



Council of the Cherokee Nation

Cherokee Nation Tribal
Council
17763 S. Muskogee Ave.
Tahlequah, OK 74464

Legislation Details (With Text)

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Title:	CHEROKEE NATION RESERVATION, JUDICIAL EXPANSION AND SOVEREIGNTY PROTECTION ACT				
Sponsors:	Victoria Vazquez, Canaan Duncan, Janees Taylor, Rex Jordan, Mike Shambaugh, Keith Austin, Dora Patzkowski, E. O. "JR." Smith, Daryl Legg, Joe Deere, Shawn Crittenden, Joe Byrd, Mike Dobbins, Wes Nofire				
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8/31/2020	1	OFFICE OF THE CHIEF	Signed	
8/27/2020	1	TRIBAL COUNCIL	Approved	Pass
8/27/2020	1	RULES COMMITTEE	Approved and Forwarded to Council	Pass

CHEROKEE NATION RESERVATION, JUDICIAL EXPANSION AND SOVEREIGNTY PROTECTION ACT

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This legislative act shall be titled and codified as the “Cherokee Nation Reservation, Judicial Expansion and Sovereignty Protection Act.”

Section 2. Findings

The Council of the Cherokee Nation finds that the opportunities presented by the United States Supreme Court’s decision in *Oklahoma v McGirt* requires both immediate action and long-term planning to secure Cherokee Nation’s reservation, protect Cherokee Nation’s sovereignty and the health and welfare of Cherokee citizens and our neighbors.

Section 3. Purpose

The purpose of this Act is to authorize the expansion of Cherokee Nation’s judiciary, prosecution staff and Marshal service to ensure the Nation has adequate court, prosecution and law enforcement capacity, indigent defense resources, incarceration and rehabilitation services.

Section 4. Substantive Provisions

§ 1 Authorization to Apply for Federal Funding

- A. The Principal Chief is authorized to apply for grants or other provision of funds from the federal government relating to the purposes of this Act where such authorization is required by federal law, regulation or policy, without limitation and without the need for further Council authorization.
- B. The Principal Chief shall advise the Council, in writing, of any such applications.
- C. Nothing herein limits the authority of the Council to make appropriation of such funds obtained under this section.

§ 2 Authorization for Referees

The Chief Justice of the Supreme Court and the Presiding Judge of the District Court are hereby authorized to appoint Referees in their respective Courts to address pre-trial motions, discovery, evidentiary issues, acceptance of guilty pleas, and other issues as may be assigned. All Orders of a Referee shall also be signed by the Chief Justice or the Presiding Judge. Challenges to any findings or recommendations issued by a Referee shall be reviewed de novo as to both law and fact. All Referees shall meet the Constitutional and statutory requirements for appointment as a Justice or Judge in the respective Courts. Referees shall have the authority to issue warrants and compel witnesses so long as the Order is signed by a Justice or Judge of the respective Courts.

§ 3 Access to Detention Facilities

The Cherokee Nation Marshal is authorized to enter into detention facility agreements with any entity in or outside of the Cherokee Nation Reservation as necessary to ensure the safe detention of offenders held under the laws of the Cherokee Nation.

§ 4 Non-Incarceration Rehabilitation Services

The Supreme Court is hereby authorized to enter into agreements for rehabilitation services that may be used as an alternative to incarceration.

§ 5 Indigent Defense

The Supreme Court is authorized to provide, by Rule, Order or otherwise, the Constitutional guarantee of the right to counsel for all individuals accused of a crime in the Cherokee Nation. This shall include the ability to determine under which circumstances indigent defendants are entitled to court appointed and compensated counsel.

§ 6 Prosecution

The Attorney General is hereby authorized to evaluate resources within the Office of Attorney General to handle existing and anticipated increased caseloads and make recommendations for additional staff to adequately prosecute additional caseload.

§ 7 Law Enforcement

The Marshal is hereby authorized to evaluate resources within the Marshal Service to handle existing and anticipated increased caseloads and make recommendations for additional staff to adequately investigate and respond to additional caseload.

§ 8 Bond

The Supreme Court is authorized to provide by Rule, Order, or otherwise, a comprehensive bond schedule for all crimes contained in the Cherokee Nation Code.

Section 5. Amending current law

Compensation of members of the Judiciary

Title 20, Section 37 shall be amended as follows:

The Salaries for Justices of the Supreme Court shall be ~~\$27,600 per annual;~~ and the salary for Chief Justice shall be ~~\$28,800 per annual~~ determined through the appropriation process of the Cherokee Nation. The Justices of the Supreme Court and the District and Associate District Court Judges will be entitled to health insurance, retirement and other benefits that are offered to other elected and appointed officials of the Cherokee Nation. Justices of the Supreme Court and District and Associate District Court Judges are exempt from any disciplinary action through the Human Resource Department Policy and Procedures. Justices of the Supreme Court and District and Associate District Court Judges may only be disciplined or removed under provisions of the Constitution of the Cherokee Nation.

Section 6. Provisions as cumulative

The provisions of this act shall be cumulative to existing law.

Section 7. Severability

The provisions of this act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

Section 8. Effective Date: Emergency Declared

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this Act shall take effect immediately upon its approval and signatures.