

112TH CONGRESS
2D SESSION

H. R. 6625

To grant Indian tribes jurisdiction over crimes of domestic violence that occur in the Indian country of that tribe.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 3, 2012

Mr. ISSA (for himself, Mr. COLE, Mr. McHENRY, and Mr. SIMPSON) 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 grant Indian tribes jurisdiction over crimes of domestic violence that occur in the Indian country of that tribe.

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 “Violence Against In-
5 dian Women Act of 2012”.

1 **SEC. 2. 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 DOMES-**
8 **TIC VIOLENCE.**

9 “(a) DEFINITIONS.—In this section:

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

11 lence’ means violence committed by a person who is

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

13 intimate nature with the victim, as determined by

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

15 ship, and the frequency of interaction between the

16 persons involved in the relationship.

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

18 tic violence’ means violence committed by a current

19 or former spouse or intimate partner of the victim,

20 by a person with whom the victim shares a child in

21 common, by a person who is cohabitating with or

22 has cohabitated with the victim as a spouse or inti-

23 mate partner, or by a person similarly situated to a

24 spouse of the victim under the domestic- or family-

25 violence laws of an Indian tribe that has jurisdiction

26 over the Indian country where the violence occurs.

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

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

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

10 “(A) means any injunction, restraining
11 order, or other order issued by a civil or crimi-
12 nal court for the purpose of preventing violent
13 or threatening acts or harassment against, sex-
14 ual violence against, contact or communication
15 with, or physical proximity to, another person;
16 and

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

24 “(6) SPECIAL DOMESTIC VIOLENCE CRIMINAL
25 JURISDICTION.—The term ‘special domestic violence

1 criminal jurisdiction’ means the criminal jurisdiction
2 that a participating tribe may exercise under this
3 section but could not otherwise exercise.

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

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

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

17 “(2) CONCURRENT JURISDICTION.—The exer-
18 cise of special domestic violence criminal jurisdiction
19 by a participating tribe shall be concurrent with the
20 jurisdiction of the United States, of a State, or of
21 both.

22 “(3) APPLICABILITY.—Nothing in this sec-
23 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 “(4) 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) CRIMINAL CONDUCT.—A participating tribe may
 17 exercise special domestic violence criminal jurisdiction over
 18 a defendant for criminal conduct that falls into one or
 19 more of the following categories:

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

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

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

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

5 “(i) prohibits or provides protection
6 against violent or threatening acts or har-
7 assment against, sexual violence against,
8 contact or communication with, or physical
9 proximity to, another person;

10 “(ii) was issued against the defend-
11 ant;

12 “(iii) is enforceable by the partici-
13 pating tribe; and

14 “(iv) is consistent with section
15 2265(b) of title 18, United States Code.

16 “(d) RIGHTS OF DEFENDANTS.—In a criminal pro-
17 ceeding in which a participating tribe exercises special do-
18 mestic violence criminal jurisdiction, the participating
19 tribe shall provide to the defendant—

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

21 “(2) if a term of imprisonment of any length
22 may be imposed, all rights described in section
23 202(c);

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

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

3 “(B) do not systematically exclude any dis-
4 tinctive group in the community, including non-
5 Indians; and

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

12 “(e) PETITIONS TO STAY DETENTION.—

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

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

20 “(A) finds that there is a substantial likeli-
21 hood that the habeas corpus petition will be
22 granted; and

23 “(B) after giving each alleged victim in the
24 matter an opportunity to be heard, finds by
25 clear and convincing evidence that under condi-

1 tions imposed by the court, the petitioner is not
2 likely to flee or pose a danger to any person or
3 the community if released.

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

8 “(f) SUBJECT TO REMOVAL.—A defendant charged
9 with a crime under this section may petition the appro-
10 priate Federal district for removal pursuant to section
11 3245 of title 18, United States Code.

12 “(g) GRANTS TO TRIBAL GOVERNMENTS.—The At-
13 torney General may award grants to the governments of
14 Indian tribes (or to authorized designees of those govern-
15 ments)—

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

19 “(A) law enforcement (including the capac-
20 ity of law enforcement or court personnel to
21 enter information into and obtain information
22 from national crime information databases);

23 “(B) prosecution;

24 “(C) trial and appellate courts;

25 “(D) probation systems;

1 “(E) detention and correctional facilities;

2 “(F) alternative rehabilitation centers;

3 “(G) culturally appropriate services and
4 assistance for victims and their families; and

5 “(H) criminal codes and rules of criminal
6 procedure, appellate procedure, and evidence;

7 “(2) to provide indigent criminal defendants
8 with the effective assistance of licensed defense
9 counsel, at no cost to the defendant, in criminal pro-
10 ceedings in which a participating tribe prosecutes a
11 crime of domestic violence or dating violence or a
12 criminal violation of a protection order;

13 “(3) to ensure that, in criminal proceedings in
14 which a participating tribe exercises special domestic
15 violence criminal jurisdiction, jurors are summoned,
16 selected, and instructed in a manner consistent with
17 all applicable requirements; and

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

23 “(h) SUPPLEMENT, NOT SUPPLANT.—Amounts
24 made available under this section shall supplement and
25 not supplant any other Federal, State, tribal, or local gov-

1 ernment amounts made available to carry out activities de-
 2 scribed in this section.

3 “(i) AUTHORIZATION OF APPROPRIATIONS.—There
 4 are authorized to be appropriated \$5,000,000 for each of
 5 fiscal years 2013 through 2017 to carry out subsection
 6 (g) and to provide training, technical assistance, data col-
 7 lection, and evaluation of the criminal justice systems of
 8 participating tribes.”.

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

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

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

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

17 **“§ 3245. Removal criminal prosecutions brought**
 18 **under section 204 of the Indian Civil**
 19 **Rights Act**

20 “(a) NOTICE OF REMOVAL.—A defendant charged
 21 with a crime pursuant to section 204 of the Indian Civil
 22 Rights Act of 1968 (25 U.S.C. 1304) shall file in the dis-
 23 trict court of the United States for the district and divi-
 24 sion within which such prosecution is pending a notice of
 25 removal signed pursuant to Rule 11 of the Federal Rules

1 of Civil Procedure and containing a short and plain state-
2 ment of the grounds for removal under subsection (b), to-
3 gether with a copy of all process, pleadings, and orders
4 served upon such defendant or defendants in such action.

5 “(b) GROUNDS FOR REMOVAL.—No case shall be re-
6 moved unless the defendant has proven by a preponder-
7 ance of the evidence that a right guaranteed them under
8 section 202 of the Indian Civil Rights Act of 1968 (25
9 U.S.C. 1302), has been violated, the tribal court has failed
10 to adequately remedy the violation, and the violation is
11 prejudicial to the defendant.

12 “(c) REQUIREMENTS.—

13 “(1) A notice of removal of a criminal prosecu-
14 tion for domestic violence shall be filed not later
15 than 30 days after the arraignment in the Tribal
16 court, or at any time before trial, whichever is ear-
17 lier, except that for good cause shown the United
18 States district court may enter an order granting
19 the defendant or defendants leave to file the notice
20 at a later time.

21 “(2) A notice of removal of a criminal prosecu-
22 tion for domestic violence shall include all grounds
23 for such removal. A failure to state grounds that
24 exist at the time of the filing of the notice shall con-
25 stitute a waiver of such grounds, and a second no-

1 tice may be filed only on grounds not existing at the
2 time of the original notice. For good cause shown,
3 the United States district court may grant relief
4 from the limitations of this paragraph.

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

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

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

1 “(d) WRIT OF HABEAS CORPUS.—If the defendant
2 or defendants are in actual custody on process issued by
3 the Tribal court, the district court shall issue its writ of
4 habeas corpus, and the marshal shall thereupon take such
5 defendant or defendants into the marshal’s custody and
6 deliver a copy of the writ to the clerk of such Tribal court.

7 “(e) DEFINITION.—In this section, the term ‘domes-
8 tic violence’ has the meaning given such term in section
9 40002 of the Violence Against Women Act of 1994 (42
10 U.S.C. 13925).”.

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

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

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