

# TABLED

CHEROKEE COUNCIL HOUSE  
CHEROKEE, NORTH CAROLINA

Date: MAR 11 2021

ORDINANCE NO.: 391 (2021)

*An Ordinance Amending Chapter 122 Mental Health Law.*

WHEREAS, the Eastern Band of Cherokee Indians, as a federally recognized Indian tribe, has the inherent sovereign authority to make its own laws to govern activities on Tribal lands; and

WHEREAS, the Cherokee Hospital, the Cherokee Police Department and the Cherokee Court have been carrying out the law and process under the Tribe's mental health law in Chapter 122 since the new mental health crisis unit began operations in January 2021; and

WHEREAS, there are a few modifications to the law that will further enhance the safety and dignity of those in need of services at the crisis unit; and

WHEREAS, after consulting with the major service stakeholders of the mental health crisis system the following amendments to Chapter 122 are requested.

NOW THEREFORE BE IT ORDAINED, by the Tribal Council of the Eastern Band of Cherokee Indians, in Council assembled at which a quorum is present, that Tribal Council hereby amends Chapter 122 of the Cherokee Code as set forth in Exhibit 1, attached.

BE IT FINALLY ORDAINED, that all ordinances inconsistent with this ordinance are rescinded, and this ordinance shall become effective upon ratification by the Principal Chief.

*Submitted by: Office of the Attorney General*

1  
2 **EXHIBIT 1**  
3

4 **Chapter 122**  
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6  
7 **Sec. 122- 1. Title and policy**  
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10 (b) *Voluntary Treatment.* It is the policy of the Eastern Band of Cherokee Indians that any  
11 individual who is a beneficiary of the Tribe's health system may seek voluntary treatment  
12 for mental health and substance abuse disorders and diseases from Tribal facilities and  
13 programs and that such facilities and programs will have an array of services to treat and  
14 care for patients with mental health and substance abuse diagnosis as well as a system of  
15 coordination with State and other local resources that all citizens of the State of North  
16 Carolina may access.  
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18 (b1) Discharge. Should a patient admitted to the facility under (b) request discharge from  
19 the facility and should the treating physician determine that it is more likely than not that  
20 the patient's safety will be endangered as a result of immediate discharge, the treating  
21 physician is authorized to delay discharge from the facility for no more than hours 72 in  
22 order to assess the need for admission under Article V of this chapter.  
23

24  
25 **Sec. 122-502. First Examination.**  
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27  
28 (c) *Minimum factors in examination.* Examination by a commitment examiner shall include  
29 an assessment of at least all of the following with respect to the respondent patient:

- 30 (1) Current and previous mental illness and ~~mental retardation~~ intellectual or  
31 developmental delay or disability including, if available, previous treatment  
32 history;  
33 (2) Dangerousness to self, others, or in need of treatment as defined in Article I of this  
34 Chapter;  
35 (3) Ability to survive safely without inpatient commitment, including the availability  
36 and willingness of supervision from family, friends or others confirmed and  
37 specified by name in the examination findings; and  
38 (4) Capacity to make an informed decision concerning treatment.  
39

40 (d) *Examiner's findings after first examination.* After the conclusion of the first examination  
41 the commitment examiner must:

- 42 a. Make a finding in the examination report that the respondent patient is or is not  
43 mentally ill or a substance abuser;  
44 b. Make a finding in the examination report that the respondent patient is or is not  
45 dangerous to self, as defined in §122-2(c)(1),(2), (3), or (4) or dangerous to others,  
46 as defined in §122-2(d)(1); and

- 1 c. Make a finding that the respondent patient is or is not known or examiner does or  
2 does not reasonably believe the respondent patient to be ~~mentally retarded~~  
3 intellectually or developmentally delayed or disabled, this finding shall also be  
4 shown in the examination report.  
5

6 (e) Examiner's duties after first examination.  
7

- 8 a. If the commitment examiner does not find that the respondent patient is either  
9 mentally ill or a substance abuser and is either a danger to self or others, then the  
10 examiner has the duty to so note these findings in the examination report and release  
11 the respondent patient from the examination. §122-502(f) and §122-502(h) shall  
12 apply as well as §122-502(j).  
13  
14

15 **Sec. 122-503. Second Examination.**  
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17

18 (c) Duties of commitment examiner after second examination. The same minimum factors in  
19 §122-502(c) apply to the second examination. After the conclusion of the second  
20 examination the commitment examiner must:

- 21 (1) Make a finding in the examination report that the respondent patient is or is not  
22 mentally ill or a substance abuser;  
23 (2) Make a finding in the examination report that the respondent patient is or is not  
24 dangerous to self, as defined in §122-2(c)(1),(2), (3), or (4) or dangerous to others,  
25 as defined in §122-2(d)(1); and  
26 (3) Make a finding that the respondent patient is or is not known, or examiner does or  
27 does not reasonably believe the respondent patient to be ~~mentally retarded~~  
28 intellectually or developmentally delayed or disabled, this finding shall also be  
29 shown in the examination report.  
30

31 (h) Transport from facility after ~~first and second examination~~ termination of case or upon  
32 release from a non-tribal facility. If proceedings are terminated by the first or second  
33 commitment examiner, or if outpatient commitment is recommended after first or second  
34 examination, or if a respondent is released from treatment from a non-tribal facility the  
35 person designated in the custody order to provide transportation shall, with respondent's  
36 consent, return the respondent to the respondent's regular residence on tribal trust land, or  
37 within a reasonable distance from tribal land or the transportation route being used or, with  
38 the respondent's consent, to the home of a consenting individual ~~located on tribal lands~~ and  
39 the respondent shall be released from custody. When a law enforcement officer is  
40 transporting the respondent, law enforcement may determine what is a reasonable distance  
41 from tribal land or the route of transportation. Law enforcement may also return the  
42 respondent to any other location requested by respondent, such as the location of  
43 respondent's vehicle. In the event none of these options are available to respondent due to  
44 respondent's residence being located at an unreasonable distance from tribal land, law  
45 enforcement may deliver respondent to any other reasonable location such as a shelter for  
46 the unhoused or the location where custody was originally obtained.