

116TH CONGRESS
1ST SESSION

S. 288

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

JANUARY 31, 2019

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 violation
14 of the criminal law of the Indian tribe that has
15 jurisdiction over the Indian country where the
16 violation occurs that is”;

17 (B) in paragraph (2)—

18 (i) by striking “means violence” and
19 inserting “includes any violation of the
20 criminal law of the Indian tribe that has
21 jurisdiction over the Indian country where
22 the violation occurs that is”; and

23 (ii) by striking “an Indian tribe that
24 has jurisdiction over the Indian country
25 where the violence occurs” and inserting
26 “that Indian tribe”;

1 (C) in paragraph (4), by striking “domestic
2 violence” and inserting “tribal”;

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

5 (E) by inserting after paragraph (5) the
6 following:

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

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

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

17 “(7) SEX TRAFFICKING.—

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

20 “(i) consisting of—

21 “(I) recruiting, enticing, har-
22 boring, transporting, providing, ob-
23 taining, advertising, maintaining, pa-
24 tronizing, or soliciting by any means a
25 person; or

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

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

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

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

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

22 “(8) SEXUAL VIOLENCE.—The term ‘sexual vio-
23 lence’ means any nonconsensual sexual act or con-
24 tact proscribed by Federal, tribal, or State law, in-

1 including in any case in which the victim lacks the ca-
2 pacity to consent to the act.”;

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

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

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

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

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

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

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

18 (3) in subsection (b)—

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

22 (B) in paragraph (4)—

23 (i) by striking subparagraph (B);

24 (ii) by striking the paragraph designa-
25 tion and heading and all that follows

1 through “A participating” in clause (i) of
 2 subparagraph (A) and inserting the fol-
 3 lowing:

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

6 “(A) IN GENERAL.—A participating”; and
 7 (iii) by striking “(ii) DEFINITION OF
 8 VICTIM.—In this subparagraph” and in-
 9 serting the following:

10 “(B) DEFINITION OF VICTIM.—In this
 11 paragraph”;

12 (4) in subsection (c)—

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

16 (B) in paragraph (1)—

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

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

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

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

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

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

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

10 (6) in subsection (f)—

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

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

18 “(A) a crime of domestic violence;

19 “(B) a crime of dating violence;

20 “(C) a crime of sexual violence;

21 “(D) a criminal violation of a protection
22 order;

23 “(E) a crime of stalking;

24 “(F) a crime of sex trafficking; or

25 “(G) a crime of related conduct;” and

1 (C) in paragraph (4), by inserting “sexual
2 violence, stalking, sex trafficking,” after “dat-
3 ing violence,”.

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