

ORDINANCE NO. \_\_\_\_\_(2016)

WHEREAS, The Eastern Band of Cherokee Indians has the inherent authority to make and enforce laws within its jurisdictional boundaries and the duty to pass laws that respond to the concerns of health, welfare and safety of its people; and

WHEREAS, the unacceptable rates of death caused by the abuse and addiction to certain controlled substances, both legal and illegal, are of epidemic proportion for our community; and

WHEREAS, no one thing can be done by any government to combat the evils of substance abuse and addiction but many things must be done in order to measurably change the trajectory of the human and economic toll that substance abuse and addiction is causing in our community ; and

WHEREAS, while the Principal Chief is committed to join in the collaborative efforts addressing substance abuse and addiction through the authorities existing within daily operations of tribal programs, the Principal Chief must also encourage the reform and growth of the legal frameworks that influence the human and economic impacts that substance abuse and addiction can cause; and

WHEREAS, in an effort to take immediate steps to provide a sustainable and organized effort to accomplish the long-range goal of significantly decreasing the numbers of deaths resulting from substance abuse and addiction, the Principal Chief offers these initial changes to the laws that govern our Tribe.

NOW THEREFORE BE IT ORDAINED in council assembled, at which a quorum is present, the Cherokee Code be amended to read as follows:

**Sec. 7-3. - Powers and Duties of the Judicial Branch.**

(a) The judicial power shall be vested in the Judicial Branch. The Judicial Branch shall have the power to interpret and apply the Charter, laws, customs, and traditions of the Eastern Band of Cherokee Indians. The Chief Justice of the Supreme Court shall administer the Judicial Branch.

(b) The Judicial Branch shall develop a system of precedent based on the common law, customs, and traditions of the Eastern Band of Cherokee Indians. The Judicial Branch shall not adjudicate the same matter twice. The Judicial Branch shall have the power to assess fees and costs in accordance with law.

(1) Detention costs.

- (A) Persons who are lawfully confined to the Cherokee Detention Center, whether they are awaiting trial, sentenced after conviction or upon a lawful plea, or are sentenced as part of a probationary sentence shall be liable to the Tribe in the sum of ten dollars (\$10.00) for each 24 hours' confinement, or fraction thereof, except that a person so confined shall not be liable for this cost if the case or proceeding against him is dismissed, or if acquitted, or if judgment is arrested, or if probable cause is not found, or if the grand jury fails to return a true bill.
- (B) The costs set forth in this section are not exclusive, but are in addition to any other legal costs or fees assessed by the Court and do not prohibit the detention center from charging costs or fees for services or items sold from the within the facility or any other legal charges imposed under detention center policy.
- (C) The detention cost collected shall be used to reimburse the Tribe for general expenses incurred for housing inmates in the tribal detention facility.
- (D) Changes to the costs or fees in this section apply to costs or fees assessed or collected on or after the effective date of the change.

**Sec. 7C-3. - Jurisdiction.**

(a) The Cherokee Tribal Drug Court shall have jurisdiction over any case that is transferred by the Cherokee Court. Upon successful completion of the Cherokee Tribal Drug Court program, or at such a time when a participant of the Cherokee Drug Court becomes ineligible to continue in the program as set out in the Cherokee Tribal Drug Court policies and procedures, or after the third instance of non-compliance, the Cherokee Tribal Drug Court will transfer jurisdiction of each case back to the Cherokee Court for any final disposition. All sanctions imposed by the Cherokee Tribal Drug Court, including terms of incarceration, must be completed before the participant returns to Cherokee Trial Court.

(b) Referrals to the Cherokee Tribal Drug Court may be made by the Cherokee Court once a criminal defendant has plead guilty of or has been convicted of at least one criminal charge where alcohol or drugs are involved. Cherokee Tribal Drug Court referrals may be made as a part of a conditional sentence, a sentence that is stayed, or may be made as part of a split or suspended sentence.

(c) Once a referral is made to the Cherokee Tribal Drug Court, the participant shall be assigned to a caseworker who shall begin the eligibility process as set out in the Policy and Procedures Manual. The Cherokee Drug Court Judge shall order any ineligible individuals back to the Cherokee Trial Court for final disposition of the defendant's case(s) pursuant to the Policies and Procedures Manual. Individuals who are determined to be eligible by the Cherokee Drug Court Team may enter the Cherokee Tribal Drug Court.



#### **Sec. 14-1.8. - Imprisonment.**

The term "imprisonment" as it is used throughout the Cherokee Code shall mean confinement to the Cherokee Detention Center, any prison, jail, or lockup facility maintained by the federal government, any tribe, state, county or municipality or any facility under contract with the Tribe and any inpatient facility approved by the Tribe for treatment of substance abuse. The term imprisonment shall include any time spent on a work detail while incarcerated in the Cherokee Detention Center under guidelines that are to be developed by the Corrections Department of the Cherokee Indian Police Department. The term "imprisonment" shall also mean confinement to a local home address if the sentence is served under the Tribe's in-home confinement program. In-home confinement shall not be used on criminal offenses that involve the manufacture, sale, delivery or trafficking of a controlled substance.

#### **Sec. 14-2.3. - Solicitation.**

(a) It shall be unlawful within the territorial jurisdiction of the Eastern Band of Cherokee Indian to entice, advise, incite, order, or otherwise encourage another to commit any offense, with the intent that such other person commit an offense punishable under the laws of the jurisdiction where the conduct was to be performed.

(b) It shall be unlawful anywhere to entice, advise, incite, order, or otherwise encourage another to commit any offense, with the intent that such other person commit an offense punishable by Tribal, federal or state laws within the territorial jurisdiction of the Eastern Band of Cherokee Indians including, but not limited to, violating a tribal council resolution excluding a person from the trust lands of the Eastern Band of Cherokee Indians.

(c) Solicitation shall be punishable by the same penalties as the completed crime.

#### **Sec. 14-95.21. - Punishment levels.**

The authorized punishment for each class of penalty is as specified below:

(a) Any person subject to a class A penalty shall be imprisoned in active custody for not less than one year nor more than three years and pay a fine of not less than \$5,000.00 nor more than \$15,000.00 and shall be subject to exclusion for a period of not less than ten years nor more than life. This punishment shall not require a mandatory one year active sentence and the remainder of any sentence greater than the mandatory minimum may be suspended only if unless a condition of special probation is imposed to require the defendant to serve the remaining portion of a term greater than the mandatory one year of imprisonment of at least one year, and the imprisonment may not be spent on electronic home confinement.

(b) Any person subject to a class B penalty shall be imprisoned in active custody for not less than six months nor more than three years and pay a fine of not less than \$2,000.00, nor more than \$15,000.00 and shall be subject to exclusion for a period of not less than three years nor more than 15 years. The term of imprisonment This punishment shall require a mandatory six month active sentence and the remainder of any sentence greater than the mandatory minimum may be



suspended only if a condition of special probation is imposed to require the defendant to serve the remaining portion of a term greater than the mandatory six months. of imprisonment of at least six months.

(c) Any person subject to a class C penalty shall be imprisoned for not less than 30 days nor more than one year and pay a fine of not less than \$1,000.00, nor more than \$5,000.00 and shall be subject to exclusion for a period of not more than ten years. The term of imprisonment. This punishment shall require a mandatory 30 day active sentence and the remainder of any sentence greater than the mandatory minimum may be suspended only if a condition of special probation is imposed to require the defendant to serve the remaining portion a term greater than the mandatory 30 days. of imprisonment of at least 30 days.

(d) Any person subject to a Class D Penalty shall be imprisoned for not more than three months and pay a fine of not more than \$5,000.00. perform 24 hours of community service and pay the costs of community service in the sum of \$200.00. and shall be subject to exclusion for a period of not more than ten years.

(e) Any additional penalties required under Cherokee Law shall be imposed and the mandatory minimum fines shall be reduced appropriately to ensure any punishment imposed complies with the requirements of the Indian Civil Rights Act.

(f) Except as provided in Section 14-95.35, 14-95.36 and 14-95.37, the court may not ~~reduce or~~ defer any penalty imposed for violation of this Article ~~these statutes. The court may not reduce the punishments of any person subject to a class A or B penalty for any reason whatsoever. The Court may stay a sentence imposed under sub-paragraph (c) above and transfer the case to the Drug Court, but only after the mandatory minimum thirty (30) day sentence has been served.~~ The court may not grant a Prayer for Judgment Continued for violations under this Article ~~these statutes.~~

(g) The sentence of persons violating this article will be elevated under the provisions of Section 14-95.22, 14-95.23, and 14-95.24. Except as provided in 14-95.22(a)(v), if two or more elevating factors are found, then the person shall be subject to a class A penalty.

(h) Credit for inpatient treatment. The judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility approved by the Tribe for the treatment of substance abuse where the defendant has been accepted for admission or commitment as an inpatient but only after the mandatory minimum sentence has been served. The defendant shall bear the expense of any treatment. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced, but only when such sentence is above the mandatory minimum active sentence required. This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law.



#### **Sec. 14-95.30. - Determination of punishment.**

(a) Before determining a penalty level and imposing a sentence, the court shall ascertain the existence of any and all elevating factors presented. When considering the exact sentence to impose within the ~~range restrictions~~ of the penalty level, the court has complete discretion with regard to imposition of a penalty above the mandatory minimum and may consider any aggravating and mitigating factors which may be appropriate in the imposition of a penalty above the mandatory minimum.

(b) Consolidation of sentences. If an offender is convicted of more than one offense at the same session of court, the court may consolidate the offenses for judgment and impose a single judgment for the consolidated offenses. Any sentence imposed shall be consistent with the appropriate mandatory minimum penalty for each of the consolidated offenses. ~~level of the most serious offense.~~

#### **Sec. 14-95.37. - Transfer to Cherokee Tribal Drug Court.**

Upon the conviction of any offense under this article under which the person would be subject to Class C or D penalty, except for a conviction under 14-95.6(c) or 14-95.7(d), the court may transfer the case to Cherokee Tribal Drug Court pursuant to the provisions of Chapter 7C. Upon unsuccessful discharge from the Wellness Court program; ~~the person must complete any sentence imposed by the court, and transfer back to the Cherokee Court, the Cherokee Court shall immediately activate the sentence or the balance of the sentence that was stayed including the collection of all outstanding fines, fees and costs,~~ notwithstanding any term of imprisonment imposed by the Wellness Court. Payment of required fines shall be stayed until discharge from the Wellness Court.

#### **Sec. 15-4. – Probation Officer.**

(a) The position of Probation Officer and Community Service ~~Work Detail~~ Supervisor is hereby authorized and created.

(b) Such persons shall maintain records for all persons convicted ~~of misdemeanors~~ in the Cherokee Court who are sentenced to probation or are assigned to community service work detail as a part of their judgment and shall assign and supervise the work for all such persons.

(c) Persons assigned to work detail shall perform work for the benefit of the Tribe and community including, but not limited to: clean Police Department vehicles and grounds; clean and maintain the grounds, parking lot, and roadways to the Cherokee Hospital; clean and maintain roadsides throughout the Cherokee Indian Reservation; clean and maintain the grounds of the Cherokee Civic Center; cut and deliver wood to the elderly and invalids residing on the

Reservation, and pay the costs of community service in the sum of two hundred dollars (\$200.00).

(d) ~~The position of Probation Officer shall be funded through Community Service funds. The Probation Officer shall provide a monthly report detailing compliance with community service activity to the Prosecutor and the Chief Justice of the Cherokee Court.~~

**Sec. 15-5. - Pretrial release and adult rehabilitation program.**

(a) The Tribe shall administer a Pretrial Release and Adult Delinquent Rehabilitation Program under the supervision of the Probation Office. ~~Community Services Committee of the Tribal Council.~~

(b) The program will assume jurisdiction over and responsibility for individuals released by courts of the United States, the Tribe and the State of North Carolina.

(c) The program shall be administered in accordance with guidelines approved by the Office of Justice Services or appropriate federal agency. ~~Law Enforcement Assistance Administration.~~

**Sec. 117-42. – Cherokee Drug Commission.**

(a) The Cherokee Drug Commission is created with members consisting of the following persons:

- (1) Three Tribal Council Members appointed by Tribal Council to serve a term of two years, which shall be concurrent with the member's term of office.
- (2) The Principal Chief, or is or her proxy given to the Vice Chief, to serve a term of four years, which shall be concurrent with the executive term of office.
- (3) The Deputy Operating and Health Officers shall serve as voting members to serve a term of four years, which shall be concurrent with the executive term of office.
- (4) Three enrolled members appointed by the Principal Chief to serve a term of four years, which shall be concurrent with the executive term of office.
- (5) An enrolled member who is an elder, of at least 59½ years of age, appointed by the Principal Chief to serve a term of four years, which shall be concurrent with the executive term of office.
- (6) The director of Analenisgi.
- (7) The tribal prosecutor.
- (8) The Chief of the Cherokee Indian Police Department.



- (9) A member of the Wellness Court team.
- (10) The director of Public Safety.
- (11) The chief operating officer of the Cherokee Indian Hospital or his designee.
- (b) The Board shall elect from its members a Chairman, Vice-Chairman, a Secretary and such other officers as it may desire.
- (c) The appointing authority may remove any member of the Commission for cause.
- (d) The members of the Commission shall not receive compensation for their services, but shall be entitled to compensation for expenses, including traveling expenses incurred in the discharge of their duties.
- (e) ~~The commission shall coordinate the Tribal response to abuse and sale of control substances within the territory of the Eastern Band of Cherokee Indians. The purpose and authority of the Commission is to identify specific long range outcomes concerning substance abuse and addiction within the territory of the Eastern Band of Cherokee Indians and to achieve those outcomes by:~~
  - (1) Identifying and requiring stakeholder tribal agencies to meet monthly and produce monthly data reports deemed relevant by the commission to analyze the performance of the strategies that are taking place within tribal stakeholder agencies to combat substance abuse and addiction; and
  - (2) Measuring and making public each January and June the results of the performance of the strategies, and progress being made towards the long range outcomes identified by the commission; and
  - (3) Continuously monitoring, measuring, studying, planning and coordinating effective Tribal responses to achieve the identified long range outcomes.
- (f) The commission shall also create joint budget requests and grant applications to these ends.

BE IT FINALLY ORDAINED that this ordinance shall become effective when ratified by the Principal Chief and that all ordinances that are inconsistent with this law are rescinded.

Submitted by: Principal Chief, Patrick Lambert