

117TH CONGRESS
1ST SESSION

S. 3328

To amend the Indian Civil Rights Act of 1968 to extend the jurisdiction of tribal courts to cover crimes involving sexual violence, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 7, 2021

Ms. SMITH (for herself and Mr. LUJÁN) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To amend the Indian Civil Rights Act of 1968 to extend the jurisdiction of tribal courts to cover crimes involving sexual violence, and for other purposes.

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 “Justice for Native Sur-
5 vivors of Sexual Violence Act”.

6 **SEC. 2. TRIBAL JURISDICTION OVER COVERED CRIMES.**

7 Section 204 of Public Law 90–284 (25 U.S.C. 1304)
8 (commonly known as the “Indian Civil Rights Act of
9 1968”) is amended—

(1) in the section heading, by striking
“CRIMES OF DOMESTIC VIOLENCE” and insert-
 ing **“COVERED CRIMES”**;

(2) in subsection (a)—

(A) by striking paragraph (2);

(B) by redesignating paragraphs (1), (3),
 (4), (5), (6), and (7) as paragraphs (3), (5),
 (7), (8), (11), and (12), respectively;

(C) by inserting before paragraph (3) (as
 so redesignated) the following:

“(1) COERCION; COMMERCIAL SEX ACT.—The
 terms ‘coercion’ and ‘commercial sex act’ have the
 meanings given the terms in section 1591(e) of title
 18, United States Code.

“(2) COVERED CRIME.—The term ‘covered
 crime’ means—

“(A) dating violence;

“(B) domestic violence;

“(C) obstruction of justice;

“(D) sexual violence;

“(E) sex trafficking;

“(F) stalking; and

“(G) a violation of a protection order.”;

(D) in paragraph (3) (as so redesignated),
 by striking “violence committed” and inserting

1 “any violation of the criminal law of the Indian
 2 tribe that has jurisdiction over the Indian coun-
 3 try where the violation occurs that is com-
 4 mitted”;

5 (E) by inserting after paragraph (3) (as so
 6 redesignated) the following:

7 “(4) DOMESTIC VIOLENCE.—The term ‘domes-
 8 tic violence’ means any violation of the criminal law
 9 of the Indian tribe that has jurisdiction over the In-
 10 dian country where the violation occurs that is com-
 11 mitted by—

12 “(A) a current or former spouse or inti-
 13 mate partner of the victim;

14 “(B) a person with whom the victim shares
 15 a child in common;

16 “(C) a person who is cohabitating with or
 17 has cohabitated with the victim as a spouse or
 18 intimate partner;

19 “(D) a person similarly situated to a
 20 spouse of the victim under the domestic- or
 21 family-violence laws of the Indian tribe that has
 22 jurisdiction over the Indian country where the
 23 violation occurs; or

24 “(E) a person against an adult or child
 25 victim who is protected from the acts of that

1 person under the domestic- or family-violence
 2 laws of the Indian tribe that has jurisdiction
 3 over the Indian country where the violation oc-
 4 curs.”;

5 (F) by inserting after paragraph (5) (as so
 6 redesignated) the following:

7 “(6) OBSTRUCTION OF JUSTICE.—The term
 8 ‘obstruction of justice’ means any violation of the
 9 criminal law of the Indian tribe that has jurisdiction
 10 over the Indian country where the violation occurs
 11 that involves interfering with the administration or
 12 due process of the laws of the Indian tribe, including
 13 any tribal criminal proceeding or investigation of a
 14 crime.”;

15 (G) in paragraph (7) (as so redesignated),
 16 by striking “domestic violence” and inserting
 17 “tribal”;

18 (H) by inserting after paragraph (8) (as so
 19 redesignated) the following:

20 “(9) SEX TRAFFICKING.—The term ‘sex traf-
 21 ficking’ means conduct—

22 “(A) consisting of—

23 “(i) recruiting, enticing, harboring,
 24 transporting, providing, obtaining, adver-

1 tising, maintaining, patronizing, or solie-
 2 iting by any means a person; or

3 “(ii) benefitting, financially or by re-
 4 ceiving anything of value, from participa-
 5 tion in a venture that has engaged in an
 6 act described in clause (i); and

7 “(B) carried out with the knowledge, or,
 8 except if the act constituting the violation of
 9 subparagraph (A)(i) is advertising, in reckless
 10 disregard of the fact, that—

11 “(i) means of force, threats of force,
 12 fraud, coercion, or any combination of such
 13 means will be used to cause the person to
 14 engage in a commercial sex act; or

15 “(ii) the person has not attained the
 16 age of 18 years and will be caused to en-
 17 gage in a commercial sex act.

18 “(10) SEXUAL VIOLENCE.—The term ‘sexual vi-
 19 olence’ means any nonconsensual sexual act of con-
 20 tact proscribed by the criminal law of the Indian
 21 tribe that has jurisdiction over the Indian country
 22 where the violation occurs, including in any case in
 23 which the victim lacks the capacity to consent to the
 24 act.”;

1 (I) in paragraph (11) (as so redesignated)—

3 (i) in the paragraph heading, by striking
4 “DOMESTIC VIOLENCE” and inserting
5 “TRIBAL”; and

6 (ii) by striking “domestic violence”
7 and inserting “tribal”; and

8 (J) by adding at the end the following:

9 “(13) STALKING.—The term ‘stalking’ means
10 engaging in a course of conduct directed at a specific
11 person proscribed by the criminal law of the Indian
12 tribe that has jurisdiction over the Indian country
13 where the violation occurs that would cause a
14 reasonable person—

15 “(A) to fear for the safety of the person or
16 the safety of others; or

17 “(B) to suffer substantial emotional distress.
18

19 “(14) VIOLATION OF A PROTECTION ORDER.—
20 The term ‘violation of a protection order’ means an
21 act that—

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

24 “(B) violates a provision of a protection
25 order that—

1 “(i) prohibits or provides protection
 2 against violent or threatening acts or har-
 3 assment against, sexual violence against,
 4 contact or communication with, or physical
 5 proximity to, another person;

6 “(ii) was issued against the defend-
 7 ant;

8 “(iii) is enforceable by the partici-
 9 pating tribe; and

10 “(iv) is consistent with section
 11 2265(b) of title 18, United States Code.”;

12 (3) in subsection (b)—

13 (A) by striking “domestic violence” each
 14 place the term appears and inserting “tribal”;

15 (B) in paragraph (1), by inserting “, in-
 16 cluding any participating tribe in the State of
 17 Maine,” before “include”; and

18 (C) in paragraph (4)—

19 (i) by striking subparagraph (B);

20 (ii) by striking the paragraph designa-
 21 tion and heading and all that follows
 22 through “A participating” in clause (i) of
 23 subparagraph (A) and inserting the fol-
 24 lowing:

1 “(4) EXCEPTION FOR NON-INDIAN VICTIM AND
2 DEFENDANT.—

3 “(A) IN GENERAL.—A participating”;
4 (iii) in clause (ii), by striking the
5 clause designation and heading and all
6 that follows through “In this subpara-
7 graph” and inserting the following:

8 “(B) DEFINITION OF VICTIM.—In this
9 paragraph”;

10 (4) by striking subsection (c) and inserting the
11 following:

12 “(c) CRIMINAL CONDUCT.—A participating tribe may
13 exercise special tribal criminal jurisdiction over a defend-
14 ant for a covered crime that occurs in the Indian country
15 of the participating tribe.”;

16 (5) in subsection (d), by striking “domestic vio-
17 lence” each place the term appears and inserting
18 “tribal”; and

19 (6) by striking subsections (f) through (h) and
20 inserting the following:

21 “(f) GRANTS AND REIMBURSEMENT TO TRIBAL GOV-
22 ERNMENTS.—

23 “(1) REIMBURSEMENT.—

24 “(A) IN GENERAL.—The Attorney General
25 may reimburse governments of Indian tribes (or

1 authorized designees of those governments) for
2 expenses incurred in exercising special tribal
3 criminal jurisdiction.

4 “(B) ELIGIBLE EXPENSES.—Eligible ex-
5 penses for reimbursement shall include—

6 “(i) expenses incurred to arrest or
7 prosecute offenders and to detain inmates,
8 including costs associated with providing
9 health care;

10 “(ii) expenses relating to indigent de-
11 fense services; and

12 “(iii) costs associated with probation
13 and rehabilitation services.

14 “(C) REGULATIONS.—Not later than 1
15 year after the date of enactment of the Justice
16 for Native Survivors of Sexual Violence Act, the
17 Attorney General shall, after consultation with
18 Indian tribes, promulgate regulations to carry
19 out this paragraph that set the maximum allow-
20 able reimbursements under this paragraph.

21 “(2) GRANTS.—The Attorney General may
22 award grants to the governments of Indian tribes (or
23 to authorized designees of those governments)—

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

4 “(i) law enforcement, including the
5 capacity of law enforcement, court per-
6 sonnel, or other non-law enforcement enti-
7 ties that have no Federal or State arrest
8 authority but have been designated by an
9 Indian tribe as responsible for maintaining
10 public safety within its territorial jurisdic-
11 tion, to enter information into and obtain
12 information from national crime informa-
13 tion databases;

14 “(ii) prosecution;

15 “(iii) trial and appellate courts, in-
16 cluding facilities construction;

17 “(iv) probation systems;

18 “(v) detention and correctional facili-
19 ties, including facilities construction;

20 “(vi) alternative rehabilitation centers;

21 “(vii) culturally appropriate services
22 and assistance for victims and their fami-
23 lies; and

1 “(viii) criminal codes and rules of
2 criminal procedure, appellate procedure,
3 and evidence;

4 “(B) to provide indigent criminal defend-
5 ants with the effective assistance of licensed de-
6 fense counsel, at no cost to the defendant, in
7 criminal proceedings in which a participating
8 tribe prosecutes covered crimes;

9 “(C) to ensure that, in criminal pro-
10 ceedings in which a participating tribe exercises
11 special tribal criminal jurisdiction, jurors are
12 summoned, selected, and instructed in a man-
13 ner consistent with all applicable requirements;
14 and

15 “(D) to accord victims of covered crimes
16 rights that are similar to the rights of a crime
17 victim described in section 3771(a) of title 18,
18 United States Code, consistent with tribal law
19 and custom.

20 “(g) SUPPLEMENT, NOT SUPPLANT.—Amounts
21 made available under subsection (f)(2) shall supplement
22 and not supplant any other Federal, State, or local govern-
23 ment amounts made available to carry out activities de-
24 scribed in this section.

1 “(h) AUTHORIZATION OF APPROPRIATIONS.—There
2 is authorized to be appropriated \$15,000,000 for each of
3 fiscal years 2022 through 2026 to carry out subsection
4 (f) and to provide training, technical assistance, data col-
5 lection, and evaluation of the criminal justice systems of
6 participating tribes.

7 “(i) USE OF FUNDS.—Of the funds appropriated
8 under this section for each fiscal year—

9 “(1) not less than 25 percent shall be used for
10 the purposes described in subsection (f)(1); and

11 “(2) not less than 25 percent shall be used for
12 the purposes described in subsection (f)(2).”.

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