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AMENDMENT TO H.R. 4970
OFFERED BY MR. ISSA

Page 173, after line 4, insert the following new section (and redesignate the succeeding section and amend the table of contents accordingly):

1 **SEC. 904. TRIBAL JURISDICTION OVER CRIMES OF DOMES-**
2 **TIC VIOLENCE.**

3 Title II of Public Law 90–284 (25 U.S.C. 1301 et
4 seq.) (commonly known as the “Indian Civil Rights Act
5 of 1968”) is amended by adding at the end the following:

6 **“SEC. 204. TRIBAL JURISDICTION OVER CRIMES OF DOMES-**
7 **TIC VIOLENCE.**

8 “(a) DEFINITIONS.—In this section:

9 “(1) DATING VIOLENCE.—The term ‘dating vio-
10 lence’ means violence committed by a person who is
11 or has been in a social relationship of a romantic or
12 intimate nature with the victim, as determined by
13 the length of the relationship, the type of relation-
14 ship, and the frequency of interaction between the
15 persons involved in the relationship.

16 “(2) DOMESTIC VIOLENCE.—The term ‘domes-
17 tic violence’ means violence committed by a current
18 or former spouse or intimate partner of the victim,

1 by a person with whom the victim shares a child in
2 common, by a person who is cohabitating with or
3 has cohabitated with the victim as a spouse or inti-
4 mate partner, or by a person similarly situated to a
5 spouse of the victim under the domestic- or family-
6 violence laws of an Indian tribe that has jurisdiction
7 over the Indian country where the violence occurs.

8 “(3) INDIAN COUNTRY.—The term ‘Indian
9 country’ has the meaning given the term in section
10 1151 of title 18, United States Code.

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

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

17 “(A) means any injunction, restraining
18 order, or other order issued by a civil or crimi-
19 nal court for the purpose of preventing violent
20 or threatening acts or harassment against, sex-
21 ual violence against, contact or communication
22 with, or physical proximity to, another person;
23 and

24 “(B) includes any temporary or final order
25 issued by a civil or criminal court, whether ob-

1 tained by filing an independent action or as a
2 pendent lite order in another proceeding, if the
3 civil or criminal order was issued in response to
4 a complaint, petition, or motion filed by or on
5 behalf of a person seeking protection.

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

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

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

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

24 “(2) CONCURRENT JURISDICTION.—The exer-
25 cise of special domestic violence criminal jurisdiction

1 by a participating tribe shall be concurrent with the
2 jurisdiction of the United States, of a State, or of
3 both.

4 “(3) APPLICABILITY.—Nothing in this sec-
5 tion—

6 “(A) creates or eliminates any Federal or
7 State criminal jurisdiction over Indian country;
8 or

9 “(B) affects the authority of the United
10 States or any State government that has been
11 delegated authority by the United States to in-
12 vestigate and prosecute a criminal violation in
13 Indian country.

14 “(4) EXCEPTIONS.—

15 “(A) VICTIM AND DEFENDANT ARE BOTH
16 NON-INDIANS.—

17 “(i) IN GENERAL.—A participating
18 tribe may not exercise special domestic vio-
19 lence criminal jurisdiction over an alleged
20 offense if neither the defendant nor the al-
21 leged victim is an Indian.

22 “(ii) DEFINITION OF VICTIM.—In this
23 subparagraph and with respect to a crimi-
24 nal proceeding in which a participating
25 tribe exercises special domestic violence

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1 criminal jurisdiction based on a violation of
2 a protection order, the term ‘victim’ means
3 a person specifically protected by a protec-
4 tion order that the defendant allegedly vio-
5 lated.

6 “(B) DEFENDANT LACKS TIES TO THE IN-
7 DIAN TRIBE.—A participating tribe may exer-
8 cise special domestic violence criminal jurisdic-
9 tion over a defendant only if the defendant—

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

12 “(ii) is employed in the Indian coun-
13 try of the participating tribe; or

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

16 “(I) a member of the partici-
17 pating tribe; or

18 “(II) an Indian who resides in
19 the Indian country of the partici-
20 pating tribe.

21 “(C) REMOVAL BY UNITED STATES ATTOR-
22 NEY GENERAL TO FEDERAL COURT.—The At-
23 torney General may remove a criminal pro-
24 ceeding initiated by a participating Indian tribe

1 under this section to United States District
2 Court if—

3 “(i) removal occurs prior to the com-
4 pletion of the initial proceeding; or

5 “(ii) a determination is made that the
6 initial proceeding was not conducted in ac-
7 cordance with the laws of the United
8 States.

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

13 “(1) DOMESTIC VIOLENCE AND DATING VIO-
14 LENCE.—An act of domestic violence or dating vio-
15 lence that occurs in the Indian country of the par-
16 ticipating tribe.

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

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

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

23 “(i) prohibits or provides protection
24 against violent or threatening acts or har-
25 assment against, sexual violence against,

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1 contact or communication with, or physical
2 proximity to, another person;

3 “(ii) was issued against the defend-
4 ant;

5 “(iii) is enforceable by the partici-
6 pating tribe; and

7 “(iv) is consistent with section
8 2265(b) of title 18, United States Code.

9 “(d) RIGHTS OF DEFENDANTS.—In a criminal pro-
10 ceeding in which a participating tribe exercises special do-
11 mestic violence criminal jurisdiction, the participating
12 tribe shall provide to the defendant—

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

14 “(2) if a term of imprisonment of any length
15 may be imposed, all rights described in section
16 202(e);

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

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

21 “(B) do not systematically exclude any dis-
22 tinctive group in the community, including non-
23 Indians; and

24 “(4) all other rights whose protection is nec-
25 essary under the Constitution of the United States

1 in order for Congress to recognize and affirm the in-
2 herent power of the participating tribe to exercise
3 special domestic violence criminal jurisdiction over
4 the defendant.

5 “(e) PETITIONS TO STAY DETENTION.—

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

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

13 “(A) finds that there is a substantial likeli-
14 hood that the habeas corpus petition will be
15 granted; and

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

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

1 “(f) GRANTS TO TRIBAL GOVERNMENTS.—The At-
2 torney General may award grants to the governments of
3 Indian tribes (or to authorized designees of those govern-
4 ments)—

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

8 “(A) law enforcement (including the capac-
9 ity of law enforcement or court personnel to
10 enter information into and obtain information
11 from national crime information databases);

12 “(B) prosecution;

13 “(C) trial and appellate courts;

14 “(D) probation systems;

15 “(E) detention and correctional facilities;

16 “(F) alternative rehabilitation centers;

17 “(G) culturally appropriate services and
18 assistance for victims and their families; and

19 “(H) criminal codes and rules of criminal
20 procedure, appellate procedure, and evidence;

21 “(2) to provide indigent criminal defendants
22 with the effective assistance of licensed defense
23 counsel, at no cost to the defendant, in criminal pro-
24 ceedings in which a participating tribe prosecutes a

1 crime of domestic violence or dating violence or a
2 criminal violation of a protection order;

3 “(3) to ensure that, in criminal proceedings in
4 which a participating tribe exercises special domestic
5 violence criminal jurisdiction, jurors are summoned,
6 selected, and instructed in a manner consistent with
7 all applicable requirements; and

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

13 “(g) SUPPLEMENT, NOT SUPPLANT.—Amounts
14 made available under this section shall supplement and
15 not supplant any other Federal, State, tribal, or local gov-
16 ernment amounts made available to carry out activities de-
17 scribed in this section.

18 “(h) AUTHORIZATION OF APPROPRIATIONS.—There
19 are authorized to be appropriated \$5,000,000 for each of
20 fiscal years 2013 through 2017 to carry out subsection
21 (f) and to provide training, technical assistance, data col-
22 lection, and evaluation of the criminal justice systems of
23 participating tribes.”

