

# TABLED

Cherokee Council House  
Cherokee North Carolina

OCT 09 2023

Date: \_\_\_\_\_

Ordinance No.: 2 (2023)

*An ordinance to amend C.C. Chapter 7A, the Juvenile Justice code, to remove traffic offenses as a triggering event that would cause a juvenile to be declared delinquent, and to allow the use of hearsay evidence in probable cause hearings when the victim is a minor child.*

**WHEREAS**, in the Tribe's Juvenile Justice code, codified at C.C. Chapter 7A, the term "delinquent juvenile" is defined to include juveniles who commit a criminal offense under Tribal or federal laws, including violation of motor vehicle laws; and

**WHEREAS**, the underlying goal of Tribe's Juvenile Justice law is to promote rehabilitation; and

**WHEREAS**, the goal of rehabilitation is not served by making young people who receive traffic citations be declared delinquent juveniles; and

**WHEREAS**, traffic citations are required to be reported to the North Carolina Department of Motor Vehicles (NC DMV), but this is contrary to the rules of confidentiality that apply in the Tribe's Juvenile Justice system, and those rules mean citations received by juveniles cannot be reported to the NC DMV; and

**WHEREAS**, this conflict between the reporting requirement and the confidentiality of the Tribe's Juvenile Justice system creates a financial risk to EBCI enrolled juveniles who are under the age of 18, and their parents or guardians; and

**WHEREAS**, juveniles sometimes commit crimes against minor children, and a child victim needs to be treated by the Court with the upmost care, in particular by limiting the number of times the child victim has to give live testify in court.

**WHEREAS**, in cases where a child is a victim of a crime by a juvenile, the Court can limit the number of times the child victim has to testify by allowing hearsay evidence to be used at probable cause hearings, by allowing the child victim's testimony to be relayed to the Court by the investigator or forensic interviewer, thereby reducing the number of times the child victim has to testify; and

**WHEREA**, to better address these matters, the Juvenile Justice code should be amended to remove the reference to motor vehicle laws in the definition of "delinquent juvenile", and to allow the use of hearsay evidence in Juvenile Justice cases in which the victim is a minor child.

38 **NOW THEREFORE BE IT ORDAINED**, by the Tribal Council of the Eastern Band of  
39 Cherokee Indians in Annual Council assembled, at which a quorum is present, that  
40 Tribal Council hereby amends C.C. § 7A-2 and C.C. § 7A-38 to read as follows:

41 **Sec. 7A-2. Definitions.**

42 Unless the context clearly requires otherwise, the following words have the listed  
43 meanings:

- 44 (a) *Caretaker* shall mean any person other than a parent who is caring for a juvenile,  
45 including any blood relative, step-parent, foster parent, or house parent, cottage  
46 parent or other person supervising a juvenile in a child care facility.
- 47 (b) *Clerk* shall mean the Clerk of the Cherokee Court, acting clerk, or assistant or  
48 deputy clerk.
- 49 (c) *Court* shall mean the Cherokee Court of Indian Offenses or Cherokee Tribal  
50 Court.
- 51 (d) *Court counselor* shall mean a person responsible for probation and aftercare  
52 services to juveniles on probation or on conditional release.
- 53 (e) *Custodian* shall mean the person or agency that has been awarded legal custody of  
54 a juvenile by a court.
- 55 (f) *Delinquent juvenile* shall mean any juvenile who is less than 18 years of age who  
56 has committed a criminal offense under Tribal or federal laws, **including**  
57 **excluding** violations of the motor vehicle laws **in C.C. Chapter 20**.
- 58 (g) *Detention* shall mean the confinement of a juvenile pursuant to an order for secure  
59 custody pending an adjudicatory or dispositional hearing or admission to a  
60 placement.
- 61 (h) *Detention home* shall mean an authorized facility providing secure custody for  
62 juveniles.
- 63 (i) *Guardian* shall mean a person who legally has the care and management of the  
64 person or the estate or both, of a child during its minority.
- 65 (j) *In loco parentis* shall mean person acting in loco parentis, other than parents or  
66 legal guardian, who has assumed the status and obligation of a parent without  
67 being awarded the legal custody of a juvenile by a Court.
- 68 (k) *Intake counselor* shall mean a person who screens a petition alleging that a  
69 juvenile is delinquent or undisciplined to determine whether the petition should be  
70 filed.
- 71 (l) *Judge* shall mean any judge of the Cherokee Court of Indian Offenses or  
72 Cherokee Tribal Court.

- 73 (m) *Juvenile* shall mean any person who is less than 18 years of age and is not  
74 married, emancipated or a member of the armed services of the United States. A  
75 juvenile who is married, emancipated or a member of the armed forces shall be  
76 prosecuted as an adult for the commission of a criminal offense. Wherever the  
77 term "juvenile" is used with reference to rights and privileges, that term  
78 encompasses the attorney for the juvenile as well.
- 79 (n) *Parent* shall mean any biological parent or parents of a juvenile or any person  
80 who has lawfully adopted a juvenile. It does not include the unwed father where  
81 paternity has not been acknowledged or established.
- 82 (o) *Petitioner* shall mean the individual who initiates Court action whether by the  
83 filing of a petition or of a motion for review alleging the matter for adjudication.
- 84 (p) *Probation* shall mean the status of a juvenile who has been adjudicated delinquent  
85 subject to specific conditions under the supervision of a Court counselor who may  
86 be returned to the Court for violation of those conditions during the period of  
87 probation.
- 88 (q) *Prosecutor* shall mean the prosecuting attorney for the Cherokee Court of Indian  
89 Offenses or the Cherokee Tribal Court.
- 90 (r) *Protective supervision* shall mean the status of a juvenile who has been  
91 adjudicated delinquent or undisciplined and is under the supervision of a Court  
92 counselor.
- 93 (s) *Shelter care* shall mean the temporary care of a juvenile in a physically  
94 unrestricting facility pending Court disposition.
- 95 (t) *Undisciplined juvenile* shall mean a juvenile who is less than 18 years of age who  
96 is unlawfully absent from school; who is regularly disobedient to his parent,  
97 guardian, or custodian and beyond their disciplinary control, who is found in  
98 places where it is unlawful for a juvenile to be; who purchases, possesses,  
99 consumes or receives a tobacco product; or who has run away from home.

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101 **Sec. 7A-38. - Transfer of jurisdiction of juvenile.**

102 (a) After notice, hearing and a finding of probable cause, the court may transfer jurisdiction  
103 of a juvenile to the trial court if the juvenile was 14 years of age or older at the time he  
104 allegedly committed an offense which would be a felony or a motor vehicle offense if  
105 committed by an adult. If the alleged felony constitutes a capital offense, the Judge shall  
106 transfer the case to the federal court for trial as in the case of adults.

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108 (b) Probable cause shall be established using non-hearsay evidence unless the alleged victim  
109 is a minor child. If the alleged victim is a minor child, then probable cause of the crime

110 may be established with hearsay testimony from the investigator assigned to the case  
111 and/or the Forensic Interviewer if a forensic interview has been conducted.

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

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118 *Submitted by: Cody R. White, Office of the Attorney General*  
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