

Cherokee Nation and Chickasaw Nation Criminal Jurisdiction Compacting Act of 2021

Language Explainer

This fact sheet summarizes, section-by-section, proposed Federal legislation relating to the Cherokee and Chickasaw Nations. If enacted, this bill would strengthen Tribal self-determination and empower Tribal-State partnerships by authorizing those Nations to compact with Oklahoma respecting criminal jurisdiction. The bill is proposed after consultation with those Nations and upon their request. Further, Oklahoma government officials have previously called for or otherwise offered public support for the approach integrated to this bill.

Section 1 (Title) – Consistent with the bill’s scope and purpose, it is titled “Cherokee Nation and Chickasaw Nation Criminal Jurisdiction Compacting Act of 2021.”

Section 2 (Definitions) – This section offers operative definitions for key terms in the bill, two of which are particularly important to the scope of its central authorization to compact. “Indian country” is defined by reference to statute, but “Indian land” is defined to include only lands universally understood to be “Indian country” prior to the U.S. Supreme Court’s decision in *McGirt*—lands such as Tribal trust land, restricted allotments, and so-called dependent Indian communities. As such, “Indian land” is a subset of “Indian country,” and as provided in later sections, no authority would be granted to affect by compact any jurisdiction on “Indian lands.”

Section 3 (Findings) – The findings clarify the bill’s intent and purpose. Consistent with Federal law, they acknowledge each Nation’s reservation as “Indian country” for purposes of criminal jurisdiction. The findings note ongoing intergovernmental work to enhance Tribal-State coordination in reservation law enforcement and particularly commend the use of compacting for purposes of supporting Tribal self-determination and intergovernmental cooperation. The findings recognize that Federal laws (e.g., the Major and General Crimes Acts, 18 U.S.C. §§ 1152, 1153) preempt the Nations from effectively compacting on “Indian country” criminal jurisdiction and concludes by declaring its purpose is to empower these two Nations to compact with the State of Oklahoma on the subject, as provided for and expressly authorized in the substantive provisions.

Section 4 (Reservation Integrity) – To support jurisdictional clarity, the United States would be barred from taking into trust any land inside a Nation’s reservation without its consent *either* for another tribe *or* for a non-citizen. If a Nation does consent to such acquisition, the bill confirms the Nation’s jurisdiction would not be diminished as to the acquired land. A version of this rule exists in regulation, 25 C.F.R. § 151.8, but the bill would give it statutory foundation.

Section 5 (No Effect) – This section addresses what the bill would *not* do, i.e., it provides nothing in it nor in any compact entered pursuant to it diminishes either Nation’s authority or treaty rights within its reservation or otherwise invalidates any existing compact between the state and the Nations.

Section 6 (Intergovernmental Criminal Jurisdiction Compacts) – This is the heart of the bill. If enacted, each Nation would be empowered to enter compacts with Oklahoma respecting criminal jurisdiction on its respective reservation *outside of* “Indian lands.” The effect of a compact so entered would be—subject to certain requirements, limitations, and the terms of the compact itself—to authorize Oklahoma’s exercise of criminal jurisdiction notwithstanding the otherwise preemptive effect of the Major and General Crimes Acts, 18 U.S.C. §§ 1152, 1153. This mechanism can be understood as contrasting starkly with the Termination-era approach of Pub. L. 83-280, 67 Stat. 588 (Aug. 15, 1953); namely, rather than impose a jurisdictional allocation by statute or provide Tribes with an opportunity to consent to Federal transfer of jurisdiction to a State, the bill employs a Tribal self-determination model by empowering the Nations to work with Oklahoma on how to best allocate criminal jurisdiction. If enacted, this mechanism would enhance implementation of multi-jurisdictional law enforcement strategies suited to ensuring public safety, effective law enforcement, and Tribal self-governance in a manner responsive to Tribal citizen needs and intergovernmental interests.

As to compacting *requirements* and *limits*, the bill would require a compact to address the who, what, and where of affected jurisdiction—namely, to define the affected category or categories of criminal offender (*who*), category of offenses (*what*), and geographic limits of prosecutorial authority (*where*). A valid compact must also include provisions relating to amendment and revocation, which ensures flexibility for both parties as circumstances change over time. Finally, the provision affirms limits on the legal effect of any compact, making clear that no compact may diminish the jurisdiction of a Nation or the United States, affect jurisdiction over “Indian lands,” change the rules of criminal jurisdiction over past offenses, or give Oklahoma any authority to tax either Nation.

Section 7 (Federal engagement) – Federal law imposes ongoing Tribal trust responsibilities on the government. Consistent with those responsibilities and the Nations’ rights associated with them, the bill would authorize and direct the U.S. Attorney General to provide technical assistance to either Nation, on request, to develop and implement a criminal justice compact with Oklahoma. Additionally, it would vest each Nation with the option of sentencing certain criminal offenders to a federal detention facility, with detention costs borne by the United States. Finally, the bill would direct the Department of the Interior to assist a compacting Nation in the publication of notice of any compact and, further, to prepare a report to the House Natural Resources Committee and the Senate Committee on Indian Affairs on the development and implementation of compacts enacted under this legislation.