

Cherokee Nation Code Annotated
Title 22: Criminal Procedure
Chapter 2: Prevention of Public Offenses
§ 70. Special Tribal Criminal Jurisdiction
Cite as: 22 CNCA § 70

A. The Cherokee Nation hereby exercises "Special Tribal Criminal Jurisdiction" as defined within 25 U.S.C. 1304, subject to applicable exceptions defined below.

1. Notice - habeas corpus. The Cherokee Nation has a duty to timely notify, in writing, any person or defendant detained under such authority of their rights and privileges under this section and under 25 USC § 1303.

B. Special tribal criminal jurisdiction shall apply to a non-Indian offender for criminal conduct in violation of the following covered crimes:

(1) Assault of Tribal justice personnel. The term "assault of Tribal justice personnel" means any violation of any provision of the Criminal Code of the Cherokee Nation when the violation occurs within their jurisdiction where the violation occurs that involves the use, attempted use, or threatened use of physical force against an individual authorized to act for, or on behalf of, the Cherokee Nation during, or because of, the performance or duties of that individual in-

(A) preventing, detecting, investigating, making arrests relating to, making apprehensions for, or prosecuting a covered crime:

(B) adjudicating, participating in the adjudication of, or supporting the adjudication of a covered crime;

(C) detaining, providing supervision for, or providing services for persons charged with a covered crime; or

(D) incarcerating, supervising, providing treatment for, providing rehabilitation services for, or providing reentry services for persons convicted of a covered crime.

Protected individuals under this section include, but are not limited to police officers, peace officers, or other duly appointed persons charged with the responsibility of maintaining public order, safety, and health on behalf of the Cherokee Nation as referenced in 21 CNCA § 648 and § 649 and any other applicable provision reasonably construed. Protected individuals further include employees of the Cherokee Nation Court, Office of the Attorney General, Marshal Service, and other Cherokee Nation employees or individuals authorized to provide services contained in section A, B, C, and D above.

(2) Child violence. The term "child violence" means any action which constitutes the use, threatened use, or attempted use of violence against a child, including but not limited to those outlined within 21 CNCA § 843 or other applicable statute.

(3) Dating violence. The term "dating violence" means any violation of the Criminal Code of the Cherokee Nation where the violation occurs that is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(4) Domestic violence. The term "domestic violence" means any violation of the Criminal Code of the Cherokee Nation when the violation occurs within their jurisdiction that is committed by

(A) a current or former spouse or intimate partner of the victim;

(B) a person with whom the victim shares a child in common;

(C) a person who is cohabitating with or who has cohabitated with the victim as a spouse or intimate partner; or

(D) a person similarly situated to a spouse of the victim, or relevant person under 21 CNCA § 1130 or any other applicable provision.

(5) Obstruction of justice. The term "obstruction of justice" means violation of the Criminal Code of the Cherokee Nation when the violation occurs within their jurisdiction where the violation occurs that involves interfering with the administration or due process of the laws of the Indian tribe, including any Tribal criminal proceeding or investigation of a crime: including but not limited to 21 CNCA § 540.

(6) Sex trafficking. The term "sex trafficking" means conduct within the meaning of section 1591(a) of title 18, United States Code.

(7) Sexual violence. The term "sexual violence" means any nonconsensual sexual act or contact proscribed by the Criminal Code of the Cherokee Nation when the violation occurs within their jurisdiction, including in any case in which the victim lacks the capacity to consent to the act. Such acts include but are not limited to those defined as: Rape, 21 CNCA §§ 1111; 1111.1; 1114; Lewd or indecent proposals or act as to child, 21 CNCA § 1123; Sexual Battery, 21 CN § 1123.1: or any other applicable provision reasonably construed.

(8) Stalking. The term "stalking" means engaging in a course of conduct directed at a specific person proscribed by the Criminal Code of the Cherokee Nation when the violation occurs within their jurisdiction that would:

(A) cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress; or

(B) otherwise fall within the provisions of Stalking, 21 CNCA § 1134.

(9) Protection order. In addition to Chapter 5 of the Cherokee Nation Tribal Code - "Civil Protective Orders", 22 CNCA § 60.4 "Service of Process - Ex Parte Orders - Hearing - Protective Orders - Period of Relief", and 21 CNCA § 1132 - "Protection from Domestic Abuse Act", the term "protection order"-

(A) means any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and

(B) includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendent lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

(10) Violation of a protection order. In addition to the provisions of 22 CNCA § 60.6 - "Violation of Ex Parte or Final Protective Order", the term "violation of a protection order" means an act that-

(A) occurs within the jurisdiction of the Cherokee Nation; and

(B) violates a provision of a protection order that-

(i) prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person;

(ii) was issued against the defendant;

(iii) is enforceable by the Cherokee Nation or another jurisdiction; and

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

C. The Cherokee Nation hereby declares its special tribal criminal jurisdiction over a non-Indian if the offender:

1. Resides within the jurisdiction of the Cherokee Nation; or
2. Is employed within the jurisdiction of the Cherokee Nation; or
3. Is a spouse, intimate partner, or dating partner of:

- a. A citizen of the Cherokee Nation; or

- b. An Indian who resides within the jurisdiction of the Cherokee Nation

D. The Cherokee Nation may not exercise special tribal criminal jurisdiction over an alleged offence other than obstruction of justice or assault of Tribal justice personnel if neither the defendant nor the alleged victim is an Indian or the crime takes place outside the jurisdictional boundaries of the tribe.

Historical Data

LA 12–18, eff. June 13, 2018. Amended LA 31-22, eff. September 22, 2022.