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CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: AUG 01 2019

ORDINANCE NO. 687 (2019)

WHEREAS, the Tribe's Juvenile Code, codified at Cherokee Code Chapter 7A, gives the Cherokee Court exclusive, original jurisdiction over cases involving Indian juveniles who are charged with violating Tribal law, and the court is required to retain jurisdiction in certain cases (C.C. § 7A-3; C.C. § 7A-4); and

WHEREAS, a juvenile is defined as "any person who is less than 18 years of age and is not married, emancipated or a member of the armed services of the United States" (C.C. § 7A-2); and

WHEREAS, C.C. § 7A-4, which governs when the court shall retain jurisdiction, currently cuts off jurisdiction when the violator reaches 18 years of age, and C.C. § 7A-38 states when the court can transfer jurisdiction to trial court for trial as an adult; and

WHEREAS, the abrupt age cut-off in C.C. § 7A-4 creates several problems: it creates a jurisdictional gap and prevents the violator from having the benefit of juvenile code procedures if someone commits a crime shortly before their 18th birthday but that crime is not discovered until after their 18th birthday; it often does not give the juvenile offender time to complete diversion programs; and it often does not give the juvenile offender time to complete treatment programs and obtain other helpful services; and

WHEREAS, Tribal juveniles will be better served if C.C. § 7A-4 and C.C. § 7A-38 are amended to better express when and for how long the Court will retain jurisdiction.

NOW THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Tribal Council assembled, at which a quorum is present, that

Sec. 7A-4. - Retention of jurisdiction.

(a) When the court obtains jurisdiction over a juvenile who is alleged to be delinquent for an offense committed before the juvenile reached 16 years of age, jurisdiction shall continue until terminated by order of the court, or, until the delinquent juvenile or undisciplined juvenile reaches his 18th birthday, except as provided otherwise in this section.

(b) When the court obtains jurisdiction over a juvenile who is alleged to be delinquent for an offense committed while the juvenile was at least 16 years of age but less than 17

1 years of age, jurisdiction shall continue until terminated by order of the court or until
2 the juvenile reaches 19 years of age.

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4 (c) When the court obtains jurisdiction over a juvenile who is alleged to be delinquent for
5 an offense committed while the juvenile was at least 17 years of age but less than 18
6 years of age, jurisdiction shall continue until terminated by order of the court or until
7 the juvenile reaches 20 years of age.

8
9 ~~(d) The court has continuing jurisdiction over a delinquent juvenile who is in custody and~~
10 ~~over proceedings to determine whether a delinquent juvenile is on probation or who is~~
11 ~~under the post-release supervision of the court has violated the terms of the~~
12 ~~delinquent juvenile's probation or the delinquent juvenile's post-release supervision.~~
13 ~~In addition, t~~The court retains jurisdiction over the parent, guardian or custodian of a
14 juvenile who is under the jurisdiction of the court pursuant to this section if the
15 parent, guardian or custodian has been served with a summons pursuant to section
16 7A-18.

17
18 (e) When the court has not obtained jurisdiction over a juvenile before the juvenile
19 reaches 18 years of age, for a felony and any related misdemeanors the juvenile
20 allegedly committed on or after the juvenile's 14th birthday and before the juvenile's
21 18th birthday, the court has jurisdiction for the sole purpose of conducting
22 proceedings pursuant to C.C. § 7A-38 and either transferring the case to the trial court
23 so the juvenile may be tried as an adult or dismissing the petition.

24
25 Sec. 7A-38. - Transfer of jurisdiction of juvenile.

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27 After notice, hearing and a finding of probable cause, the court may transfer jurisdiction
28 of a juvenile to the trial court if the juvenile who is was 14 years of age or older at the time he
29 allegedly committed an offense which would be a felony or a motor vehicle offense if committed
30 by an adult. If the alleged felony constitutes a capital offense, the Judge shall transfer the case to
31 the federal court for trial as in the case of adults.

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

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39 *Submitted by the Prosecutor's Office*