an indigent defendant, at the expense of the tribal government, the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;

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

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

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

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

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

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

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

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

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

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

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

“(B) do not systematically exclude any dis-

tinctive group in the community, including non-

Indians; and
“(4) all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise special domestic violence criminal jurisdiction over the defendant.

“(h) PETITIONS TO STAY DETENTION.—

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

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

“(A) finds that there is a substantial likelihood that the habeas corpus petition will be granted; and

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

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

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

“(j) GRANTS TO TRIBAL GOVERNMENTS.—

“(1) GRANTS AUTHORIZED.—The Attorney General may award grants to the governments of Indian tribes (or to authorized designees of those governments)—

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

“(i) law enforcement (including the capacity of law enforcement or court personnel to enter information into and obtain information from national crime information databases);

“(ii) prosecution;

“(iii) trial and appellate courts;

“(iv) probation systems;

“(v) detention and correctional facilities;
“(vi) alternative rehabilitation centers;
“(vii) culturally appropriate services and assistance for victims and their families; and
“(viii) criminal codes and rules of criminal procedure, appellate procedure, and evidence;
“(B) to provide indigent criminal defendants with the effective assistance of licensed defense counsel, at no cost to the defendant, in criminal proceedings in which a participating tribe prosecutes a crime of domestic violence or dating violence or a criminal violation of a protection order;
“(C) to ensure that, in criminal proceedings in which a participating tribe exercises special domestic violence criminal jurisdiction, jurors are summoned, selected, and instructed in a manner consistent with all applicable requirements; and
“(D) to accord victims of domestic violence, dating violence, and violations of protection orders rights that are similar to the rights of a crime victim described in section 3771(a)
of title 18, United States Code, consistent with tribal law and custom.

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

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

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

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

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

(b) CLERICAL AMENDMENT.—The table of sections for title II of the Indian Civil Rights Act of 1968 (25
U.S.C. 1301 et seq.) is amended by inserting after the
item relating to section 203 the following:

"Sec. 204. Tribal jurisdiction over crimes of domestic violence.".

SEC. 904. REMOVAL OF CRIMINAL PROSECUTIONS.

(a) In general.—Chapter 211 of title 18, United States Code, is amended by adding at the end the follow-
ing:

"§3245. Removal criminal prosecutions brought under section 204 of the Indian Civil Rights Act

“(a) Notice of removal.—A defendant charged with a crime pursuant to section 204 of the Indian Civil Rights Act of 1968 shall file in the district court of the United States for the district and division within which such prosecution is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal under subsection (b), together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

“(b) Grounds for removal.—No case shall be removed unless the defendant has proven by a preponder-
ance of the evidence that a right guaranteed them under section 202 of the Indian Civil Rights Act of 1968 (25 U.S.C. 1302), has been violated, the tribal court has failed
to adequately remedy the violation, and the violation is prejudicial to the defendant.

“(c) REQUIREMENTS.—

“(1) A notice of removal of a criminal prosecution for domestic violence shall be filed not later than 30 days after the arraignment in the Tribal court, or at any time before trial, whichever is earlier, except that for good cause shown the United States district court may enter an order granting the defendant or defendants leave to file the notice at a later time.

“(2) A notice of removal of a criminal prosecution for domestic violence shall include all grounds for such removal. A failure to state grounds that exist at the time of the filing of the notice shall constitute a waiver of such grounds, and a second notice may be filed only on grounds not existing at the time of the original notice. For good cause shown, the United States district court may grant relief from the limitations of this paragraph.

“(3) The filing of a notice of removal of a criminal prosecution for domestic violence shall not prevent the Tribal court in which such prosecution is pending from proceeding further, except that a
judgment of conviction shall not be entered unless
the prosecution is first remanded.

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

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

“(d) Writ of Habeas Corpus.—If the defendant
or defendants are in actual custody on process issued by
the Tribal court, the district court shall issue its writ of
habeas corpus, and the marshal shall thereupon take such
defendant or defendants into the marshal’s custody and
deliver a copy of the writ to the clerk of such Tribal court.

“(e) Review of Judgment and Sentence.—
“(1) IN GENERAL.—Not later than 60 days after the date on which a tribal court enters a final judgment against a defendant in a criminal proceeding in which a participating tribe exercises special domestic violence jurisdiction, the defendant may petition the United States district court for the district and division embracing the tribal court for review of the final judgment against the defendant.

“(2) NOTICE TO DEFENDANT.—When the tribal court enters a final judgment, the tribal court shall inform the defendant of the right to petition for review of the final judgment under this subsection.

“(3) RELEASE OR DETENTION PENDING APPEAL.—Section 3143(b) of this title shall apply in the case of a defendant under this subsection.

“(f) REMOVAL BY PARTICIPATING TRIBE AND UNITED STATES ATTORNEY.—At the request of a participating tribe that is prosecuting a case pursuant to section 204 of the Indian Civil Rights Act of 1968 (25 U.S.C. 1304), the United States Attorney for the district where the case is pending may, upon written request of the participating tribe, remove the case to the United States district court for that district.

“(g) DEFINITION.—In this section, the term ‘domestic violence’ has the meaning given such term in section

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

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

(c) HABEAS CORPUS.—

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

(A) in section 2241(c)—

(i) in paragraph (5), by striking the period at the end and inserting the following: “; or”; and

(ii) by adding at the end the following:

“(6) He is in custody for an act done or omitted and to which the special domestic violence jurisdiction under section 204 of Public Law 90–284 extends.”.

(B) by adding at the end the following:

“§ 2257. Special domestic violence jurisdiction

“For purposes of this chapter, an Indian tribe that is exercising special domestic violence jurisdiction under
section 204 of Public Law 90–284 shall be treated as a State.”.

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

“2257. Special domestic violence jurisdiction.”.