



# United States Department of the Interior

## BUREAU OF INDIAN AFFAIRS

Cherokee Agency  
Cherokee, North Carolina 28719

IN REPLY REFER TO.

Michell Hicks, Principal Chief  
Eastern Band of Cherokee Indians  
P.O. Box 455  
88 Council House Loop Cherokee, NC 28719

Dear Chief Hicks:

Attached is signed Tribal Council Resolution/Ordinance No. 82 introduced on December 3, 2009 and **Passed** on January 7, 2010. Should you have any questions regarding this matter please contact me at (828) 497-9131 extension 227.

Sincerely,

Superintendent

TABLED  
AMENDED  
PASSED  
JAN 07 2010

Cherokee Council House  
Cherokee, Qualla Boundary (NC)

Date: DEC 03 2009

ORDINANCE NO. 82 (2009)

WHEREAS, Ordinance No. 117 (2000) and Ordinance No. 391 (2000) established and subsequently amended Chapter 14, Article X, the "Sexual Offender Registration Program" of the Cherokee Code; and

WHEREAS, this Article set forth procedures and guidelines that govern the conduct of registered sex offenders on lands owned by the Eastern Band of Cherokee Indians; and

WHEREAS, the Eastern Band of Cherokee Indians recognizes a compelling interest in protecting children from the threat of sexual abuse; and

WHEREAS, The following locations are for the use, education, training, entertainment and enjoyment of children and their families, and such venues are intended to be and should be free of the dangers presented to children's health, safety and welfare by persons required to register on the Sex Offender Registry:

1. Public parks,
  2. Playgrounds,
  3. School campuses and buildings (including daycare centers),
  4. Bus stops,
  5. Activity buses,
  6. School buses,
  7. Athletic, sports and recreation facilities, fields and their parking lots,
  8. School events (including school-sponsored or employee-supervised functions or field trips, on or off school property, before, during or after school hours, including sporting events),
  9. Bathing beaches,
  10. Swimming and/or wading pools
- ; and

WHEREAS, the Eastern Band of Cherokee Indians find that the public health, safety and welfare of the community, particularly children, will be best served by prohibiting persons required to register with the Sex Offender Registry from entering and/or loitering within these locations (termed *Restricted Areas*) and to update our current laws to reflect new state and federal laws regarding sex offender registration.

NOW THEREFORE BE IT ORDAINED by the Tribal Council of the Eastern Band of Cherokee Indians assembled, at which a quorum is present, that Chapter 14, Article X. of the Cherokee Code is rescinded in its entirety and replaced with the following:~~amended as follows:~~

**Cherokee Code  
Chapter 14. Criminal Code**

**ARTICLE X. SEXUAL OFFENDERS~~S.~~ REGISTRATION PROGRAM**

**Sec. 14-50. Reserved.**

**Sec. 14-50.1. Purpose.**

The Eastern Band of Cherokee Indians recognizes that sex offenders often pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is of paramount governmental interest. Further, the Eastern Band of Cherokee Indians recognizes that local law enforcement officers' efforts to protect our community, conduct investigations, and quickly apprehend offenders who commit sex offenses are impaired by the lack of information available to law enforcement agencies about convicted sex offenders who live within the Tribe's jurisdiction. Release of information about sex offenders will further the governmental interest of public safety so long as the information released is rationally related to the furtherance of those goals.

Therefore, it is the purpose of this article to assist local law enforcement agencies' efforts to protect their communities by requiring sex offenders to register with local law enforcement agencies and to require the exchange of relevant information about sex offenders among law enforcement agencies and to authorize the access to necessary and relevant information about sex offenders to others as provided in this article.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

**Sec. 14-50.2. Definitions.**

The following definitions apply in this article:

- (1) *Division* means the Division of Criminal Statistics of the Department of Justice.
- (2) *Penal institution* means a detention facility operated under the jurisdiction of the Division of Prisons of the Department of Correction, or a county jail.
- (3) *Release* means discharged or paroled.
- (4) *Reportable offense* means conviction of, adjudicated or committed for a violation, solicitation, conspiracy or attempt to commit a violation of the following:
  - a. Cherokee Tribal Code: Section 14-20.1 (Taking indecent liberties with children); Section 14-20.2 (Aggravated sexual abuse); Section 14-20.3 (Sexual abuse);

- Section 14-20.4 (Sexual abuse of minor or ward); Section 14-30.5 (Child abuse in the first degree); Section 14-80.2 (Incest); Section 14-80.4 (Indecent exposure);
- b. Any offense against a minor prohibited by North Carolina Statutes, and all sexually violent offenses prohibited by North Carolina Statutes, including NCGS. 14-27.2 (first degree rape); NCGS 14-27.3 (Second degree rape); NCGS 14-27.4 (First degree sexual offense); NCGS 14-27.5 (Second degree sexual offense); NCGS 14-27.6 (Attempted rape or sexual offense); NCGS 14-27.7 (Intercourse and sexual offense with certain victims); NCGS 14-17.8 (Incest between near relatives); NCGS 14-190.6 (Employing or permitting minor to assist in offenses against public morality or decency); NCGS 14-190.16 (First degree sexual exploitation of a minor); NCGS 14-190.17 (second degree sexual exploitation of a minor); NCGS 14-190.17A (Third degree sexual exploitation of a minor); NCGS 14-190.18 (Promoting prostitution of a minor); NCGS 14-190.19 (Participating in prostitution of a minor); NCGS 14-202.1 (Taking indecent liberties with children);
  - c. 18 U.S.C. 2241 (Aggravated Sexual Abuse); 18 U.S.C. 2242 (Sexual Abuse); 18 U.S.C. 2243 (Sexual Abuse of a Minor or Ward); 18 U.S.C. 2244 (Abusive Sexual Contact); 18 U.S.C. 2251 (Sexual Exploitation of Children); 18 U.S.C. 2252 (Certain Activities Relating to Material Involving Sexual Exploitation of Minors); 18 U.S.C. 2252A (Certain Activities Relating to Material Constituting or Containing Child Pornography); 18 U.S.C. 2260 (Production of Sexually Explicit Depictions of a Minor for Importation into the United States).
  - d. A reportable offense shall also include all convictions or adjudications or commitments for the above offenses by any tribal, federal, or state jurisdiction, which if committed on the Cherokee Reservation or within the State of North Carolina, would have been a sex offense as defined by Chapter 14 of the Eastern Band of Cherokee Code or the North Carolina General Statutes or the United States Code ~~as described above~~.
  - e. All delinquency findings or adjudications of minors for offenses listed in subsections (4)a.--d. above, in any jurisdiction shall also be a reportable offense.
  - f. Individuals who have been released from a mental health facility or from a prison's mental health facility for treatment for any mental disorder, mental illness, mental disease, defect, or has been found not guilty or not responsible by reason of mental disease or defect for any offenses enumerated in subsections (4)a.--d. of this section. In the event that such individual is deemed legally incompetent, it shall be the responsibility of the guardian to register the individual as required by this article.
  - g. Reportable offenses must have occurred any time after March 7, 1991.
- (5) ~~Reserved for future codification.~~ Restricted Areas are areas described as public parks, playgrounds, school campuses, school buildings (including daycare centers), libraries, museums, school bus stops, activity buses, school buses, athletic, sports and recreation facilities, fields and their parking lots, school events (including school-sponsored or employee-supervised functions or field trips, on or off school property), bathing beaches, swimming and/or wading pools, or any place where it is reasonably believed that children may congregate.



- (6) *Sexually violent person* is defined as a person who has been convicted of a reportable offense as defined in this chapter, has been adjudicated delinquent for a reportable offense, or has been found not guilty of or not responsible for a sexually violent offense by reason of mental disease, defect, or illness, and who is a danger to the community because he or she suffers from a mental disorder that make it substantially probable that the person will engage in acts of sexual violence.
- (7) *Vulnerable adult* is defined as a person who is vulnerable to assault either because of the infirmities of aging or mental incompetence.
- (8) *Chief of police* shall mean the top law enforcement officer with the Cherokee Police Department.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

#### **Sec. 14-50.3. Registration.**

Registrants must register in person. A person who is a resident and who has a reportable offense shall be required to maintain immediate registration with the Cherokee Indian Police Department~~chief of police.~~ If the person moves to the Cherokee Reservation from outside this jurisdiction the person shall register within threeten days of establishing residence in the territory of the Eastern Band of Cherokee Indians or whenever the person has been present in the territory of the Eastern Band of Cherokee Indians for 15 days, whichever comes first. If the person is a current resident of territory of the Eastern Band of Cherokee Indians, the person shall register:

- (1) Within threeten days of release from a penal institution; or
- (2) In the event an individual is convicted of a reportable offense but not sentenced to a term of incarceration in any penal institution, correctional facility, detention center, mental health facility or jail, but is required to serve a term of probation, supervised release, or conditional release, the individual shall immediately register with the Cherokee Police Department if he or she intends to reside in the Cherokee territory; or
- (3) In the event that an individual is released from a mental health facility or from a prison's mental health facility for treatment as enumerated in subsection 14-50.2(4)f., such individual must register with the Cherokee Police Department within 3+0 days of release from the facility.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

#### **Sec. 14-50.4. Duration of registration requirements.**

- (a) If a person has one reportable offense, he or she shall register for thirtyten years following release from a prison, jail, correctional facility, detention center, mental health institution or release from parole or probation as enumerated in section 14-50.3.
- (b) If a person has more than one reportable offense from any court of competent jurisdiction referred to in this article, he or she shall be required to register for the remainder of the individual's natural life.

(Ord. No. 117, 3-3-2000)

**Sec. 14-50.5. Information to be provided to the Cherokee Police Department.**

- (a) The Cherokee Police Department shall maintain a registry of all persons subject to this article. The registry shall contain the following information:
  - (1) Name, aliases, and remote communication identifiers and addresses, which include all internet identifiers, internet addresses and telephone numbers.
  - (2) Social security number.
  - (3) Resident, lodging and travel information, which includes residence address, other residence information, temporary lodging information, and travel and immigration documents.
  - (4) Employment information, which include other employment information and professional license.
  - (5) School information.
  - (6) Vehicle information.
  - (7) Date of birth.
  - (8) Physical description.
  - (9) Text of registration offense.
  - (10) Criminal history and other criminal justice information.
  - (11) Current photograph.
  - (12) Fingerprints and palm prints.
  - (13) DNA sample.
  - (14) Driver's license or identification card.
- (b) All registrants are required to provide updated information whenever there is a change in any required registry information, including but not limited to, residence, address (including county), school, employment, use of vehicle, ~~and/or~~ change in name and on-line identifier. This update must be received no later than threefive calendar days after the change has occurred.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000; Ord. No. 714, 4-28-2009)

**Sec. 14-50.6. Frequency of registration.**

- (a) The covered individuals shall be subject to bi-annual registration beginning on the initial anniversary date of the initial registration date, and again every six (6) months thereafter.
- (b) The covered individuals shall provide written notice of changes of the registration information to the Cherokee Police Department within threefive days of the change.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

**Sec. 14-50.7. Duties of the Cherokee Police Department.**

- (a) The Cherokee Police Department shall maintain the registry information in an orderly manner. Such duties may be delegated to a specific division of the department.



- (b) The registry may be expunged by the Cherokee Police Department in the event that the convicted sex offender provides authenticated court documents that the conviction was overturned, reversed, set aside, or vacated.
- (c) If a registered sex offender moves to another jurisdiction, the Cherokee Indian Police Department shall inform the local law enforcement of the new jurisdiction of the change of residency.
- (d) The Police Department shall notify the individual of the need for the bi-annual update at the time of initial registration, least 20 calendar days before the anniversary date.
- (e) If a sex offender is excluded from the reservation pursuant to this article the Police Department shall:
  - (1) Escort the individual to the boundary of the reservation and remove him or her.
  - (2) Serve notice on other jurisdictions as in subsection (c) of this section.
- ~~(f) If an officer of the Cherokee Indian Police Department reasonably believes that a sex offender is in a restricted area, the officer shall require the suspected sex offender to provide his/her name, address, and telephone number. If it is established that the individual is a registered sex offender, then the office shall issue a written warning that he/she is in violation of this Article and require the person to leave the restricted area. If the person refuses to leave or is later found to be in the same restricted area, the penalties set forth in Section 14-50.10 of this Article shall apply.~~
- ~~(g) Officers of the Cherokee Indian Police Department shall be authorized to issue warnings and citations for violations of this Article and to remove registered sex offenders from restricted areas.~~
- ~~(h) Any law enforcement officer who is aware that a sex offender has committed a violation of N.C.G.S §14-208.11(a), shall immediately arrest that person in violation in accordance with N.C.G.S §15A-305, or seek an order for the person's arrest. For more information, see N.C.G.S. §14-208.11, including subsection (c) that addresses offenders that are in carcerated in, or in custody, of a local, State, private, or federal correctional facility.~~

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

**Sec. 14-50.8. Registered sex offenders' requirements and restrictions.**

Registered sex offenders shall:

- (1) Avoid contact with children under 18 and vulnerable adults. Registered sex offenders shall refrain from living in any home or residence where a child under 18 years or a vulnerable adult lives. (Exceptions may apply when the registered sex offender is himself under 18). Registered sex offenders shall not be licensed nor permitted to work in or around the care of children or vulnerable adults.
- (2) In the event a registered sex offender seeks employment which may involve some contact with children or vulnerable adults, (for example, in a fast food restaurant), ~~or in the event a registered sex offender seeks to participate in a volunteer activity which may involve some contact with children under 18 or vulnerable adults,~~ the sex offender must first notify the employer ~~or director of the volunteer activity~~ of his/her sex offender status prior to beginning such employment. It is unlawful for any offender to provide volunteer services, with or without compensation, at any place where a minor is present (N.C.G.S. § 14-208.17(a) [2006 S.L. 247]).

- (3) Sex offenders who attend schools with children under 18 or with vulnerable adults shall notify school administrators of his/her sex offender status. This must be done prior to enrollment, or, if the sex offender is already enrolled, notification must be done prior to attending any classes or school functions.
- (4) Enter and complete a mental health program specifically related to sexual offender therapy and abide by all policies and procedures of the sex offender treatment program.
- (5) Refrain from the use of illegal substances.
- (6) Participate in Alcoholic Anonymous and Narcotics Anonymous, as recommended by mental health professionals.
- (7) Provide written documentation of compliance with subsections (4) and (6) of this section to the Cherokee Indian Police Department every six months.
- (8) Provide bi-annual registration to the Cherokee Indian Police Department as required by Section 14-50.6.
- (9) Sex offenders are prohibited from public parks, playgrounds, school campuses, school buildings (including daycare centers), libraries, museums, school bus stops, activity buses, school buses, athletic, sports and recreation facilities, fields and their parking lots, school events (including school-sponsored or employee-supervised functions or field trips, on or off school property), bathing beaches, swimming and/or wading pools, or any place where it is reasonably believed that children may congregate.
- (10) Sex offenders shall not knowingly reside within 1,000 feet of the property on which any public or non-public school or child care center is located.
- (11) Offenders residence may not be used to care for a child or children.
- (12) Sex offenders are prohibited access to commercial social networking Web sites that permits minor children to become members or to create or maintain personal Web pages on the commercial social networking Web site.
- (13) It is illegal for anyone who has reason to believe that an offender is in violation of Tribal, State or Federal laws to intentionally assist the offender in eluding arrest by withholding information or failing to notify law enforcement of the offender's non-compliance, and if known, the whereabouts of the offender.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

**Sec. 14-50.9. Tribal prosecutor's enforcement power.**

- (a) The Tribal prosecutor shall be responsible for enforcing the penalty provisions of this chapter.
- (b) The Chief may appoint a special prosecutor to enforce this provision of the Eastern Cherokee Code.
- (c) A special prosecutor must be appointed if the Tribal prosecutor is a member of the immediate family of the party accused.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

**Sec. 14-50.10. ~~Penalties. Failure to register and/or comply with sex offender requirements.~~**



- (a) It shall be a crime for a sexual offender to fail to register with the Cherokee Police Department, to intentionally offer false information to the Cherokee Police Department or fail to comply with any other requirements of the Tribe's sexual offender registration program, including those requirements set out in section 14-50.8.
- (b) The penalty for violation of this section shall be as follows:
  - (1) For the first offense the offender shall be fined \$2,500.00, and imprisoned a minimum of 30 days, subject to a maximum term of imprisonment of up to six months.
  - (2) For the second and any subsequent offense the offender shall be fined \$5,000.00 and imprisoned for a minimum term of six months in jail, subject to a maximum term of one year in jail, in addition to the provisions of section 14-50.11.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000; Ord. No. 587, 2-26-01)

**Sec. 14-50.11. Exclusion for failure to register or comply with sex offender requirements.**

- (a) A sexual offender who is a Tribal member and who fails to register or maintain registry updates and changes, or fails to comply in any way with the requirements of this article, including the requirements of section 14-50.8, on two or more occasions shall be subject to exclusion from the Cherokee Indian Reservation, if at a hearing before the Tribal council, the Tribe's attorney proves by clear and convincing evidence that the individual is a sexually violent person, and any two of the following four provisions:
  - (1) It is substantially likely that the individual will re-offend.
  - (2) The individual shows no remorse.
  - (3) The individual fails to comply with provisions of the laws of the Eastern Band of Cherokee.
  - (4) The individual has not shown any progress in sex offender treatment groups or therapy.
- (b) The hearing shall be public.
- (c) The Tribe shall have the right to hire an independent psychologist or psychiatrist to prosecute this action.
- (d) If the Tribal council is satisfied that the individual is a sexually violent person the individual shall be subject to all the terms of exclusion, as enumerated in the Cherokee Code.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

**Sec. 14-50.12. Rights of tribal members subject to petition for exclusion for failure to register or for failure to comply with sex offender requirements.**

The individual shall have a right to:

- (1) Be represented by counsel, at their own expense.
- (2) Remain silent.
- (3) Present and cross-examine witnesses.
- (4) Have the hearing recorded.
- (5) Public hearing.

- (6) 45-days' written notice of the proceedings. Such notice shall be served personally. If the Tribal attorney is unable to serve notice on the individual within 20 days, the prosecutor may use publication notice in the Cherokee One Feather.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

**Sec. 14-50.13. Non-tribal members who fail to register or who fail to comply with sex offender requirements.**

A non-tribal member who fails to register or maintain registry changes and updates, or fails to comply with any other requirements included in this article, including failure to comply with the requirements of section 14-50.8, shall be subject to a forfeiture not to exceed five thousand dollars, revocation of all licenses and privileges on the Eastern Cherokee Indian Reservation, and exclusion from the reservation pursuant to chapter 2 of this Code.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

**Sec. 14-50.14. Duration of exclusion.**

- (a) An individual excluded from the reservation pursuant to this provision shall have the opportunity to petition for restoration of status of Tribal member and/or residency after ten years.
- (b) The petition for restoration of status of tribal member and/or residency shall contain information to a preponderance of the evidence that the individual is no longer sexually violent and presents no danger to the community. Hearing on a petition for restoration of status shall be at the Tribal council's discretion.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

**Sec. 14-50.15. Access to registration information.**

- (a) All information (except items listed in subsections 14-50.5(a)(4)--(7) and information relating to juvenile delinquency adjudications) obtained by the Cherokee Police Department pursuant to section 14-50.5 is public record. This information shall be available for public inspection and may be published in local newspapers and posted in public places from time to time. The Cherokee Police Department shall release any other relevant information that is necessary to protect the public concerning a specific person, but shall not release the identity of the victim of the offense that required registration under this article.
- (b) Registry information which pertains to juveniles who have been adjudicated to be delinquent shall only be provided to appropriate school officials or, upon written request, to certain groups, entities, organization, or corporations that utilizes volunteers or employees in working with, caring for, supervising or protecting children or vulnerable adults.
- (c) The Cherokee Police Department will share all registry information with law enforcement agencies from other jurisdictions.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

**Sec. 14-50.16. Prior inconsistent laws repealed.**

Any existing laws which are inconsistent with this amendment are specifically repealed.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

**Sec. 14-50.17. Severability.**

If any section of this chapter is deemed unconstitutional, the remaining provisions shall have full force and effect.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

BE IT FINALLY ORDAINED that this ordinance shall be effective upon ratification by the Principal Chief and any prior ordinance or part thereof that conflicts with this ordinance is rescinded.

*Submitted by the Office of the Attorney General*

Amendment:

Fourth “WHEREAS” paragraph, strike the “; and” and insert the following:

11. Libraries



The attached Resolution/Ordinance No. 82 dated December 3, 2009 was:

**PASSED ( X )**

**KILLED ( )**

and ratified in open Council on January 7, 2010 by 82 voting for the act  
and 0 members voting against it as follows:

VOTE	FOR	AGAINST	ABSTAIN	ABSENT	TABLE
Teresa McCoy	X				
Perry Shell	X				
Gene Crowe	X				
Mike Parker	X				
David Wolfe	X				
Alan Ensley	X				
Jim Owle	X				
Diamond Brown				X	
Adam Wachacha				X	
Bill Taylor	X				
Terri Henry	X				
Tommye Saunooke				X	
	82	0	0	18	0

  
TRIBAL COUNCIL CHAIRMAN

  
CLERK

  
PRINCIPAL CHIEF

APPROVED ( ✓ )

VETOED ( )

VETO UPHeld ( ) VETO DENIED ( )

DATE: 1-25-10

I hereby certify that the foregoing act of the Council was duly:

**PASSED ( )**

**KILLED ( )**

and ratified by Council Chairperson, Clerk, and Principal Chief of the Eastern Band of Cherokee Indians.

In testimony, whereof, I have hereunto set my hand and affixed the seal of the said Band of Indians. Superintendent, Cherokee Indian Agency.

\_\_\_\_\_  
INTERPRETED ( )

  
\_\_\_\_\_  
OMITTED ( )