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Cherokee Council House
Cherokee North Carolina

Date: FEB 03 2022

Ordinance No.: 143 (2021)

An ordinance to establish rights of victims of crime in a new Chapter 15C of the Cherokee Code.

WHEREAS, the laws of the Eastern Band of Cherokee Indians are silent on the rights victims of crimes; and

WHEREAS, while efforts by law enforcement and prosecution to keep victims informed and engaged in the investigation, charging and dispositions of criminal cases are established in practice it is important to codify both the legal rights of victims and minimal procedural standards for the various law enforcement agents of the Tribe to guarantee these rights to victims of crime; and

WHEREAS, should additional resources and training be necessary for the administration of this law by law enforcement and prosecutors of the Tribe such resources should be identified and justified so that these important legal rights can be accommodated and fostered within the criminal justice system.

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 C.C. Chapter 15C is established to read as follows:

15C-1 Basic Rights of Victims of Crime.

(a) Purpose. It is the policy of the Eastern Band of Cherokee Indians to ensure that the criminal justice system's administrative components work together for the purpose of providing victims of crime every opportunity to engage with the justice system at each stage of criminal investigation, prosecution, trial process and custody proceedings and that victims are treated with dignity and respect during each phase of the criminal justice process.

(b) Basic protections. Each law enforcement agency, the Office of the Tribal Prosecutor, the Cherokee Court, and the Cherokee Department of Corrections, shall assure that each agency's training manual and operational protocols include specific steps for how the agency will inform victims of their minimum rights and protections as victims. Victims shall have the following minimum rights and protections:

(1) To be provided information regarding immediate medical assistance when needed and to not be detained for an unreasonable length of time before having such medical assistance administered.

(2) To be contacted by the Office of the Prosecutor and provided information about available services to assist the victim with resources to ameliorate the impact of the crime; provided information about protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts and receive such protection when requested; and provided

- 44 information about any other rights that this Chapter affords victims of crimes.
- 45 (3) To be informed that testimony as to one's home address is not relevant in every case, and that
46 the victim or witness may request the prosecutor to object to that line of questioning when
47 appropriate.
- 48 (4) The Office of the Prosecutor shall offer the victim the opportunity to reasonably confer with an
49 attorney from the prosecutor's office to obtain the views of the victim about, at a minimum,
50 dismissal, plea or plea negotiation, sentencing, and any pretrial diversion programs.
- 51 (5) To have any stolen or other personal property expeditiously returned by law enforcement
52 agencies when it is no longer needed as evidence and the property's return would not impede an
53 investigation or prosecution of the case. When feasible, all such property, except weapons, currency,
54 contraband, property subject to evidentiary analysis, and property whose ownership is disputed,
55 should be photographed and returned to the owner within a reasonable period of time of being
56 recovered by law enforcement officials.
- 57 (6) To be provided appropriate employer intercession services to seek the employer's and
58 employee's cooperation with the criminal justice system and minimize the employee's loss of pay
59 and other benefits resulting from such cooperation whenever possible.
- 60 (7) To be provided, whenever practical, a secure waiting area during court proceedings that does
61 not place the victim in close proximity to defendants and families or friends of defendants.
- 62 (8) To be informed how to apply for and receive restitution.
- 63 (9) To be informed of the right to be present throughout the entire trial of the defendant, subject to
64 the right of the court to sequester witnesses.
- 65 (10) To be given the opportunity through notice of hearing and upon written request of victim, to
66 be present during the final disposition and sentencing phase of the case.
- 67 (11) To be notified, whenever possible, that a court proceeding to which the victim or witness has
68 been subpoenaed will not occur as scheduled.
- 69 (12) To be given the opportunity to prepare a victim impact statement for consideration by the court.
- 70 (13) To be provided information about the plea-bargaining procedures, and prior notice of plea
71 negotiations in the cases where victim has requested in writing to have notice and an opportunity to
72 be informed by the prosecutor about plea negotiations with the accused and the right to be present
73 and heard by the court when the prosecutor recommends a plea bargain to the court.
- 74 (14) To be informed that civil remedies may be available and that statutes of limitation apply in
75 civil cases.
- 76 (15) After contact, pursuant to (2) above, upon the victim's written request, to be notified before a
77 court proceeding is held at which the release of the offender from tribal detention is considered, if
78 the crime for which the offender was placed in custody is a crime of violence, sexual in nature, or
79 would be deemed a major crime under 18 USC 1153 regardless if the crime was charged and
80 prosecuted as a tribal or federal crime.
- 81 (16) The judge, in any court proceeding subject to victim's rights as stated in this Chapter, shall

82 inquire as to whether the victim is present and wishes to be heard. If the victim is present and wishes
83 to be heard, the court shall grant the victim an opportunity to be reasonably heard. The right to be
84 reasonably heard may be exercised, at the victim's discretion, through an oral statement, submission
85 of a written statement, or submission of an audio or video statement.

86 (17) Upon the victim's written request, to be notified if the offender escapes from custody of the
87 detention center or law enforcement or when the offender is released from custody of the detention
88 center if the crime for which the offender was placed in detention is a crime of violence, sexual in
89 nature, or would be deemed a major crime under 18 USC 1153 regardless if the crime was charged
90 and prosecuted as a tribal or federal crime.

91 (18) Family members of a homicide victim are offered all the guarantees in this section, except
92 those in subdivision (1).

93 (19) For each crime of a sexual nature or crimes that would be major crimes under 18 USC 1153
94 regardless if the crime was charged and prosecuted as a tribal or federal crime, the Tribe's
95 prosecutor shall manage the information from this or multiple jurisdictions in which these crimes
96 may be prosecuted, and when any agency with authority to investigate and bring criminal charges
97 declines to investigate or bring criminal charges in an alleged case of sexual assault, molestation,
98 abuse or any crime of a sexual nature or crimes that would be major crimes under 18 USC 1153,
99 the Tribe's prosecutor shall provide to that person, in writing, the reasons why the agency did not
100 pursue the investigation or charge a crime and when there is concurrent jurisdiction of the Tribe and
101 the United States to investigate and charge a crime, the Tribe's prosecutor shall ensure the
102 declination letters are issued from both law enforcement authorities under the guidelines issued by
103 the United States Department of Justice.
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105 (c) No cause of action. Nothing in this section shall be construed to create a cause of action for failure to
106 comply with the requirements described in this section. However, victims of crime shall be afforded the
107 right to complain in writing that his/her rights under this Chapter were not offered or fully realized. Such
108 written complaints shall be made and copied to the Attorney General, the Chief of Police, and the Chief
109 Justice who shall review and address written complaints together, as stakeholders of the justice system,
110 and take any actions necessary to correct and improve agency responses to victims.

111 15C-2. Definitions.

112 (a) The following definitions apply in this Chapter:

113 (1) Accused.--A person who has been arrested and charged with committing a crime covered by
114 this Chapter.

115 (2) Arresting, investigation or lead law enforcement agency.--The Cherokee Indian Police
116 Department, any other law enforcement agency of the Eastern Band of Cherokee Indians and if an
117 arrest is made by an outside agency such as the Federal Bureau of Indian Affairs or a State law
118 enforcement agency, then the Cherokee Indian Police Department shall notify the victim of the
119 crime of such arrest and refer the victim to the Prosecutor's office where the victim's rights to be
120 informed and participate will be coordinated between the Tribe and the non-tribal prosecuting
121 agency .

122 (3) Court proceeding.--A critical stage of the post-arrest process heard by a judge in open court
123 involving a plea that disposes of the case or the conviction, sentencing, or release of the accused,
124 including the hearings for reductions in bond or for release from custody or any civil or criminal
125 case arising from a domestic violence incident where criminal charges or civil protection orders
126 have been issued.

127 (4) Custodial agency.--The Cherokee Detention Center or any detention center contracted for
128 services by the Cherokee Indian Police Department to house an inmate under tribal authority.

129 (5) Family member.--A spouse, child, parent, guardian, legal custodian, sibling, or grandparent of
130 the victim. The term does not include the accused.(6) Law Enforcement Officers.—All sworn law
131 enforcement officers employed by the Eastern Band of Cherokee Indians.

132 (7) Victim.--A person against whom there is probable cause to believe an offense that qualifies
133 under this Chapter has been committed against the person.

134 (A) If the victim is a minor or is legally incapacitated, a parent, guardian, or legal custodian
135 may assert the victim's rights under this Chapter. The accused may not assert the victim's rights.
136 If the victim is deceased, then a family member, in the order set forth in the definition contained
137 in this section, may assert the victim's rights under this Chapter, except that the guardian or legal
138 custodian of a deceased minor has priority over a family member.

139 (B) An individual entitled to exercise the victim's rights as the appropriate family member
140 in accordance with this section may designate any family member to act on behalf of the victim.

141 (C) An individual who, in the determination of the prosecutor, would not act in the best
142 interests of the victim shall not be entitled to assert or exercise the victim's rights. An individual
143 may petition the court to review this determination by the prosecutor.

144 15C-3. Evidence of victim impact.

145 (a) Right to offer statement. A victim has the right to offer admissible evidence of the impact of the crime,
146 which shall be considered by the court or jury in sentencing the defendant. The evidence may include the
147 following:

148 (1) A description of the nature and extent of any physical, psychological, or emotional injury
149 suffered by the victim as a result of the offense committed by the defendant.

150 (2) An explanation of any economic or property loss suffered by the victim as a result of the offense
151 committed by the defendant.

152 (3) A request for restitution.

153 (b) Statements not offered. No victim shall be required to offer evidence of the impact of the crime. No
154 inference or conclusion shall be drawn from a victim's decision not to offer evidence of the impact of the
155 crime. At the victim's request and with the consent of the defendant, a representative of the district
156 attorney's office or a law enforcement officer may proffer evidence of the impact of the crime to the court.

157 Sec. 15C-4. Post-trial responsibilities.
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159 (a) Case summary. Within 30 days after the final court proceeding in the case, the Office of the Prosecutor
160 shall notify the victim that has requested in writing, a written account, of:

161 (1) The final disposition of the case.

162 (2) The crimes of which the defendant was convicted.

163 (3) The defendant's right to appeal, if any.

164 (4) The telephone number of offices to contact in the event of nonpayment of restitution by the
165 defendant.

166 (b) Notice of appeal. Upon a defendant's giving notice of appeal to the Cherokee Supreme Court, the
167 Office of the Prosecutor shall provide the victim that has requested in writing with the following:

168 (1) A clear and concise explanation of how the appellate process works, including information about
169 possible actions that may be taken by the appellate court.

170 (2) Notice of the date, time, and place of any appellate proceedings involving the defendant. Notice
171 shall be given in a manner that is reasonably calculated to be received by the victim prior to the date
172 of the proceedings.

173 (3) The final disposition of an appeal.

174 (c) Right to be present at appeal. Although the victim does not have a right to be heard, the victim is
175 permitted to be present at any appellate proceeding that is an open hearing.

176 (d) Rights at new trials. If the defendant's conviction is overturned, and the Office of the Prosecutor
177 decides to retry the case or the case is remanded to Cherokee Court for a new trial, the victim shall be
178 entitled to the same rights under this Chapter as if the first trial did not take place.
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180 Sec. 15C-5. Responsibilities of the Cherokee Detention Center.

181 (a) Notice of release. A form shall be included with any court order including but not limited to the final
182 judgment and commitment to custody that includes a victim's contact information and whether or not the
183 victim seeks to exercise their right of notification of the release or hearing for release of the accused, or
184 when the victim has otherwise filed a written request for notification with the Cherokee Detention Center,
185 the Detention Center shall notify the victim of:

186 (1) The projected date by which the defendant can be released from custody. The calculation of the
187 release date shall be as exact as possible, including earned time and disciplinary credits if the
188 sentence of imprisonment exceeds 90 days.

189 (2) This notification shall include notice that the inmate's custody status may lead to the inmate's
190 participation in one or more community-based programs such as work release or supervised leaves
191 in the community.

192 (3) The defendant's escape from custody, within 72 hours, except that if a victim has notified the
193 agency in writing that the defendant has issued a specific threat against the victim, the agency shall
194 notify the victim as soon as possible and within 24 hours at the latest.

195 (5) The defendant's capture, within 24 hours.

196 (6) The date the defendant is scheduled to be released from the facility. Whenever practical, notice
197 shall be given 60 days before release. In no event shall notice be given less than seven days before
198 release.

199 (7) The defendant's death.

200 (b) Time to inform detention facility. Notifications required in this section shall be provided within 60
201 days of the date the custodial agency takes custody of the defendant or within 60 days of the event
202 requiring notification, or as otherwise specified in subsection (a) of this section.

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205 Sec. 15C-6. Responsibilities of the Cherokee Marshall Service.

206 (a) The Cherokee Marshall Service shall notify the victim of:

207 (1) The defendant's regular conditions of probation or post-release supervision, special or added
208 conditions, supervision requirements, and any subsequent changes.

209 (2) The date and location of any hearing to determine whether the defendant's supervision should
210 be revoked, continued, modified, or terminated.

211 (3) The final disposition of any hearing referred to in subdivision (2) of this subsection.

212 (4) The defendant's absconding supervision, within 72 hours.

213 (5) The capture of a defendant described in subdivision (6) of this subsection, within 72 hours.

214 (6) The date when the defendant is terminated or discharged.

215 (7) The defendant's death.

216 (b) Time to inform victim. Notifications required in this section shall be provided within 30 days of the
217 event requiring notification, or as otherwise specified in subsection (a) of this section.

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220 15C-7. Responsibilities of Law Enforcement Officers.

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222 (a) Officer duty to document family relationships. In instances where law enforcement officers respond to a call
223 involving a relative by blood or marriage, the officer shall note the relationship in the case report or incident
224 report. The supervisor reviewing the report shall review the report for accuracy and will ensure that the
225 appropriate action has been taken with regard to any potential bias inherent or perceived by the nature of the
226 relationship between an accused or a perpetrator.

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228 (b) Officer duty to inform. As soon as practicable but within 72 hours after identifying a victim covered by this
229 Chapter, law enforcement shall provide the victim with at least the following information in writing:

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231 (1) The availability of medical services, if needed.

232 (2) The address and telephone number of the Office of the Tribal Prosecutor or the State's
233 District Attorney's office that will be responsible for prosecuting or coordinating the
234 prosecution of the victim's case.

- 235 (3) The name and telephone number of the investigating law enforcement agency employee
236 whom the victim may contact if the victim has not been notified of an arrest in the victim's
237 case within six months after the crime was reported to the law enforcement agency.
238 (4) Information about an accused's opportunity for pretrial release.
239 (5) The name and telephone number of the detention center employee whom the victim may
240 contact to find out whether the accused has been released from custody.
241 (6) A list of each basic right enumerated in section 15C-1(b).
242 (7) Information about any other rights that may be afforded to victims by law.
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244 (c) Within six (6) hours after the arrest of a person believed to have committed a crime covered by this
245 Chapter, the arresting law enforcement officer shall inform the investigating law enforcement officer
246 of the arrest. Following receipt of this information, the investigating law enforcement officer or the
247 officer's designee shall notify the victim of the arrest within an additional 48 hours.
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249 (d) Within 48 hours after receiving notification from the arresting law enforcement agency that the
250 accused has been arrested, the investigating law enforcement agency shall also forward to the Tribal
251 Prosecutor's Office the defendant's name and the victim's name, address and telephone number or
252 other contact information, unless the victim refuses to disclose any or all the information, in which
253 case the investigating law enforcement agency shall so inform the Tribal Prosecutor's Office.
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256 (e) Upon receiving the information in subsection (b) of this section, the victim shall indicate on a form
257 created by the Tribal Prosecutor's Office and utilized by law enforcement, whether the victim wishes
258 to be informed by the investigating law enforcement agency on the status of the accused during the
259 pretrial process. If the victim elects to receive further notices during the pretrial process, the victim
260 shall return the form to the investigating law enforcement agency within 10 business days of receipt
261 of the form. The victim shall be responsible for notifying the investigating law enforcement agency
262 of any changes in the victim's name, address, and telephone number and this form with any updates
263 of information shall be promptly forwarded to the Office of the Prosecutor.
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265 (f) Upon receiving a form from the victim pursuant to subsection (e) of this section, the Tribal
266 Prosecutor's Office will use this information to contact the victim for case development and to
267 facilitate compliance with the victim's preferences regarding notification by the Prosecutor's Office.
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271 BE IT FINALLY ORDAINED that all ordinances that are inconsistent with this ordinance are rescinded, and that
272 this ordinance shall become effective when ratified by the Principal Chief.
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274 Submitted by: Hannah Smith, Office of the Attorney General