

115TH CONGRESS
2D SESSION

S. 3216

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

JULY 16, 2018

Ms. SMITH (for herself, Ms. MURKOWSKI, and Mr. UDALL) 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”.

1 **SEC. 2. TRIBAL JURISDICTION OVER CRIMES OF DOMES-**
2 **TIC, DATING, OR SEXUAL VIOLENCE, SEX**
3 **TRAFFICKING, OR STALKING.**

4 Section 204 of Public Law 90–284 (25 U.S.C. 1304)
5 (commonly known as the “Indian Civil Rights Act of
6 1968”) is amended—

7 (1) in the section heading, by striking “**DO-**
8 **MESTIC VIOLENCE**” and inserting “**DOMESTIC,**
9 **DATING, OR SEXUAL VIOLENCE, SEX TRAF-**
10 **FICKING, OR STALKING**”;

11 (2) in subsection (a)—

12 (A) in paragraph (1), by striking “means
13 violence” and inserting “includes any felony or
14 misdemeanor violation of the criminal law of
15 the Indian tribe that has jurisdiction over the
16 Indian country where the violation occurs that
17 is”;

18 (B) in paragraph (2)—

19 (i) by striking “means violence” and
20 inserting “includes any felony or mis-
21 demeanor violation of the criminal law of
22 the Indian tribe that has jurisdiction over
23 the Indian country where the violation oc-
24 curs that is”; and

25 (ii) by striking “an Indian tribe that
26 has jurisdiction over the Indian country

1 where the violence occurs” and inserting
2 “that Indian tribe”;

3 (C) in paragraph (4), by striking “domes-
4 tic violence” and inserting “tribal”;

5 (D) by redesignating paragraphs (6) and
6 (7) as paragraphs (9) and (10), respectively;

7 (E) by inserting after paragraph (5) the
8 following:

9 “(6) RELATED CONDUCT.—The term ‘related
10 conduct’ means conduct alleged to have been com-
11 mitted by a defendant that—

12 “(A) is a violation of the criminal law of
13 the Indian tribe that has jurisdiction over the
14 Indian country where the underlying offense oc-
15 curred; and

16 “(B) occurs in connection with the exercise
17 of special tribal criminal jurisdiction by that In-
18 dian tribe.

19 “(7) SEX TRAFFICKING.—

20 “(A) IN GENERAL.—The term ‘sex traf-
21 ficking’ means conduct—

22 “(i) consisting of—

23 “(I) recruiting, enticing, har-
24 boring, transporting, providing, ob-
25 taining, advertising, maintaining, pa-

1 tronizing, or soliciting by any means a
2 person; or

3 “(II) benefiting, financially or by
4 receiving anything of value, from par-
5 ticipation in a venture that has en-
6 gaged in an act described in subclause
7 (I); and

8 “(ii) carried out with the knowledge,
9 or, except where the act constituting the
10 violation of clause (i) is advertising, in
11 reckless disregard of the fact, that—

12 “(I) means of force, threats of
13 force, fraud, coercion, or any combina-
14 tion of such means will be used to
15 cause the person to engage in a com-
16 mercial sex act; or

17 “(II) the person has not attained
18 the age of 18 years and will be caused
19 to engage in a commercial sex act.

20 “(B) DEFINITIONS.—In this paragraph,
21 the terms ‘coercion’ and ‘commercial sex act’
22 have the meanings given the terms in section
23 1591(e) of title 18, United States Code.

24 “(8) SEXUAL VIOLENCE.—The term ‘sexual vio-
25 lence’ means any nonconsensual sexual act or con-

1 tact proscribed by Federal, tribal, or State law, in-
2 cluding in any case in which the victim lacks the ca-
3 pacity to consent to the act.”;

4 (F) in paragraph (9) (as redesignated by
5 subparagraph (D))—

6 (i) in the paragraph heading, by strik-
7 ing “DOMESTIC VIOLENCE” and inserting
8 “TRIBAL”; and

9 (ii) by striking “domestic violence”
10 and inserting “tribal”; and

11 (G) by adding at the end the following:

12 “(11) STALKING.—The term ‘stalking’ means
13 engaging in a course of conduct directed at a spe-
14 cific person that would cause a reasonable person—

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

17 “(B) to suffer substantial emotional dis-
18 tress.”;

19 (3) in subsection (b)—

20 (A) by striking “domestic violence” each
21 place the term appears and inserting “tribal”;
22 and

23 (B) in paragraph (4)—

24 (i) by striking subparagraph (B);

1 (ii) by striking the paragraph designa-
 2 tion and heading and all that follows
 3 through “A participating” in clause (i) of
 4 subparagraph (A) and inserting the fol-
 5 lowing:

6 “(4) EXCEPTION FOR NON-INDIAN VICTIM AND
 7 DEFENDANT.—

8 “(A) IN GENERAL.—A participating”; and

9 (iii) by striking “(ii) DEFINITION OF
 10 VICTIM.—In this subparagraph” and in-
 11 sserting the following:

12 “(B) DEFINITION OF VICTIM.—In this
 13 paragraph”;

14 (4) in subsection (c)—

15 (A) in the matter preceding paragraph (1),
 16 by striking “domestic violence” and inserting
 17 “tribal”;

18 (B) in paragraph (1)—

19 (i) in the paragraph heading, by strik-
 20 ing “VIOLENCE AND DATING” and insert-
 21 ing “, DATING, AND SEXUAL”; and

22 (ii) by striking “or dating violence”
 23 and inserting “, dating violence, or sexual
 24 violence”; and

25 (C) by adding at the end the following:

1 “(3) STALKING.—An act of stalking that occurs
2 in the Indian country of the participating tribe.

3 “(4) SEX TRAFFICKING.—An act of sex traf-
4 ficking that occurs in the Indian country of the par-
5 ticipating tribe.

6 “(5) RELATED CONDUCT.—An act of related
7 conduct that occurs in the Indian country of the
8 participating tribe.”;

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

12 (6) in subsection (f)—

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

16 (B) in paragraph (2), by striking “pros-
17 ecutes” and all that follows through the semi-
18 colon at the end and inserting the following:

19 “prosecutes—

20 “(A) a crime of domestic violence;

21 “(B) a crime of dating violence;

22 “(C) a crime of sexual violence;

23 “(D) a criminal violation of a protection
24 order;

25 “(E) a crime of stalking;

1 “(F) a crime of sex trafficking; or
2 “(G) a crime of related conduct;” and
3 (C) in paragraph (4), by inserting “sexual
4 violence, stalking, sex trafficking,” after “dat-
5 ing violence,”.

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