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Cherokee Council House
Cherokee, North Carolina

AUG 01 2019

Date

ORDINANCE NO. 689 (2018)

WHEREAS, the Charter and Governing Document authorizes and empowers the Eastern Band of Cherokee Indians (EBCI) Tribal Council to adopt laws and regulations for the general government of the Tribe. Charter and Governing Document, sect. 23 (Sept. 5, 1995) *see also* C.C. §117-10.

WHEREAS, the EBCI Tribal Council constitutes the Eastern Band of Cherokee Indian's Legislative Branch of government. C.C. §117-10.

WHEREAS, Tribal Council recognizes that deaths due to the opioid epidemic are devastating tribal families, and;

WHEREAS, Tribal Council finds that the legal distribution of opioids should only be through a prescription issued for a legitimate medical purpose, and;

WHEREAS, there needs to be effective intervention by the criminal justice system to hold illegal drug dealers accountable for criminal conduct that results in death.

NOW, THEREFORE, BE IT ORDAINED by the Eastern Band of Cherokee Indians in Tribal Council assembled, at which a quorum is present that the Tribal Council of the Eastern Band of Cherokee Indians amends Cherokee Code, Ch. 14, Article IX, Crimes of Bodily Injury, as follows in EXHIBIT A.

BE IT FURTHER ORDAINED the provisions of the Ordinance which amend or adopt new sections of the Cherokee Code shall be codified by the Department of Justice. The Department of Justice shall incorporate such amended provisions in the next codification of the Cherokee Code.

BE IT FURTHER ORDAINED should any provisions of this Ordinance be determined invalid by the Cherokee Supreme Court, or the Cherokee Court without appeal to the Cherokee Supreme Court, or any other court of competent jurisdiction, those portions of this Ordinance which are not determined invalid shall remain the law of the Eastern Band of Cherokee Indians.

BE IT FINALLY ORDAINED that all ordinances inconsistent with this ordinance are rescinded, and that this ordinance shall become effective when ratified by the Principal Chief or Vice-Chief. Charter and Governing Document, sect. 12 (Oct. 8, 1986).

Submitted by: Albert Rose, Birdtown Representative

Cherokee Code

Chapter 14 – CRIMINAL LAW

ARTICLE IX. – CRIMES OF BODILY INJURY

Sec. 14-40.42. – Death by distribution of certain controlled substances; aggravated death by distribution of certain controlled substances; penalties.

(a) Death by Distribution of Certain Controlled Substances. – A person is guilty of death by distribution of certain controlled substances if all of the following requirements are met:

- (1) The person unlawfully sells and delivers at least one certain controlled substance to the victim.
- (2) The ingestion of the certain controlled substance or substances causes the death of the user.
- (3) The person's unlawful sale and delivery of the certain controlled substance or substances was the proximate cause of the victim's death.
- (4) The person did not act with malice.

(b) Aggravated Death by Distribution of Certain Controlled Substances. – A person is guilty of aggravated death by distribution of certain controlled substances if all of the following requirements are met:

- (1) The person unlawfully sells and delivers at least one certain controlled substance to the victim.
- (2) The ingestion of the certain controlled substance or substances causes the death of the user.
- (3) The person's unlawful sale and delivery of the certain controlled substance or substances was the proximate cause of the victim's death.
- (4) The person did not act with malice.

1 (5) The person has a previous conviction under this section, C.C. 14-95.6,
2 14-95.23, or trafficking in violation of C.C. 14-95.9, or a prior conviction
3 in any federal or state court in the United States that is substantially
4 similar to an offense listed, within seven years of the date of the offense.
5 In calculating the seven-year period under this subdivision, any period of
6 time during which the person was incarcerated in a local, state, or federal
7 detention center, jail, or prison shall be excluded.

8 (c) Certain Controlled Substance. – For the purposes of this section, the term "certain
9 controlled substance" includes any opium, opiate, or opioid; any synthetic or
10 natural salt, compound, derivative, or preparation of opium, opiate, or opioid;
11 cocaine or any other substance described in N.C.G.S. 90-90(1)(d), adopted in C.C.
12 14-95.4(a); methamphetamine; a depressant described in N.C.G.S. 90-92(a)(1),
13 adopted in C.C. 14-95.4(a); or a mixture of one or more of these substances.

14 (d) Lesser Included Offense. – Death by distribution of certain controlled substances
15 constitutes a lesser included offense of aggravated death by distribution of certain
16 controlled substances in violation of this section.

17 (e) Samaritan Protection. – A person shall not be prosecuted for any of the above
18 offenses if all of the following requirements and conditions are met:

19 (1) The person sought medical assistance for an individual experiencing a
20 drug-related overdose by contacting the 911 system, a law enforcement
21 officer, or emergency medical services personnel.

22 (2) The person acted in good faith when seeking medical assistance, upon a
23 reasonable belief that he or she was the first to call for assistance.

24 (3) The person provided his or her own name to the 911 system or to a law
25 enforcement officer upon arrival.

26 (4) The person did not seek the medical assistance during the course of the
27 execution of an arrest warrant, search warrant, or other lawful search.

28 (5) The evidence for prosecution of the offenses listed above was obtained as
29 a result of the person seeking medical assistance for the drug-related
30 overdose.

1 (f) Unlawful Distribution. – For purposes of this section, issuing a valid prescription
2 for a controlled substance for a legitimate medical purpose by an individual
3 practitioner acting in the usual course of professional practice is not unlawful
4 distribution.

5 (g) Punishment. – The following punishment shall apply to the offenses set forth in
6 this section:

7 (1) Death by distribution of certain controlled substances shall be punishable
8 by a fine of not more than \$15,000.00, by a term of imprisonment not to
9 exceed three years; exclusion for a period not less than ten years nor more
10 than life; or any combination of them.

11 (2) Aggravated death by distribution of certain controlled substances shall be
12 punishable by a fine of not more than \$15,000.00, by a term of
13 imprisonment not to exceed three years, exclusion for a period of not less
14 than one year nor more than life; or any combination of them.

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16 **Sec. 14-40.432. – Causing a suicide.**

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18 **Sec. 14-40.443. – Aiding or soliciting a suicide.**

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