



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Cherokee Agency
Cherokee, North Carolina 28719

IN REPLY REFER TO.

Michell Hicks, Principal Chief
Eastern Band of Cherokee Indians
P.O. Box 455
88 Council House Loop Cherokee, NC 28719

Dear Chief Hicks:

Attached is signed Tribal Council Resolution No. **144** **Jan. 7, 2008** Should you have any questions regarding this matter please contact me at (828) 497-9131 extension 227.

Sincerely,

Superintendent

PASSED

Cherokee Council House
Cherokee, Qualla Boundary (NC)

Date: JAN 07 2008

RESOLUTION NO. 144 (2008)

WHEREAS, the Eastern Band of Cherokee Indians has the sovereign authority to exclude persons from lands of the Eastern Band in order to protect the integrity, law and order on Tribal lands and territory or the welfare of the members of the Tribe; and

WHEREAS, the Tribal Council has codified its authority to exclude persons from the lands of the Eastern Band at Chapter 2 of the Cherokee Code; and

WHEREAS, exclusion authority allows for issuance of a Writ of Temporary Exclusion for drug offences, all of which are deemed to be a threat to the integrity, law and order on Tribal lands and territory or the welfare of its members; and

WHEREAS, a Writ of Temporary Exclusion was issued upon Isaac Ishmail Rivers; and

WHEREAS, Isaac Ishmail Rivers is not a member of the Eastern Band of Cherokee Indians and is currently entering or residing on Tribal lands; and

WHEREAS, Tribal Council has good reason to believe that Isaac Ishmail Rivers is a threat to the integrity, law and order on Tribal lands and territory or the welfare of its members by engaging in certain conduct, examples of such conduct are attached to this Resolution as an exhibit; and

WHEREAS, Tribal Council believes that the threat to this Tribe will diminish if Isaac Ishmail Rivers is not allowed to remain on lands owned by or held in trust for the Eastern Band of Cherokee Indians.

NOW THEREFORE, BE IT RESOLVED by the Tribal Council, in Council assembled, with a quorum present and with the number of votes required by Tribal law that Isaac Ishmail Rivers is hereby permanently excluded from all Tribal lands and IS HEREBY NOTIFIED AND ORDERED TO VACATE ALL TRIBAL LANDS and to remove all personal property from Tribal lands within 48 hours from the date this resolution is ratified. Any personal property remaining on Tribal lands after that period shall become the property of the Tribe.

BE IT FURTHER RESOLVED that if Isaac Ishmail Rivers is found on Tribal lands at any time after the effective date of this resolution he shall be in violation of Tribal law and of a lawful order of Tribal Council and a law enforcement officer shall arrest him and take other appropriate legal action against him.

BE IT FURTHER RESOLVED that this exclusion prohibits Isaac Ishmail Rivers from entering on or being present on Tribal lands for any purpose EXCEPT AS REQUIRED BY A SUBPOENA issued by the Cherokee Tribal Court or an officer of the Tribe with authority to issue subpoenas.

BE IT FINALLY RESOLVED that this resolution shall be effective upon ratification by the Principal Chief.

Submitted by: the Office of the Attorney General pursuant to Cherokee Code §2-9(a)(6) and (f).

EBCI
CHEROKEE TRIBAL COURT

EASTERN BAND OF CHEROKEE INDIANS



Date and Time of Application
12-25-07 8:45 A

Tribal Council

DATE: 12/25/07 TIME: 9 AM

EASTERN BAND OF CHEROKEE INDIANS VERSUS

BY MAGISTRATE: J

Name of Individual: Isaac Ishmail Rivers
 Race: BIK Sex: M
 App-Member: Yes No
 DOB: 11-11-1977

APPLICATION FOR WRIT OF TEMPORARY EMERGENCY EXCLUSION

Location of Incident: Goose Creek Rd. Date of Incident: 12-25-07 Time of Incident: 06:17 am CIPD Case Number: 0712250617DM

I, the undersigned, upon information and belief, allege that on or about the date of offense shown and in the location named above, the non-member individual named above did commit a Drug Offense, as defined in C.C. §2-9, and thereby constitutes a treat to the integrity and law and order on Tribal lands of the Eastern Band of Cherokee Indians and territory or welfare of its members, by:

- [C.C. 14-95.5(a)] Possessing a controlled substance classified in schedule I, II, III, IV, and V, specifically Vicodin / 4 units
- [C.C. 14-95.5(b)] Possessing a controlled substance, specifically more than one-half ounce of marijuana or more than one-twentieth of an ounce of hashish (Aggravated Possession of Marijuana).
- [C.C. 14-95.5(c)] Possessing a controlled substance, specifically less than one-half ounce of marijuana or less than one-twentieth of an ounce of hashish (Simple Possession of Marijuana). **MUST HAVE AGGRAVATING FACTORS**
- [C.C. 14-95.6(b)] Manufacturing Selling or delivering Possessing with intent to sell or deliver a controlled substance classified in schedule I, II, III, IV, and V, specifically
- [C.C. 14-95.6(c)] Manufacturing Selling or delivering Possessing with intent to sell or deliver a controlled substance classified in schedule VI.
- [C.C. 14-95.6(d)] Manufacturing Methamphetamine.
- [C.C. 14-95.7] Manufacturing Selling or delivering Possessing with intent to sell or deliver a counterfeit controlled substance.
- [C.C. 14-95.8(a)] Possessing an immediate precursor chemical with intent to manufacture a controlled substance; or possess or distribute an immediate precursor chemical knowing or having a reasonable cause, to believe that the immediate precursor chemical will be used to manufacture a controlled substance.
- [C.C. 14-95.8(b)] Possessing an immediate precursor chemical with intent to manufacture methamphetamine; or possess or distribute an immediate precursor chemical knowing or having a reasonable cause, to believe that the immediate precursor chemical will be used to manufacture methamphetamine.
- [C.C. 14-95.8(d)] Possessing a seed or ripened ovule of gymnosperm or angiosperm which can be used to produce any controlled substance
- [C.C. 14-95.9] Trafficking in Marijuana Trafficking in Methaqualone Trafficking in Cocaine Trafficking in Methamphetamine/ Amphetamine Trafficking in Opiate/ Heroin Trafficking in Lysergic Acid Diethylamide Trafficking in MDA/MDMA
- [C.C. 14-95.10] Transporting, carrying, or otherwise causing, assisting, or providing for the importation of controlled substance or immediate precursor chemical into the territory of the Eastern Band of Cherokee Indians
- [C.C. 14-95.11(c)] Using, possessing with intent to use drug paraphernalia **MUST HAVE AGGRAVATING FACTORS**
- [C.C. 14-95.11(d)] Delivering, possessing with intent to deliver, or manufacture with intent to deliver drug paraphernalia
- [C.C. 14-95.11(f)] Advertising drug paraphernalia **MUST HAVE AGGRAVATING FACTORS**

AGGREVATING FACTORS

- [C.C. 14-95.22] Prior convictions
- [C.C. 14-95.23(a)] Sale or delivery of controlled substance to person under 16 years of age or a pregnant female
- [C.C. 14-95.23(b)] Delivery of drug paraphernalia to a person under 16 years of age
- [C.C. 14-95.23(c)] Purchase or receive controlled substance from minor 16 years of age or younger
- [C.C. 14-95.23(d)] Offense committed while pregnant
- [C.C. 14-95.23(e)] Sale or delivery on property used for a school, day care center, playground, or community building or within 300 feet of the boundary of real property used for a school, day care center, playground, or community building
- [C.C. 14-95.23(f)] Possess on property used for a school, day care center, playground, or community building or within 300 feet of the boundary of real property used for a school, day care center, playground, or community building
- [C.C. 14-95.23(g)] Sale or Delivery in the primary residence of a child 13 years of age or younger
- [C.C. 14-95.23(h)] Possession in the primary residence of a child 13 years of age or younger
- [C.C. 14-95.23(i)] Sale or Delivery in the sensory perception of a child 13 years of age or younger
- [C.C. 14-95.23(j)] Possession in the sensory perception of a child 13 years of age or younger
- [C.C. 14-95.23(k)] Possession or Sale or Delivery in the sensory perception or dwelling of a child between 13 and 16.
- [C.C. 14-95.24] Possession of gun at time of offense

I certify that I am a Law Enforcement Officer with the responsibility of enforcing Cherokee Law, I have read the above statement, and I verify that the facts set forth in this application are true and correct to the best of my knowledge.

Official's Certification

Sworn and Subscribed before me this day.

Date: 12-25-07 Name of Law Enforcement Officer: Sgt. D. [Signature] Signature of Law Enforcement Officer: [Signature] Signature of Designated Official: Selene Shearant Date: 12/25/07

EBCI
CHEROKEE TRIBAL COURT

EASTERN BAND OF CHEROKEE INDIANS C.

Writ Application No (if applicable)
12-25-07 8:45 A

Tribal Council

DATE: 12/25/07 TIME 9: AM



EASTERN BAND OF CHEROKEE INDIANS VERSUS BY MAGISTRATE: J. ASH

**WRIT OF EMERGENCY
TEMPORARY EXCLUSION**

Name of Individual <i>Isaac Thomas Rivers</i>		Non-Member <input checked="" type="checkbox"/> Yes
Race <i>B/K</i>	Sex <i>M</i>	DOB <i>11-11-07</i>

FINDINGS

Location of Incident <i>Boose Creek Rd</i>	Date of Incident <i>12-25-07</i>	Time of Incident <i>2617</i>	CIPD Case Number <i>071225067DM</i>
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I, the undersigned have reviewed the Application for Writ of Emergency Temporary Exclusion and have determined that probable cause exists that on or about the date of offense shown and in the location named above, the non-member individual named above did commit a Drug Offense, as defined in C.C. §2-9, and thereby constitutes a treat to the integrity and law and order on Tribal lands of the Eastern Band of Cherokee Indians and territory or welfare of its members.

Drug Statute	Offense
<i>CC 14-95.5(a)</i>	<i>Possessing a Control Substance Vicodone / 4 units</i>

WRIT

TO THE PERSON NAMED ABOVE

Under the authority of the Laws of the Eastern Band of Cherokee Indians, you are ordered to leave the territorial jurisdiction of the Eastern Band of Cherokee Indians and not to return until permitted by the Tribal Council of the Eastern Band of Cherokee Indians. This application and Writ will be placed on the agenda of Tribal Council on the date and time showed below. You may appear at this hearing where Tribal Council will review all facts and determinations in this matter.

TO ANY CHEROKEE OFFICER

Under the authority of the Laws of the Eastern Band of Cherokee Indians, you are hereby ordered to execute this Writ of Emergency Temporary Exclusion by serving a copy of this Writ and Application upon the person named above and transporting this Non-Member to any point outside the territorial jurisdiction of the Eastern Band of Cherokee Indians. This is in addition to any criminal charged filed against the person named above. If this person is found within the territorial jurisdiction of the Eastern Band of Cherokee Indians after the execution of this Writ, they are to be taken into custody and are to be charged in Federal and/or Tribal Court.

Date To Appear <i>1/3/07</i>	Time To Appear <i>8</i>	<input checked="" type="checkbox"/> AM <input type="checkbox"/> PM	Date Of Order <i>12/25/07</i>
Place To Appear Council House Cherokee, Qualla Boundary (NC)			Signature <i>Seane Shiant</i>

RETURN OF SERVICE

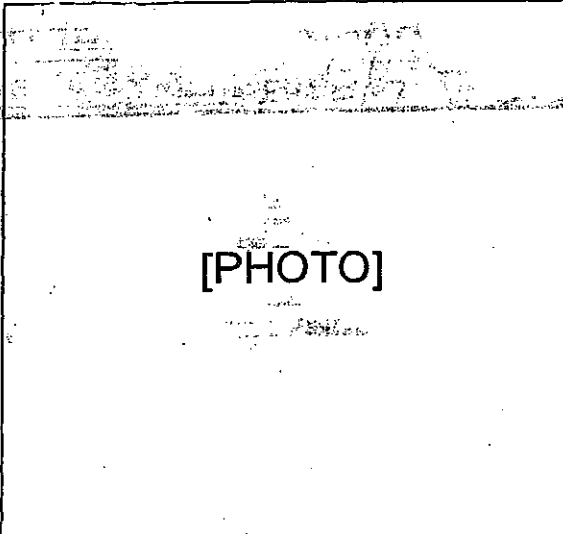
I certify that was received and served on the defendant as follows:

Date Received <i>12-25-07</i>	Date of Return <i>12-25-07</i>	Officer Making Return <i>[Signature]</i>
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EASTERN BAND OF CHEROKEE INDIANS

Tribal Council

MAGISTRATE: 29 Nov



**IDENTIFYING INFORMATION
ABOUT EXCLUDED INDIVIDUAL**

Write Application No (if applicable) _____ Date Issued (if applicable) _____ Designated Official (if applicable) _____

INFORMATION ABOUT INDIVIDUAL

Name of Individual
Isaac Ishmael Rivers

Street Address of Individual (No P.O. Box)
79 Clayton St

City *Sylva* State *NC* Zip *28779*

Date of Birth *11-11-07* Race: American Indian (Tribe) White Black Asian/ Pacific Islander Other Sex: Male Female

Height _____ Weight _____ Hair Color *Blk* Eye Color *Brn*

Identifying Marks (List any marks, scars, tattoos)

Does the Individual have a driver's license or state-issued card from any state? Yes No
If yes, provide the state and number if possible: State *NC* Number: *24010340*

Vehicle Description and License Plate Number:

Social Security Number of Individual *368-84-3825* Telephone Number of Individual _____

Is there any reason that a law enforcement officer should consider the individual a potential threat (i.e., carries concealed weapons while drinking alcohol, has threatened an officer etc.)? Yes No

If yes, specify the circumstances:

COUNCIL PROCEEDINGS

Hearing Date	Result of Hearing	Signature
<i>1/3/07</i>		

EASTERN BAND OF CHEROKEE INDIANS

The Cherokee Court

File No. (if any)

CR 07-1761:1762

For Victim

For Accused

IN RE

2007 DEC 25 AM 9:24

AFFIDAVIT OF JURISDICTION

Name and Address of Affiant

Isaac Ishmail River

Name and Address of Accused

Date of the Offense

Victim

Potential Offenses

AFFIDAVIT OF JURISDICTION

1. Are you an enrolled member of any Federally Recognized Tribe?

Yes

No

Which Tribe

Refused Jurisdiction

INSTRUCTIONS: If the answer to Question No. 1 is Yes then the Affiant is an Indian for the purposes of jurisdiction. If the answer is No, proceed to Question No. 2.

2. Are you a first linear descendant under the laws of the Eastern Band of Cherokee Indians?

Yes

No

INSTRUCTIONS: If the answer to Question No. 2 is Yes then the Affiant is under the jurisdiction of the Cherokee Court. If the answer is No, proceed to Question No. 3.

3. (for Accused Only) Are you a citizen of any country other than the United States of America?

Yes

No

INSTRUCTIONS: If the answer to Question No. 3 is Yes then the Affiant is under the jurisdiction of the Cherokee Court. If the answer is No, proceed to Question No. 5.

4. (If the accused answers No to the preceding questions) If it is determined that you are a non-Indian and therefore not subject to prosecution by the Cherokee Court, you may freely and knowingly waive any objection to jurisdiction of the Cherokee Court. Would you like to do that?

Yes

No

INSTRUCTIONS: If the answer to Question No. 4 is Yes then the Affiant is under the jurisdiction of the Cherokee Court. If the answer is No, proceed to Question No. 5.

5. Do you or your ancestors have any Indian Blood?

Yes

No

INSTRUCTIONS: If the answer to Question No. 5 is No then the Affiant is a Non-Indian for the purposes of jurisdiction. If the answer is Yes, proceed to Question No. 6-9.

6. Have you been provided formally or informally with any assistance that is reserved only for Indians?

Yes

No

Describe:

7. Do you enjoy the benefits of Tribal Affiliation (i.e., First Lineal Descendant, or other special status bestowed by a tribe)?

Yes

No

Describe:

8. Do you live on an Indian Reservation?

Yes

No

Describe:

9. Do you participate in Indian Social Life (i.e., Attend Indian Dinners, Community Meetings, Traditional Ceremonies, or Dance at Pow-Wows)?

Yes

No

Describe:

INSTRUCTIONS: The Magistrate must consider all answers and information provided in response to questions No. 5-9, applying Cherokee Law and Traditions, Treaties, and Acts of the United States Congress and decision of the Courts of the United States to determine whether the Affiant is an Indian for the purposes of Jurisdiction.

DETERMINATION OF JURISDICTION

SWORN AND SUBSCRIBED BEFORE ME

Date

12/25/07

Date

Signature

Isaac Ishmail River

Signature of Affiant

Isaac Ishmail River

Deputy CSC Assistant CSC Clerk of Superior Court

Name of Affiant (Type or Print)

Notary Public Magistrate Judge

X

Isaac Ishmail River

INITIAL DETERMINATION

Signature of Judicial Official

Judge

Date

ARREST REPORT

AGENCY INFO.	Agency Name Cherokee Indian Police Department			ORI NC0870200		Date/Time of Arrest Mo Date Year 12 25 2007 6:17 Hrs.		OCA 0712250617DM					
	<input type="checkbox"/> Taken <input type="checkbox"/> Prints <input checked="" type="checkbox"/> Photos	Fingerprint Card Check Digit # (CKN)			Arrest Tract		Residence Tract Birdtown		Arrest Number 1				
ARRESTEE INFORMATION	Name (Last, First, Middle) Rivers, Isaac Ishmail				D.O.B. 11/11/1977	Age 30	Race B	Sex M	Place of Birth	Country of Citizenship US			
	Current Address 79 Clayton St., Sylva, NC 28779				Phone		Occupation		<input checked="" type="checkbox"/> Resident <input type="checkbox"/> Unknown <input type="checkbox"/> Non-Resident				
	Employer's Name				Address			Phone					
	Also Known As (Alias Names)				Hgt 5'07"	Wgt 180	Hair BLK	Eye	Skin Tone	Consumed Drug/Alcohol <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unk			
	Scars, Marks, Tattoos			Social Security #		OLN and State		Misc. # and Type					
	Nearest Relative Name				Address			Phone					
	If Armed, Type of Weapon 99 - Unknown/Not Stated			<input checked="" type="checkbox"/> On-View <input type="checkbox"/> Criminal Summons <input type="checkbox"/> Order for Arrest <input type="checkbox"/> Citation <input type="checkbox"/> Warrant			Place of Arrest Gosse Creek Rd., Cherokee, NC 28719						
Charge #1 Drugs (Poss Schedule III)		<input type="checkbox"/> Fel <input checked="" type="checkbox"/> Misd	Counts 4	DCI Code 25.2[90-95(d)(2)	Offense Jurisdiction (if not arresting agency) Swain Co.		Statute #	Warr. Date Mo Date Yr					
Charge #2		<input type="checkbox"/> Fel <input type="checkbox"/> Misd	Counts	DCI Code	Offense Jurisdiction (if not arresting agency)		Statute #	Warr. Date Mo Date Yr					
Charge #3		<input type="checkbox"/> Fel <input type="checkbox"/> Misd	Counts	DCI Code	Offense Jurisdiction (if not arresting agency)		Statute #	Warr. Date Mo Date Yr					
VEH. INFO.	VYR	Make	Model	Style	Color	Lic/Lis		Vin					
	Vehicle: 1. <input type="checkbox"/> Left at Scene <input type="checkbox"/> Secured <input type="checkbox"/> Unsecured Date/Time _____ Hrs. _____ 2. <input type="checkbox"/> Released to other at owners request <input type="checkbox"/> Name of Other _____ 3. <input type="checkbox"/> Impounded <input type="checkbox"/> Place of Storage _____ Inventory on File? _____												
CONFINED BOND INFO.	Date/Time Confined Hrs.			Place Confined			Committing Magistrate						
	Type Bond <input type="checkbox"/> Written Promise <input type="checkbox"/> Unsecured <input type="checkbox"/> Secured <input type="checkbox"/> No Bond <input type="checkbox"/> Other			Amt. Bond		Trial Date	Court of _____ City						
	Assisting Officer Name/ID Number				Released By: Name/Dept/ID			Date/Time Released Hrs.					
Status Codes	L = Lost S = Stolen R = Recovered D = Damaged Z = Seized B = Burned C = Counterfeit / Forged F = Found (Check "OJ" column if recovered for other jurisdiction)												
DRUGS AT TIME OF ARREST	DCI	Status	Quantity	Type Measure	Suspected Type			Check up to 3 types of activity for each					
	H	Z	4.00	DU	Other Narcotics			Possess	Buy	Sale	Mfg.	Importing	Operating
								X					
COM-PLAIN-ANT	Name: Complainant <input type="checkbox"/> Victim <input type="checkbox"/>				Address:				Phone:				
	<p>This Officer was responding a Domestic call on Goose Creek Rd. near the Locust Branch Rd entrance. Upon arrival to the area I was passing the entrance to the Rec. Park I noticed a subject walking down on the left side of the roadway and another subject walking down on the right side of the right side of the roadway. As I was getting closer I recognized the subject on the left side to be a female and that it was Ms. Carly Maples and I noticed that the</p>												
STATUS	Arresting Officer Signature/ID # Sergeant-K-9 Daryl D. Martin 731			Date/Time Submitted Mo Date Yr 12 25 2007 7:14 Hrs.			Supervisor Signature						
	Case Status: <input type="checkbox"/> Further Inv. <input checked="" type="checkbox"/> Inactive <input type="checkbox"/> Closed			Case Disposition: <input type="checkbox"/> Cleared By Arrest / No Supplement Needed <input checked="" type="checkbox"/> Arrest/No Investigation			Arrestee Signature						

1. AGENCY Cherokee Indian Police Department	2. ORI NC0870200	3. CONTINUATION TO: <input type="checkbox"/> INVESTIGATION <input checked="" type="checkbox"/> ARREST <input type="checkbox"/> SUPPLEMENTARY INV.	4. OCA FILE NO. 0712250617DM -
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Narrative
subject on the right side was a male and learned that it was Isaac Ishmail Rivers of Sylva. I rolled my window down to see if could hear anything that the two might be saying to one another. I noticed that Maples was upset and crying. I pulled my vehicle up towards the male subject and as I was getting closer Rivers got down on to both of his knees. I got out of my patrol vehicle that was when River had gotten back up to his feet.

As I was speaking to Maples and she was telling me and she then showed me her upper lip which I noticed that it was swollen and had been bleeding at one time. Rivers then started moving towards maples cussing her calling her; "a whore and a bitch, she wasn't worth it". I then was going to transport River to the Cherokee PD to find a place to hold him while he sobered up. I asked Rivers if he had any weapons on him and I then asked if he wouldn't if I patted him down for my safety and his. River said "sure I don't have any knives on me". I began patting Rivers down and I noticed that there was a bottle of some sort in the left hand front pants pocket. I began to pull the bottle out and River stated "he had Vicodine for his tooth ache, but he didn't have a perscription for the Vicodine.

I placed River under arrest for Possession of a Schedule III. I the transported Rivers to the Cherokee PD and then before the Magistrate where he where an emergency exclusion was done on Rivers to be exclude from the Reservation until 1/3/2007.

Officer Name / ID Sergeant-K-9 Daryl D. Martin - 731	Officer Signature	Date / Time Submitted 12/25/2007 7:14	Page <u>4</u> of <u>4</u>
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Chapter 2

EXCLUSION POWERS OF THE TRIBE*

- Sec. 2-1. Power to exclude.
- Sec. 2-2. Tribal Council proceedings.
- Sec. 2-3. Notice and legal defense rights.
- Sec. 2-4. Terms of exclusion.
- Sec. 2-5. Votes required for exclusion.
- Sec. 2-6. Enrolled members; permanent exclusion.
- Sec. 2-7. Request for exclusion action.
- Sec. 2-8. List of Convictions for which exclusion is a punishment.
- Sec. 2-9. Emergency Temporary Exclusion.

*Cross References—Civil procedures, ch. 1; exclusion or rejection of individuals for Tribal gaming, § 16-9.01 et seq.; enrollment, ch. 49; Tribal government, ch 117.

Sec. 2-1. Power to exclude.

- (a) The Tribal Council shall have the power to exclude enrolled Tribal members for sexual offenses against minors; and for convictions for trafficking in controlled substance under Chapter 14 of the Cherokee Code. Tribal Council shall also have the authority to exclude enrolled Tribal members for violations of state and federal law where such offenses would constitute trafficking in controlled substance under the Cherokee Code if committed within the territory of the Eastern Band of Cherokee Indians.
- (b) The Tribal Council shall have the power to exclude other persons from Cherokee Trust lands when necessary to protect the integrity and law and order on Tribal lands and territory or the welfare of its members.
- (c) The Tribal Council shall have the power to exclude from or prohibit operation of a business on Cherokee trust lands or specific locations thereon, if the business threatens the health, safety or welfare of Tribal members or Tribal natural resources due to spills, accidents, illegal dumping, or other unauthorized releases of hazardous materials into the environment.

Notwithstanding any other provision of law, the Tribe reserves its sovereign immunity and shall not be liable for claims of loss, damage or injury resulting from exclusions.

(Ord. No. 92, 5-5-1994; Ord. No. 271, 7-24-1996; Ord. No. 630, 2-1-2007; Ord. No. 589, 2-8-2007)

Sec. 2-2. Tribal Council proceedings.

The Tribal Council shall exercise its power to exclude persons from the Cherokee trust lands only in open session of the Council. Nothing in this section shall prohibit the issuance of Writs of Emergency Temporary Exclusion under 2-9 or the exclusion of persons under 2-3(f).

(Ord. No. 92, 5-5-1994; Ord. No. 589, 2-8-2007)

Sec. 2-3. Notice and legal defense rights.

- (a) The Tribal Council shall provide reasonable notice to all persons over whom it exercises the power or exclusion, together with hearing before the Tribal Council.
- (b) The Tribal Council shall provide not less than ten calendar day's written notice to such persons prior to hearing. For good cause shown, the Council can waive the ten-day period and exclude immediately.
- (c) Such persons shall be provided with a written statement of the grounds for the proposed exclusion at the same time notice of the hearing is served upon them.
- (d) Such persons shall have the right to appear in person before the Tribal Council, to be represented by legal counsel before the Tribal Council, to require all testimony to be under oath at such hearing, to subpoena witnesses in their behalf for such hearing, to confront or question witnesses bringing exclusion actions against them to the Tribal Council or testifying against them in such hearing.
- (e) Notice of exclusion hearings shall specify the duration of exclusion proposed for each individual.
- (f) Any person convicted of trafficking in controlled substance under Chapter 14 of the Cherokee Code shall not be allowed to enter the territory of the Eastern Band of Cherokee Indians until a hearing on exclusion is held by the Tribal Council. Such hearing shall, if possible, be held prior to their release from custody.

(Ord. No. 92, 5-5-1994; Ord. No. 271, 7-24-1996; Ord. No. 589, 2-8-2007)

Sec. 2-4. Terms of exclusion.

The Tribal Council may exclude persons from Cherokee trust lands for limited periods of time, indefinite periods of time or permanently.

(Ord. No. 92, 5-5-1994)

Sec. 2-5. Votes required for exclusion.

- (a) Exclusion of any person from Cherokee trust lands for a limited period of time not exceeding 90 days shall require a majority vote of the entire Tribal Council.
- (b) Exclusion of any person from Cherokee trust lands for more than 90 days or for an indefinite period to time shall require a two-thirds vote of the entire Tribal Council.
- (c) Permanent exclusion of any person from Cherokee trust lands shall require a three-fourths vote of the entire Tribal Council.
- (d) In this section, "a vote of the entire Tribal Council" means that the vote shall be calculated in the proportion of the number of Tribal Council members present at the exclusion hearing; provided, however, that not all Tribal Council members have to be present or vote at the hearing to satisfy this section, so long as not fewer than seven Council members are present and voting.

(Ord. No. 92, 5-5-1994; Ord. No. 530, 1-6-2005)

Sec. 2-6. Enrolled members; permanent exclusion.

If an enrolled Tribal member is permanently excluded from Cherokee trust lands, then the member's name shall be removed from the membership roll of the Tribe, and all privileges pertaining thereto shall immediately be suspended indefinitely. The removal of the person's name from the roll shall be submitted to the Superintendent of the Eastern Cherokee Agency for approval by the Secretary of the Interior or his authorized representative.

(Ord. No. 271, 7-24-1996)

Sec. 2-7. Request for exclusion action.

The persons with standing to bring a request to the Tribal Council for an exclusion action against a person who is subject to this Chapter are:

- (1) The Principal Chief.
- (2) The Vice-Chief.
- (3) Members of the Tribal Council.
- (4) The Chief of the Cherokee Police Department.
- (5) The Tribal Prosecutor.

(Ord. No. 271, 7-24-1996; Ord. No. 757, 5-16-2001; Ord. No. 589, 2-8-2007)

Sec. 2-8. List of Convictions for which exclusion is a punishment.

The Clerk of Cherokee Court shall semiannually provide Tribal Council with a list of all persons convicted of crimes during the preceding six months in which banishment is provided by statute. The list shall be transmitted no later than January 31, 2007 and every 6 months thereafter. The initial list shall include all persons convicted since April 1, 2000.

(Ord. No. 589, 2-8-2007)

Sec. 2-9. Emergency Temporary Exclusion.

(a) Definitions: For the purpose of this section the following definitions shall apply:

(1) *Officer*: A sworn law enforcement officer of the Cherokee Police Department or any other law enforcement officer with the responsibility of enforcing Cherokee Law under authority of this code or a mutual aid agreement.

(2) *Cherokee Officer*: A sworn law enforcement of the Cherokee Police Department.

(3) *Drug Offense*: Any act which would violate the provisions of Article XVI of Chapter 14 of the Cherokee Code committed within the territorial jurisdiction of the Eastern Band of Cherokee Indians, whether or not the Cherokee Court has jurisdiction over the individual committing the offense. Considering all appropriate aggravating factors which may be present, the term "Drug Offense" shall not include any act which would be punished as a Class D offense under Cherokee law.

(4) *Non-Member*: Any person not officially enrolled as a tribal member in the Eastern Band of Cherokee Indians.

(5) *Designated Official*: An individual designated by Cherokee Law to enforce the provisions of this section by issuing Writs of Emergency Temporary Exclusion. Any magistrate of the Cherokee Court shall be a designated official for the purposes of this Chapter.

(6) *Writ of Emergency Temporary Exclusion (Writ)*: A legally binding order issued by the designated official exercising the power of exclusion of Tribal Council excluding a non-member from the Cherokee Trust lands. The Writ shall clearly state on its face the dated, time and location of the next scheduled Tribal Council session. Unless renewed by a vote of the Tribal Council in open council, the Writ shall expire at the end of the next regularly scheduled Tribal Council meeting following its issuance.

- (b) When a Law Enforcement Officer has probable cause to believe that a non-member has committed a Drug Offense, the officer shall bring the non-member before the designated official without necessary delay to determine whether a Writ of Emergency Temporary Exclusion is necessary to protect the integrity and law and order on the Tribal lands and territory or the welfare of its members. The commission of any Drug Offense by a non-member shall constitute a per se threat to the integrity and law and order on Tribal lands and territory or the welfare of its members.
- (c) The officer shall complete a sworn, written application for Writ of Emergency Temporary Exclusion. The application shall contain a written statement of the essential facts constituting the Drug Offense. If the application establishes probable cause to believe that a Drug Offense has been committed by a non-member, the designated official must issue Writ of Emergency Temporary Exclusion. Without exception, a copy of the application and Writ and any appropriate information considered by the Designated Official shall be transmitted to the English Clerk of Tribal Council no later than the beginning of the next scheduled Tribal council or 72 hours after the application was considered, whichever is sooner.
- (d) Any Cherokee Officer shall be authorized to execute a Writ of Emergency Temporary Exclusion upon a named non-member. The Cherokee Officer shall execute the Writ by serving a copy of the Writ and application upon the non-member and transporting the non-member to any location outside the territorial jurisdiction of the Eastern Band of Cherokee Indians.
- (e) The issuance and execution of a Writ of Emergency Temporary Exclusion shall be independent of any criminal charges filed against the non-member in Cherokee Court or any other jurisdiction.
- (f) Regardless of whether a writ is issued, the non-member shall be given notice of the next scheduled meeting of Tribal Council and the application and writ shall be placed upon the agenda. A decision by the Designated Official regarding probable cause shall not be binding on Tribal Council and hearing before Council shall require a de novo review of all appropriate facts and determinations. If no Writ is issued upon application, the Tribal Council may review the facts and hold a proceeding for non-emergency exclusion. At the designated meeting or any subsequent scheduled meeting, Tribal Council may renew the Writ until the next scheduled session, complete the process of formal exclusion under this chapter, or decline to take further action.
- (g) The requirements of Cherokee Code Sections 2-2, 2-3, 2-4, 2-5, and 2-7 shall not apply to Writs of Temporary Emergency Exclusion issued under this section, but shall apply to all subsequent proceedings before Council.

(Ord. No. 589, 2-8-2007)

The attached Resolution/Ordinance No. 144 dated January 7, 2008 was:

PASSED ()

KILLED ()

and ratified in open Council on January 7, 2008 by 100 voting for the act and 0 members voting against it as follows:

VOTE	FOR	AGAINST	ABSTAIN	ABSENT
Stephen Watty	X			
Perry Shell	X			
Jim Owle	X			
Mike Parker	X			
David Wolfe	X			
Alan Ensley	X			
Butch Goings	X			
Angie Kephart	X			
Abe Wachacha	X			
Susan Toineeta	X			
Marie Junaluska	X			
Tommye Saunooke	X			
TOTAL	100	0	0	0



TRIBAL COUNCIL CHAIRMAN



CLERK



PRINCIPAL CHIEF

APPROVED () VETOED ()

VETO UPHeld () VETO DENIED ()

DATE: 1-28-08

I hereby certify that the foregoing act of the Council was duly:

PASSED ()

KILLED ()

and ratified in open Council after the same has been interpreted by the Official Interpreter and has been fully and freely discussed.

In testimony, whereof, I have hereunto set my hand and affixed the seal of the said Band of Indians. Superintendent, Cherokee Indian Agency.

INTERPRETED ()



OMITTED ()