

117TH CONGRESS
1ST SESSION

H. R. 3091

To support clarity and consistency with regard to the exercise of criminal jurisdiction and authority in Indian country, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 11, 2021

Mr. COLE introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To support clarity and consistency with regard to the exercise of criminal jurisdiction and authority in Indian country, 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 “Cherokee Nation and
5 Chickasaw Nation Criminal Jurisdiction Compacting Act
6 of 2021”.

7 **SEC. 2. FINDINGS.**

8 Congress finds the following:

1 (1) Court rulings have affirmed the Cherokee
2 Nation and the Chickasaw Nation have reservations
3 that constitute Indian country for purposes of crimi-
4 nal jurisdiction, the boundaries of which are set
5 forth in each Nation’s respective treaties with the
6 United States.

7 (2) Each Nation has worked with the State, in-
8 cluding certain political subdivisions of the State, to
9 ensure cooperation and coordination on law enforce-
10 ment and public safety within the respective reserva-
11 tions of the Nations.

12 (3) Legally effective compacts are important
13 tools of Tribal self-determination and are useful in
14 avoiding jurisdictional disputes within Indian coun-
15 try;

16 (4) The Nations and the State have successfully
17 implemented intergovernmental agreements on policie-
18 ing, taxation, child welfare, gaming, hunting and
19 fishing, and other matters implicating their respec-
20 tive sovereign authorities, rights, and interests.

21 (5) Sections 1152 and 1153 of title 18, United
22 States Code, and other Federal laws preempt the
23 Nations and the State from forming effective com-
24 pacts respecting criminal jurisdiction in Indian coun-
25 try.

1 (6) It is necessary, proper, and consistent with
2 Federal policies supporting Tribal self-determination
3 to provide express, specific, and defined authoriza-
4 tion for purposes of the Nations forming lawful and
5 effective compacts with the State respecting criminal
6 jurisdiction on Indian country (other than on Indian
7 lands).

8 **SEC. 3. DEFINITIONS.**

9 In this Act:

10 (1) CHEROKEE NATION.—The term “Cherokee
11 Nation” means the federally recognized Indian Tribe
12 with its present Tribal headquarters south of Tahle-
13 quah, Oklahoma, having adopted its most recent
14 constitution on August 7, 2003, and having entered
15 into various treaties with the United States, includ-
16 ing the Treaty at Hopewell, executed on November
17 28, 1785 (7 Stat. 18), and the Treaty at Wash-
18 ington, D.C., executed on July 19, 1866 (14 Stat.
19 799), and which has maintained a continuous gov-
20 ernment-to-government relationship with the United
21 States since the earliest years of the Union.

22 (2) CHICKASAW NATION.—The term “Chicka-
23 saw Nation” means a federally recognized Indian
24 Tribe with its present Tribal headquarters in Ada,
25 Oklahoma, having adopted its most recent constitu-

1 tion on August 27, 1983, and having entered into
2 various treaties with the United States of America,
3 including the Treaty at Hopewell, executed on Janu-
4 ary 10, 1786 (7 Stat. 24), and the Treaty at Wash-
5 ington, D.C., executed on April 28, 1866 (7 Stat.
6 21), and which has maintained a continuous govern-
7 ment-to-government relationship with the United
8 States since the earliest years of the Union.

9 (3) INDIAN.—The term “Indian” has the mean-
10 ing given that term in section 201(4) of the Indian
11 Civil Rights Act of 1968 (25 U.S.C. 1301(4)).

12 (4) INDIAN COUNTRY.—The term “Indian coun-
13 try” has the meaning given that term in section
14 1151 of title 18 of the United States Code.

15 (5) INDIAN LAND.—The term “Indian land”
16 means land within a Nation’s reservation—

17 (A) title to which is held in trust by the
18 United States for the benefit of an Indian Tribe
19 or an Indian;

20 (B) title to which is held in fee by an In-
21 dian Tribe or an Indian subject to restrictions
22 against alienation under laws of the United
23 States;

24 (C) title to which is held in fee by an In-
25 dian Tribe or an Indian in accord with a treaty

1 with the United States to which an Indian
2 Tribe is a party, and such land had never been
3 allotted to any individual; or

4 (D) which otherwise constitutes Indian
5 country under subsection (b) or (c) of section
6 1151 of title 18, United States Code.

7 (6) INDIAN TRIBE.—The term “Indian Tribe”
8 means any American Indian or Alaska Native Tribe,
9 band, nation, pueblo, village, or community that the
10 Secretary acknowledges to exist as a federally recog-
11 nized Indian Tribe under the Federally Recognized
12 Indian Tribe List Act of 1994 (25 U.S.C. 5131).

13 (7) NATION.—The term “Nation” means the
14 Cherokee Nation or the Chickasaw Nation.

15 (8) NATIONS.—The “Nations” means the Cher-
16 okee Nation and the Chickasaw Nation.

17 (9) SECRETARY.—The term “Secretary” means
18 the Secretary of the Interior.

19 (10) STATE.—The term “State” means the
20 State of Oklahoma.

21 **SEC. 4. RESERVATION INTEGRITY.**

22 To support clarity and consistency with respect to the
23 exercise of criminal jurisdiction and authority on the Na-
24 tions’ respective Indian country—

1 (1) the reservation of each Nation, with bound-
2 aries as set forth in its most recent treaty or agree-
3 ment with the United States, is acknowledged;

4 (2) the Secretary shall not take any land into
5 trust status within the exterior boundary of the res-
6 ervation of a Nation unless—

7 (A) the land is taken into trust status for
8 the benefit of that Nation or of a citizen or citi-
9 zens of that Nation; or

10 (B) the Nation consents in writing to the
11 trust status for such land; and

12 (3) the Secretary taking land within the exte-
13 rior boundary of a Nation's reservation into trust in
14 accordance with paragraph (2) shall not alter or di-
15 minish any criminal or civil jurisdiction of the con-
16 senting Nation.

17 **SEC. 5. NO EFFECT.**

18 Nothing in this Act—

19 (1) waives the sovereign immunity of a Nation;

20 (2) expands, limits, modifies, or otherwise af-
21 fects the authority or right that a Nation possesses
22 under, or which is protected by, a treaty with the
23 United States or other Federal law;

24 (3) deprives a Nation of any right, privilege, or
25 immunity afforded under Federal treaty, agreement,

1 statute, or other law with respect to hunting, fish-
2 ing, or water; or

3 (4) invalidates, supersedes, or restricts any
4 intergovernmental agreement or compact between a
5 Nation and the State, or any of its subdivisions, en-
6 tered into before the date of the enactment of this
7 Act.

8 **SEC. 6. INTERGOVERNMENTAL CRIMINAL JURISDICTION**
9 **COMPACTS.**

10 (a) **IN GENERAL.**—A Nation may negotiate and enter
11 into one or more intergovernmental compacts with the
12 State regarding criminal jurisdiction on the Indian coun-
13 try (other than on Indian land) of that Nation, in accord
14 with this Act.

15 (b) **AUTHORIZATION.**—

16 (1) **IN GENERAL.**—Upon entering into a com-
17 pact that satisfies the requirements of subsection (c)
18 and subject to the limitations set forth in subsection
19 (d) and the terms of such compact, the State may
20 exercise its criminal jurisdiction in accord with its
21 laws over offenses committed by or against Indians
22 within the reservation of the Nation (other than on
23 Indian land) to the same extent as the courts of the
24 State have jurisdiction over and its laws apply to of-
25 fenses committed elsewhere within the State on

1 lands that are not Indian country, notwithstanding
2 sections 1152 and 1153 of title 18, United States
3 Code, and other Federal laws providing for United
4 States criminal jurisdiction exclusive of State juris-
5 diction on lands that are Indian country.

6 (2) EXISTING JURISDICTION.—The jurisdiction
7 of the State described in paragraph (1) shall be con-
8 current with any criminal jurisdiction of the United
9 States and the Nation on lands that are Indian
10 country.

11 (c) REQUIREMENTS.—An intergovernmental criminal
12 jurisdiction compact entered into under this section
13 shall—

14 (1) define any geographic limits within the res-
15 ervation of the compacting Nation on which the
16 State may exercise criminal jurisdiction;

17 (2) define the categories of criminal offenders
18 or offenses within the reservation of the compacting
19 Nation over which the State may exercise jurisdic-
20 tion;

21 (3) provide for means to amend the compact;

22 (4) provide for means for either party to revoke
23 the compact upon not less than one year of written
24 notice to the other party, specifying the date on
25 which such revocation shall take effect and stating

1 that revocation shall not affect any action, pending
2 proceeding, conviction, adjudication, or final deter-
3 mination over which a court has already assumed ju-
4 risdiction; and

5 (5) provide that it shall take legal effect upon
6 entry in accordance with the respective laws of the
7 State and the Nation.

8 (d) LIMITATIONS.—Nothing in this Act or any agree-
9 ment entered under this Act shall—

10 (1) limit or otherwise diminish the jurisdiction
11 of the United States or of a Nation;

12 (2) limit or otherwise affect the allocation of
13 criminal jurisdiction respecting Indian land;

14 (3) alter or otherwise affect jurisdiction over
15 any person for any offense committed before a com-
16 pact takes effect;

17 (4) limit or otherwise diminish criminal juris-
18 diction of the State over offenses committed by a
19 person anywhere on the Indian country of a Nation
20 before the date of a compact taking effect;

21 (5) limit or otherwise diminish applicability of
22 the criminal laws of the State anywhere on the In-
23 dian country of a Nation before the date of a com-
24 pact taking effect; or

1 (6) confer upon the State any authority to im-
2 pose any tax, fee, charge, or other assessment upon
3 a Nation, nor may the State refuse to enter into a
4 compact based on the lack of authority in the State,
5 including its political subdivisions, to impose any
6 such tax, fee, charge, or other assessment.

7 **SEC. 7. FEDERAL ENGAGEMENT.**

8 (a) UNITED STATES ATTORNEY GENERAL.—At the
9 request of a Nation, the Attorney General shall consult
10 with and provide technical assistance to the Nation for
11 purposes of developing or implementing any compact au-
12 thorized under this Act.

13 (b) BUREAU OF PRISONS.—In the case of an offender
14 sentenced by a Nation to a term of imprisonment of more
15 than 6 months, the Nation may require the offender to
16 serve his or her sentence in the nearest appropriate Fed-
17 eral facility. The Bureau of Prisons shall accept and im-
18 plement the term of imprisonment in accordance with such
19 sentence, and the term of imprisonment shall be subject
20 to the conditions described in section 5003 of title 18,
21 United States Code, regarding the custody of State offend-
22 ers, except that any offender sentenced by a Nation shall
23 be imprisoned at the expense of the United States.

24 (c) DUTIES OF THE SECRETARY.—

1 (1) PUBLICATION OF COMPACT.—Upon a Na-
2 tion and the State entering a compact under section
3 6, the Nation may provide a copy of the compact to
4 the Secretary, who shall then cause notice of the
5 compact to be published in the Federal Register not
6 later than 30 days after receiving such copy.

7 (2) REPORT.—The Secretary shall—

8 (A) in consultation with each Nation—

9 (i) complete a report on the develop-
10 ment and implementation of compacts
11 under this Act; and

12 (ii) make recommendations for further
13 action to support and enhance the criminal
14 justice system of each Nation, including
15 additional Federal expenditures appro-
16 priate to such actions; and

17 (B) not later than 2 years after the date
18 of the enactment of this Act, submit the report
19 prepared under subparagraph (A) to the Com-
20 mittee on Natural Resources of the House of
21 Representatives and the Committee on Indian
22 Affairs of the Senate.

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