

Chapter 14 CRIMINAL LAW

ARTICLE XIV.A. – CONTROLLED SUBSTANCES

Sec. 14-95.1. Title of the Article.

This Article shall be known and may be cited as the "Cherokee Controlled Substances Act."
(Ord. No. 589, Art. II, 2-8-2007)

Sec. 14-95.2. Applicability.

This Article shall take effect January 1, 2007 and applies to criminal offenses in Cherokee that occur on or after January 1, 2007.

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

Sec. 14-95.3. Definitions.

(a) Except as noted herein, as used in this article, the Tribe hereby adopts the definitions, as codified in North Carolina General Statutes 90-87, as well as any amendments, additions, deletions, or redefining which may be made to these definitions under state law.

(b) "Marijuana" means all parts of the plants of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. This term does not include hemp, as defined in section 297A of the federal Agricultural Marketing Act of 1946, and does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination (7 U.S.C. 1639o). The term means all cannabis that tests as having a THC concentration level higher than 0.3 percent on a dry weight basis ~~all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil, or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination. The term does not include hemp, hemp extracts, or hemp products as defined below.~~

~~(1) "Hemp" means the plant Cannabis sativa (L.) and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, within the federally defined THC level for hemp.~~

~~(2) "Hemp extract" means an extract from hemp, or a mixture or preparation containing hemp plant material or compounds.~~

36 ~~(3) "Hemp product" means any product within the federally defined THC level for hemp~~
37 ~~derived from, or made by, processing hemp plants or plant parts, that are prepared in a~~
38 ~~form available for commercial sale, including, but not limited to, cosmetics, personal~~
39 ~~care products, food intended for animal or human consumption, cloth, cordage, fiber,~~
40 ~~fuel, paint, paper, particleboard, plastics, and any product containing one or more~~
41 ~~hemp-derived cannabinoids, such as cannabidiol.~~

42 (c) As appropriate in context, "state" means the State of North Carolina or the Eastern Band of
43 Cherokee Indians.

44 (d) "THC" means Delta-9-tetrahydrocannabinol, Delta-8-tetrahydrocannabinol, Delta-10-
45 tetrahydrocannabinol, and the optical isomers of such substances.

46 ~~(de)~~ "Tribe" means the Eastern Band of Cherokee Indians.

47 ~~(ef)~~ "Unfinished," relating to dextromethorphan, means any concentration or amount of
48 dextromethorphan that is not in finished dosage form.

49 **Sec. 14-95.4. Authority to Control.**

50 (a) The Tribe hereby adopts the schedules of controlled substances as codified in the North
51 Carolina General Statutes Section 90-89 through Section 90-~~94~~ 93, as well as any
52 amendments, additions, deletions, or rescheduling which may be made to these schedules
53 under state law.

54 (b) The Tribe hereby grants the Commission for Mental Health, Developmental Disabilities and
55 Substance Abuse Services of the State of North Carolina, established under Part 4 of Article
56 3 of Chapter 143B of the North Carolina General Statutes authority to regulate the
57 registration and control of the manufacture, distribution, security and dispensing of
58 controlled substances within the jurisdiction of the Eastern Band of Cherokee Indians.

59 (c) The Tribe hereby adopts North Carolina General Statutes 90-101 through 90-113.8, as
60 amended to regulate the registration and control of the manufacture, distribution, security
61 and dispensing of controlled substances within the jurisdiction of the Eastern Band of
62 Cherokee Indians and authorizes state officials empowered therein to enforce provisions of
63 these statutes within the jurisdiction of the Eastern Band of Cherokee Indians.

64 (d) The Tribe hereby adopts North Carolina General Statutes 90-113.9(1) and 90-113.10
65 through 90-113.12, as amended to regulate the inhalation of toxic vapors.

66 (e) As appropriate in context in these adopted statutes, "state" means the State of North
67 Carolina or the Eastern Band of Cherokee Indians.

68 (f) Authority to control under this Article does not include distilled spirits, wine, malt
69 beverages or tobacco.

70 **Sec. 14-95.5. Possession of a controlled substance.**

71 (a) Except as authorized by Cherokee Law, it is unlawful for any person to possess a controlled
72 substance.

73 (b) Unless a person's conduct is covered under some other provision of law providing greater
74 punishment, possession of a controlled substance classified in schedule I, II, III, IV, or V
75 shall be punished with a class C penalty.

76 ~~(c) Unless a person's conduct is covered under some other provision of law providing greater
77 punishment, possession of more than one ounce (avoirdupois) of marijuana, the possession
78 of more than three twentieths of an ounce (avoirdupois) of extracted resin of marijuana,
79 commonly known as hashish, or the possession of any other controlled substance classified
80 in Schedule VI shall be known as "possession of marijuana," and shall be punished with a
81 class C penalty.~~

82 ~~(d) Unless a person's conduct is covered under some other provision of law providing greater
83 punishment, possession of marijuana or the possession of extracted resin of marijuana,
84 commonly known as hashish, by a person less than 21 years old shall be known as
85 "underage possession of marijuana," and be punished with a class D penalty.~~

86 ~~(e)~~ (c) Unless a person's conduct is covered under some other provision of law providing greater
87 punishment, possession of unfinished dextromethorphan shall be classified in schedule V
88 and shall be punished with a class C penalty.

89 ~~(f)~~ (d) Unless a person's conduct is covered under some other provision of law providing greater
90 punishment, possession of 2.5-dimethoxy-4-ethylphenethylamine (2 C-E) shall be
91 classified in schedule I and shall be punished with a class C penalty.

92 **Sec. 14-95.6. Manufacture, sell or deliver, or possession with intent to manufacture sell or**
93 **deliver of a controlled substance.**

94 (a) Except as authorized by Cherokee Law, it is unlawful for any person to manufacture, sell or
95 deliver, or possess with intent to manufacture, sell or deliver a controlled substance.

96 (b) Unless a person's conduct is covered under some other provision of law providing greater
97 punishment, manufacture, sell or deliver, or possess with intent to sell or deliver of a
98 controlled substance classified in schedule I, II, III, IV, or V shall be punished with a class
99 B penalty.

100 ~~(c) Unless a person's conduct is covered under some other provision of law providing greater
101 punishment, manufacture, sell or deliver, or possess with intent to sell or deliver of a
102 controlled substance classified in schedule VI shall be punished with a class C penalty.~~

103 ~~(c)~~ (d) Manufacture of methamphetamine shall be punished with a class A penalty.

104 ~~(d)~~ (e) Manufacture, sell or deliver, or possession with intent to manufacture, sell or deliver
105 unfinished dextromethorphan shall be punished with a class B penalty.

106 ~~(e)~~ (f) Unless a person's conduct is covered under some other provision of law providing greater
107 punishment, manufacture, sell or deliver, or possess with intent to sell or deliver of 2.5-
108 dimethoxy-4-ethylphenethylamine (2 C-E) shall be classified in schedule I and shall be
109 punished with a class B penalty.

110 **Sec. 14-95.7. Manufacture, sell or deliver, or possession with intent to manufacture sell or**
111 **deliver of a counterfeit controlled substance.**

- 112 (a) Except as authorized by Cherokee Law, it is unlawful for any person to manufacture, sell or
113 deliver, or possess with intent to manufacture, sell or deliver a counterfeit controlled
114 substance.
- 115 (b) Unless a person's conduct is covered under some other provision of law providing greater
116 punishment, manufacture, sell or deliver, or possess with intent to sell or deliver of a
117 counterfeit controlled substance shall be punished with a class C penalty.

118 **Sec. 14-95.8. Possession of an immediate precursor chemical.**

- 119 (a) Except as authorized by Cherokee Law, it is unlawful for any person to possess an
120 immediate precursor chemical with intent to manufacture a controlled substance; or possess
121 or distribute an immediate precursor chemical knowing, or having reasonable cause to
122 believe, that the immediate precursor chemical will be used to manufacture a controlled
123 substance. Unless a person's conduct is covered under some other provision of law
124 providing greater punishment, violation of this section shall be punished with a class B
125 penalty, unless the immediate precursor is one that can be used to manufacture
126 methamphetamine.
- 127 (b) Except as authorized by Cherokee Law, it is unlawful for any person to possess an
128 immediate precursor chemical with intent to manufacture methamphetamine; or possess or
129 distribute an immediate precursor chemical knowing, or having reasonable cause to believe,
130 that the immediate precursor chemical will be used to manufacture methamphetamine.
131 Unless a person's conduct is covered under some other provision of law providing greater
132 punishment, violation of this subsection shall be punished with a class A penalty.
- 133 (c) The immediate precursor chemicals to which this section applies are those immediate
134 precursor chemicals designated by North Carolina General Statute 90-95(d2).
- 135 (d) Except as authorized by Cherokee Law, it is unlawful for any person to possess a seed or
136 ripened ovule of gymnosperm or angiosperm plant which can be used to produce any
137 controlled substance, whether or not said seed or ovule is scheduled as a controlled
138 substance. Unless a person's conduct is covered under some other provision of law
139 providing greater punishment, violation of this section shall be punished with a class C
140 penalty.
- 141 (e) The tribe hereby adopts North Carolina General Statutes § 90-113.50 through § 90-113.60,
142 as amended to regulate the use, possession and distribution of methamphetamine precursors.

143 **Sec. 14-95.9. Drug trafficking.**

- 144 (a) Except as authorized by Cherokee Law, any person who sells, manufactures, delivers,
145 transports or possesses in excess of the following amounts of controlled substances or
146 marijuana shall be guilty of "trafficking," and shall be punished with a class A penalty:

i.	Marijuana	more than <u>31</u> pounds
ii.	Methaqualone	more than 125 dosage units
iii.	Cocaine	more than 3 grams
iv.	Methamphetamine/amphetamine	more than 3 grams
v.	Opiate or heroin	more than 2 grams
vi.	Lysergic acid diethylamide	more than 10 dosage units
vii.	MDA/MDMA	more than 4 grams or 10 dosage units

147

148 (b) The controlled substances listed in this section includes the controlled substance named and
 149 any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or any
 150 leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of leaves,
 151 stems, seeds, buds or any part of any plant named, and any salt, isomer, salts of isomers,
 152 compound, derivative or preparation thereof which is chemically equivalent or identical
 153 with any of these substances (except leaves or any extraction of leaves which does not
 154 contain the controlled substance) or any mixture containing such substances. The term
 155 "dosage units," used in this section shall include tablets, capsules, or dosage units as
 156 appropriate.

157 ~~(c) No person convicted under this section shall be allowed to enter the territory of the Eastern~~
 158 ~~Band of Cherokee Indians until permitted by Tribal Council. Prior to release from custody,~~
 159 ~~any person convicted of an offense under this section, shall receive a hearing before tribal~~
 160 ~~council to determine the term, if any, of exclusion.~~

161 **Sec. 14-95.10. Transporting controlled substance into the territory of the Eastern Band of**
 162 **Cherokee Indians.**

163 (a) Except as authorized by Cherokee Law, it is unlawful for any person to transport, carry, or
 164 otherwise cause, assist, or provide for the importation of any controlled substance or
 165 immediate precursor chemical into the territory of the Eastern Band of Cherokee Indians.
 166 Unless a person's conduct is covered under some other provision of law providing greater
 167 punishment, violation of this section shall be punished with a class B penalty.

168 ~~(b) It shall be unlawful for a person to transport cannabis, medical cannabis, concentrated~~
 169 ~~cannabis, or medical cannabis products in the passenger area of a motor vehicle in other~~
 170 ~~than the manufacturer's unopened original container. It shall be unlawful for a person who is~~
 171 ~~driving a motor vehicle on a highway or public vehicular area to consume in the passenger~~
 172 ~~area of that vehicle cannabis of any kind or nature. Violation of this section shall constitute~~
 173 ~~a criminal offense punishable by a fine of \$25.00 to \$500.00 or imprisonment for not more~~
 174 ~~than 30 days.~~

175 ~~(c) For purposes of this section, the definitions contained in Sections 14-15.3(c) and 17-2 shall~~
 176 ~~apply.~~

177 **Sec. 14-95.11. Drug paraphernalia.**

178 (a) As used in this Section, "drug paraphernalia" means all equipment, products and materials
 179 of any kind that are used to facilitate, or intended or designed to facilitate, violations of the
 180 Controlled Substances Act, including planting, propagating, cultivating, growing,

181 harvesting, manufacturing, compounding, converting, producing, processing, preparing,
182 testing, analyzing, packaging, repackaging, storing, containing, and concealing controlled
183 substances and injecting, ingesting, inhaling, or otherwise introducing controlled substances
184 into the human body. "Drug paraphernalia" includes, but is not limited to, the following:

- 185 (1) Kits for planting, propagating, cultivating, growing, or harvesting any species of plant
186 which is a controlled substance or from which a controlled substance can be derived;
- 187 (2) Kits for manufacturing, compounding, converting, producing, processing, or preparing
188 controlled substances;
- 189 (3) Isomerization devices for increasing the potency of any species of plant which is a
190 controlled substance;
- 191 (4) Testing equipment for identifying, or analyzing the strength, effectiveness, or purity of
192 controlled substances;
- 193 (5) Scales and balances for weighing or measuring controlled substances;
- 194 (6) Diluents and adulterants, such as quinine, hydrochloride, mannitol, mannite, dextrose,
195 and lactose for mixing with controlled substances;
- 196 (7) Blenders, bowls, containers, spoons, and mixing devices for compounding controlled
197 substances;
- 198 (8) Capsules, balloons, envelopes and other containers for packaging small quantities of
199 controlled substances;
- 200 (9) Containers and other objects for storing or concealing controlled substances;
- 201 (10) Hypodermic syringes, needles, and other objects for parenterally injecting controlled
202 substances into the body;
- 203 (11) Objects for ingesting, inhaling, or otherwise introducing cocaine, hashish, or hashish
204 oil into the body, such as:
 - 205 a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without
206 screens, permanent screens, hashish heads, or punctured metal bowls;
 - 207 b. Water pipes;
 - 208 c. Carburetion tubes and devices;
 - 209 d. Smoking and carburetion masks;
 - 210 e. Miniature cocaine spoons and cocaine vials;
 - 211 f. Chamber pipes;
 - 212 g. Carburetor pipes;
 - 213 h. Electric pipes;
 - 214 i. Air-driven pipes;
 - 215 j. Chillums;
 - 216 k. Bongs;

- 217 1. Ice pipes or chillers.
- 218 (b) The following, along with all other relevant evidence, may be considered in determining
219 whether an object is drug paraphernalia:
- 220 (1) Statements by the owner or anyone in control of the object concerning its use;
- 221 (2) Prior convictions of the owner or other person in control of the object for violations of
222 controlled substances law;
- 223 (3) The proximity of the object to a violation of the Controlled Substances Act;
- 224 (4) The proximity of the object to a controlled substance;
- 225 (5) The existence of any residue of a controlled substance on the object;
- 226 (6) The proximity of the object to other drug paraphernalia;
- 227 (7) Instructions provided with the object concerning its use;
- 228 (8) Descriptive materials accompanying the object explaining or depicting its use;
- 229 (9) Advertising concerning its use;
- 230 (10) The manner in which the object is displayed for sale;
- 231 (11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or
232 related items to the community, such as a seller of tobacco products or agricultural
233 supplies;
- 234 (12) Possible legitimate uses of the object in the community;
- 235 (13) Expert testimony concerning its use;
- 236 (14) The intent of the owner or other person in control of the object to deliver it to persons
237 whom he knows or reasonably should know intends to use the object to facilitate
238 violations of this article.
- 239 (c) It is unlawful for any person to knowingly use, or to possess with intent to use, drug
240 paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert,
241 produce, process, prepare, test, analyze, package, repackage, store, contain, or conceal a
242 controlled substance which it would be unlawful to possess, or to inject, ingest, inhale, or
243 otherwise introduce into the body a controlled substance which it would be unlawful to
244 possess. Violation of this section shall be known as "possession of drug paraphernalia", and
245 shall be punished with a class D penalty.
- 246 (d) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with
247 intent to deliver, drug paraphernalia knowing that it will be used to plant, propagate,
248 cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test,
249 analyze, package, repackage, store, contain, or conceal a controlled substance which it
250 would be unlawful to possess, or that it will be used to inject, ingest, inhale, or otherwise
251 introduce into the body a controlled substance which it would be unlawful to possess.
252 Violation of this section shall be punished with a class C penalty.
- 253 (e) Possession, delivery, possession with intent to deliver, or manufacture with intent to deliver,
254 of each separate and distinct item of drug paraphernalia is a separate offense.

255 (f) It is unlawful for any person to purchase or otherwise procure an advertisement in any
256 newspaper, magazine, handbill, or other publication, or purchase or otherwise procure an
257 advertisement on a billboard, sign, or other outdoor display, when he knows that the
258 purpose of the advertisement, in whole or in part, is to promote the sale of objects designed
259 or intended for use as drug paraphernalia described in this Section. Violation of this section
260 shall be punished with a class D penalty.

261 **Sec. 14-95.12 – Prohibited Marijuana Conduct.**

262 (a) It shall be unlawful for any person, business, or other entity to:

- 263 (1) Possess marijuana when the person is less than 21 years old;
264 (2) Provide, give, or transfer in any way, marijuana to any person less than 21 years
265 old;
266 (3) Cultivate marijuana without a valid license, valid agent card, or a valid medical
267 cannabis patient card issued by the EBCI Cannabis Control Board;
268 (4) Operate any marijuana facility without a valid license issued by the EBCI Cannabis
269 Control Board;
270 (5) Sell marijuana without a valid license from the EBCI Cannabis Control Board;
271 (6) Sell hemp or hemp products without a valid license from the EBCI Cannabis
272 Control Board;
273 (7) Possess marijuana in any place where possession is prohibited by the conspicuous
274 posting of a sign or notice by the owner or possessor of the location;
275 (8) Consuming marijuana in public;
276 (9) Possess or consume marijuana within 100 feet of a school, child day care facility,
277 church, hospital, Tribal government building, public park, playground, community
278 club building, or public swimming pool, or community facility as defined in
279 Chapter 17;
280 (10) Transport marijuana, hemp, or hemp products in the passenger area of a
281 motor vehicle in other than the manufacturer's unopened original container;
282 (11) Consume marijuana, hemp, or hemp products while driving a motor vehicle
283 on a highway or public vehicular area as defined as Chapter 20 of the Cherokee
284 Code.

285 (b) Violation of subsection (a)(1) shall constitute a criminal offense punishable by a fine of
286 up to \$500.00, 72 hours of community service, and defendant shall obtain a substance
287 abuse assessment.

288 (c) Violation of subsection (a)(2) shall constitute a criminal offense punishable as follows:

- 289 (1) First offense. A mandatory minimum sentence of not less than a \$1,000.00 fine, and
290 no more than \$5,000.00 fine, costs and imprisonment for not less than seven days
291 up to 30 days.
292 (2) Second offense. A mandatory minimum sentence of not less than a \$3,000.00 fine,
293 nor more than \$5,000.00 fine, costs and imprisonment for not less than 30 days up
294 to six months.
295 (3) Third and subsequent offenses. A mandatory minimum sentence of not less than a
296 \$5,000.00 fine, nor more than \$15,000.00 fine, costs, and imprisonment for not less
297 than 6 months.

- 298 (d) Violation of subsections (a)(3)-(6) shall be punishable by a fine of not less than \$5,000.00,
299 costs, and no more than \$15,000.00 per violation.
- 300 (e) Violation of subsections (a)(7)-(10) shall constitute an infraction and shall be punishable
301 by a fine of up to \$250.00 plus costs.
- 302 (f) Violation of subsection (a)(11) shall constitute a criminal offense punishable by
303 imprisonment up to six months and no more than \$5,000.00 plus costs.
- 304 (g) Any and all marijuana, hemp, or hemp products seized pursuant to any court action brought
305 under this section, is summarily forfeited to the Cherokee Indian Police Department to be
306 destroyed upon completion of the criminal case, including appellate timeframes.
- 307 (h) Fines collected under this section shall be placed in the CIPD budget in a designated line
308 item to fund behavioral health supports and peer supports for individuals who may become
309 involved with the Justice System. If there is money left in this line item at the end of the
310 fiscal year, the money shall stay within the CIPD budget and not returned to the general
311 fund.

312 **Secs. 14-95.12 13—14-95.19. Reserved.**

313 **Sec. 14-95.20. Purpose of punishment.**

314 The primary purposes of sentencing a person convicted of a crime are to impose a
315 punishment commensurate with the injury the offense has caused, taking into account factors that
316 may diminish or increase the offender's culpability; to protect the public by restraining offenders;
317 to assist the offender toward treatment, rehabilitation and restoration to the community as a
318 lawful citizen; and to provide a general deterrent to criminal behavior.

319 **Sec. 14-95.21. Punishment levels.**

320 The authorized punishment for each class of penalty is as specified below:

- 321 (a) Any person subject to a class A penalty shall be imprisoned in active custody for not
322 less than 18 months nor more than three years and pay a fine of not less than \$5,000.00
323 nor more than \$15,000.00 and shall be subject to exclusion for a period of not less than
324 ten years nor more than life. This punishment shall require a mandatory 18 months
325 active sentence and the remainder of any sentence greater than the mandatory
326 minimum may be suspended only if a condition of special probation is imposed to
327 require the defendant to serve the remaining portion of a term greater than the
328 mandatory 18 months, and the imprisonment may not be spent on electronic home
329 confinement.
- 330 (b) Any person subject to a class B penalty shall be imprisoned in active custody for not
331 less than ~~one year~~ 6 months nor more than ~~three years~~ one year and pay a fine of not
332 less than ~~\$2~~ 1,000.00, nor more than ~~\$4~~ 5,000.00 and shall be subject to exclusion for a
333 period of not less than three years nor more than 15 years. This punishment shall
334 require a mandatory ~~one year~~ six month active sentence and the remainder of any
335 sentence greater than ~~the~~ the mandatory minimum may be suspended only if a condition
336 of special probation is imposed to require the defendant to serve the remaining portion
337 of a term greater than the mandatory ~~one year~~ minimum sentence.

- 338 (c) Any person subject to a class C penalty shall be imprisoned for not less than ~~six~~ three
339 months nor more than one year and pay a fine of not less than ~~\$1,000.00~~ 500.00, nor
340 more than \$5,000.00 and shall be subject to exclusion for a period of not more than ten
341 years. This punishment shall require a mandatory ~~six~~ three months active sentence and
342 the remainder of any sentence greater than the mandatory minimum may be suspended
343 only if a condition of special probation is imposed to require the defendant to serve the
344 remaining portion a term greater than the mandatory ~~six months~~ minimum sentence.
- 345 (d) Any person subject to a Class D Penalty shall be imprisoned for not more than ~~three~~
346 ~~months~~ 30 days and pay a fine of not more than \$5,000.00, perform 24 hours of
347 community service and pay the costs of community service in the sum of \$200.00, and
348 shall be subject to exclusion for a period of not more than ten years.
- 349 (e) Any additional penalties required under Cherokee Law shall be imposed and the
350 mandatory minimum fines shall be reduced appropriately to ensure any punishment
351 imposed complies with the requirements of the Indian Civil Rights Act.
- 352 (f) The court may stay a sentence imposed under subparagraph (c) above and transfer the
353 case to the Wellness Court in accordance with Section 14-95.37[.] The court may not
354 grant a Prayer for Judgment Continued for violations under this Article.
- 355 (g) The sentence of persons violating this article ~~will~~ may be elevated under the provisions
356 of Section 14-95.22, 14-95.23, and 14-95.24. Except as provided in 14-95.22(a)(v), if
357 two or more elevating factors are found, then the person ~~shall~~ may be subject to a class
358 A penalty.
- 359 (h) Credit for inpatient treatment. The judge may order that a term of imprisonment
360 imposed as a condition of special probation under any level of punishment be served as
361 an inpatient in a facility approved by the Tribe for the treatment of substance abuse
362 where the defendant has been accepted for admission or commitment as an inpatient[.]
363 The defendant shall bear the expense of any treatment. The judge may impose
364 restrictions on the defendant's ability to leave the premises of the treatment facility and
365 require that the defendant follow the rules of the treatment facility. The judge may
366 credit against the active sentence imposed on a defendant the time the defendant was
367 an inpatient at the treatment facility, provided such treatment occurred after the
368 commission of the offense for which the defendant is being sentenced[.] This section
369 shall not be construed to limit the authority of the judge in sentencing under any other
370 provisions of law.

371 **Sec. 14-95.22. Prior convictions.**

- 372 (a) The penalty for any offender ~~shall~~ may be elevated one level for each prior drug
373 conviction and two levels for each prior drug distribution conviction.
- 374 i. Any person who commits an offense with a class B penalty who has one prior drug
375 conviction or one prior drug distribution conviction ~~shall~~ may be subject to a class A
376 penalty.
- 377 ii. Any person who commits an offense with a class C penalty who has ~~a~~ two or more
378 prior drug convictions or one or more prior drug distribution conviction ~~shall~~ may be
379 subject to a class A penalty.

- 380 iii. Any person who commits an offense with a class C penalty who has one prior drug
381 conviction ~~shall~~ may be subject to a class B penalty.
- 382 iv. Any person who commits an offense with a class D penalty who has ~~a~~ three or more
383 prior drug convictions or two or more prior drug distribution conviction ~~shall~~ may be
384 subject to a class A penalty.
- 385 v. Any person who commits an offense with a class D penalty who has ~~a~~ two or more
386 prior drug convictions or one or more prior drug distribution conviction ~~shall~~ may be
387 subject to a class B penalty.
- 388 vi. Any person who commits an offense with a class D penalty who has ~~a~~ one prior drug
389 conviction ~~shall~~ may be subject to a class C penalty.

390 (b) Prior drug conviction. A person has a prior drug conviction when, on the date a criminal
391 judgment is entered, the person being sentenced has been previously convicted of a crime
392 involving the possession or use of any controlled substance in the courts of the Tribe, the
393 State of North Carolina or another state or the United States, regardless of whether the
394 crime was committed before or after the effective date of this Article. This section shall
395 not apply to any prior conviction of drug paraphernalia, marijuana, or Schedule VI
396 controlled substance.

397 (c) Prior Drug Distribution Conviction. A person has a prior drug distribution conviction
398 when, on the date a criminal judgment is entered, the person being sentenced has been
399 previously convicted of a crime involving the trafficking, sale, delivery, or possession
400 with intent to distribute any controlled substance in the courts of the Tribe, the State of
401 North Carolina or another state or the United States, regardless of whether the crime was
402 committed before or after the effective date of this article.

- 403 (d) Proof of prior convictions. A prior conviction shall be proved by any of the following
404 methods:
- 405 (1) Stipulation of the parties.
 - 406 (2) An original or copy of the court record of the prior conviction.
 - 407 (3) A copy of records maintained by the Division of Criminal Information, the Division of
408 Motor Vehicles, or of the Administrative Office of the Courts.
 - 409 (4) Any other method found by the court to be reliable.

410 The Tribe bears the burden of proving, by a preponderance of the evidence, that a prior
411 conviction exists and that the offender before the court is the same person as the offender named
412 in the prior conviction. The original or a copy of the court records or a copy of the records
413 maintained by the Cherokee Court, the North Carolina Division of Criminal Information, the
414 North Carolina Division of Motor Vehicles, or of the North Carolina Administrative Office of
415 the Courts, bearing the same name as that by which the offender is charged, is prima facie
416 evidence that the offender named is the same person as the offender before the court, and that the
417 facts set out in the record are true. For purposes of this subsection, "a copy" includes a paper
418 writing containing a reproduction of a record maintained electronically on a computer or other
419 data processing equipment, and a document produced by a facsimile machine. The prosecutor
420 shall make all feasible efforts to obtain and present to the court the offender's full record.
421 Evidence presented by either party at trial may be utilized to prove prior convictions.

422 ~~(e) Convictions for violations of this article, Cherokee Code Section 14-25.2, North Carolina~~
423 ~~General Statutes 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or 90-113.11, or~~
424 ~~90-113.12, or 90-113.21 or any similar state or federal law shall be considered previous~~
425 ~~convictions.~~

426 **Sec. 14-95.23. Drugs; children and elders.**

- 427 (a) Notwithstanding other provisions of this article, if a person who is 18 years of age or older
428 who violates Section 14-95.6 or 14-95.7 and it is found as provided in Section 14-95.31 that
429 the person sold or delivered a controlled substance to a person under 16 years of age or a
430 pregnant female, then the person shall be subject to a class A penalty.
- 431 (b) Notwithstanding other provisions of this article, if a person who is 18 years of age or older
432 who violates Section 14-95.11(d) and it is found as provided in Section 14-95.31 that the
433 person delivered a drug paraphernalia to a person under 16 years of age, then the person
434 shall be subject to a class B penalty.
- 435 (c) Notwithstanding other provisions of this article, if a person who is 18 years of age or older
436 is convicted of an offense under this article and it is found as provided in Section 14-95.31
437 that the person purchased or received a controlled substance from a minor 16 years of age or
438 younger who possessed, sold, or delivered the controlled substance in violation of this
439 article, then the person shall be subject to a class A penalty.
- 440 (d) Notwithstanding other provisions of this article, if a person who is 18 years of age or older
441 violates Section 14-95.5, 14-95.6, 14-95.7, or 14-95.8 and it is found as provided in Section
442 14-95.31 that the offense occurred while the person was pregnant, then the person shall be
443 subject to a class A penalty.
- 444 (e) Notwithstanding other provisions of this article, if a person who is 18 years of age or older
445 is convicted of an offense under Section 14-95.6, 14-95.7 or 14-95.8 and it is found as
446 provided in Section 14-95.31 that any part of the crime occurred on property used for a
447 school, day care center, playground, or community building or within 300 feet of the
448 boundary of real property used for a school, day care center, playground, or community
449 building, then the person shall be subject to a class A penalty. This section shall not apply if
450 the person was a regularly enrolled student in good standing currently attending classes at
451 the school where the offense occurred.
- 452 (f) Notwithstanding other provisions of this article, if a person who is 18 years of age or older
453 is convicted of an offense under Section 14-95.5 and it is found as provided in Section 14-
454 95.31 that the person possessed the controlled substance on property used for a school, day
455 care center, playground, or community building or within 300 feet of the boundary of real
456 property used for a school, day care center, playground, or community building playground,
457 or community building, then the person shall be subject to a class B penalty. This section
458 shall not apply if the person was a regularly enrolled student in good standing currently
459 attending classes at the school where the offense occurred.
- 460 (g) Notwithstanding other provisions of this article, if a person who is 18 years of age or older
461 is convicted of an offense under Section 14-95.6, 14-95.7 or 14-95.8 and it is found as
462 provided in Section 14-95.31 that any part of the crime occurred in a dwelling which is the

- 463 primary residence of a child who is 13 years of age or younger, then the person will be
464 subject to a class A penalty.
- 465 (h) Notwithstanding other provisions of this article, if a person who is 18 years of age or older
466 is convicted of an offense an offense under Section 14-95.5 and it is found as provided in
467 Section 14-95.31 that the person possessed the controlled substance in a dwelling which is
468 the primary residence of a child who is 13 years of age or younger, then the person will be
469 subject to a class B penalty.
- 470 (i) Notwithstanding other provisions of this article, if a person who is 18 years of age or older
471 is convicted of an offense under Section 14-95.6, 14-95.7 or 14-95.8 and it is found as
472 provided in Section 14-95.31 that any part of the crime occurred within the sensory
473 perception of a child who is 13 years of age or younger, whether or not the child actually
474 perceived the crime, then the person will be subject to a class A penalty.
- 475 (j) Notwithstanding other provisions of this article, if a person who is 18 years of age or older
476 is convicted of an offense under Section 14-95.5 and it is found as provided in Section 14-
477 95.31 that the person possessed the controlled substance within the sensory perception of a
478 child who is 13 years of age or younger, whether or the child actually perceived the crime
479 then the person will be subject to a class B penalty.
- 480 (k) Unless a person's conduct is covered under some other provision of law providing greater
481 punishment, if a person who is at least 18 years old is convicted of an offense under this
482 section and it is found as provided in Section 14-95.31 that any part of the crime occurred in
483 a dwelling which is the primary residence of a child under 16 years of age but more than 13
484 years of age or within the sensory perception of a child under 16 years of age but more than
485 13 years of age, then the person shall be punished as an offense one level higher than the
486 offense committed.
- 487 (l) Mistake of age is not a defense to a prosecution under this section.
- 488 (m) Notwithstanding other provisions of this article, if a person who is 18 years of age or older
489 is convicted of an offense under Section 14-95.6 or 14-95.6 and it is found as provided in
490 Section 14-95.31 that the person possessed the controlled substance within 300 feet of
491 Tribal real property dedicated to housing for elderly or disabled tribal members and their
492 families, then the person shall be subject to a Class A penalty.
- 493 (n) Notwithstanding other provisions of this article, if a person who is 18 years of age or older
494 is convicted of an offense under Section 14-95.6 or 14-95.7 and it is found as provided in
495 Section 14-95.31 that any part of the crime occurred in a dwelling which is the primary
496 residence of a vulnerable adult as defined in Section 108-7, then the person will be subject
497 to a class A penalty.

498 **Sec. 14-95.24. Drugs and guns.**

499 Notwithstanding other provisions of this article, if a person who is 18 years of age or older
500 is convicted of an offense under this section and it is found as provided in Section 14-95.31 at
501 the time of the offense that the person actually possessed the firearm about his or her person, or
502 used, displayed, or threatened to use or display a firearm, then the then the person shall be
503 punished as an offense two levels higher than the offense committed.

504 **Secs. 14-95.25—14-95.29. Reserved.**

505 **Sec. 14-95.30. Determination of punishment.**

- 506 (a) Before determining a penalty level and imposing a sentence, the court shall ascertain the
507 existence of any and all elevating factors presented **to the Court**. When considering the
508 exact sentence to impose within the range of the penalty level, the court has complete
509 discretion with regard to imposition of a penalty above the mandatory minimum and may
510 consider any aggravating and mitigating factors which may be appropriate in the imposition
511 of a penalty above the mandatory minimum.
- 512 (b) Consolidation of sentences. If an offender is convicted of more than one offense at the same
513 session of court, the court may consolidate the offenses for judgment and impose a single
514 judgment for the consolidated offenses. Any sentence imposed shall be consistent with the
515 appropriate mandatory minimum penalty for each of the consolidated offenses.

516 **Sec. 14-95.31. Procedure for determining elevating factors.**

- 517 (a) *Generally, burden of proof.* The court shall consider evidence of elevating factors present in
518 the offense that make an elevated sentence appropriate. The Tribe bears the burden of
519 proving beyond a reasonable doubt that an elevating factor exists.
- 520 (b) *Procedure for determination of prior record.* The existence of elevating factors under
521 section 14-95.22 will be determined as provided in that section. The existence of other
522 elevating factors will be determined in accordance with the procedures of this section.
- 523 (c) *Jury to determine elevating factors; jury procedure if trial bifurcated.* The defendant may
524 admit to the existence of an elevating factor, and the factor so admitted shall be treated as
525 though it were found by a jury pursuant to the procedures in this subsection. If the defendant
526 does not so admit, only a jury may determine if an elevating factor is present in an offense.
527 The jury impaneled for the trial of the offense may, in the same trial, also determine if one
528 or more elevating factors is present, unless the court determines that the interests of justice
529 require that a separate sentencing proceeding be used to make that determination. If the
530 court determines that a separate proceeding is required, the proceeding shall be conducted
531 by the trial judge before the trial jury as soon as practicable after the guilty verdict is
532 returned. If prior to the time that the trial jury begins its deliberations on the issue of
533 whether one or more elevating factors exist, any juror dies, becomes incapacitated or
534 disqualified, or is discharged for any reason, an alternate juror shall become a part of the
535 jury and serve in all respects as those selected on the regular trial panel. An alternate juror
536 shall become a part of the jury in the order in which the juror was selected. If the trial jury is
537 unable to reconvene for a hearing on the issue of whether one or more elevating factors
538 exist after having determined the guilt of the accused, the trial judge shall impanel a new
539 jury to determine the issue. A jury selected to determine whether one or more elevating
540 factors exist shall be selected in the same manner as juries are selected for the trial of
541 criminal cases.

- 542 (d) *Procedure if defendant admits elevating factor only.* If the defendant admits that an
543 elevating factor exists, but pleads not guilty to the underlying offense, a jury shall be
544 impaneled to dispose of the offense charge. In that case, evidence that relates solely to the
545 establishment of an elevating factor shall not be admitted in the trial.
- 546 (e) *Procedure if defendant pleads guilty to the offense only.* If the defendant pleads guilty to the
547 offense, but contests the existence of one or more elevating factors, a jury shall be
548 impaneled to determine if the elevating factor or factors exist.
- 549 (f) *Pleading of elevating factors.* Elevating factors set forth in this article need not be included
550 in a complaint or other charging instrument.
- 551 (g) *Notice of intent to use elevating factors or prior record level points.* The Tribe must provide
552 a defendant with written notice of its intent to prove the existence of one or more elevating
553 factors under this article at least 30 days before trial or the entry of a guilty or no contest
554 plea. A defendant may waive the right to receive such notice. The notice shall list all the
555 elevating factors the Tribe seeks to establish.
- 556 (h) *Written findings; when required.* The court shall make findings of the elevating factors
557 present in the offense. If the jury finds elevating factors, the court shall ensure that those
558 findings are entered in the court's judgment. Findings shall be in writing.

559 **Sec. 14-95.32. Special evidence procedure.**

- 560 (a) Notwithstanding any provision to the contrary in the North Carolina General Statutes as
561 adopted herein, whenever a substance is submitted to either the North Carolina State Bureau
562 of Investigations Laboratory, the Charlotte, North Carolina, Police Department Laboratory;
563 the Toxicology Laboratory, Reynolds Health Center, Winston-Salem; the Forensic Testing
564 Laboratory at Duke University Medical Center; or any other accredited laboratory testing
565 facility, whether owned publicly or privately, approved by the Cherokee Court for chemical
566 analysis, the report of that analysis shall be certified by the person performing the analysis
567 and shall be admissible as evidence without further authentication in all proceedings in the
568 Cherokee Court as evidence of the identity, nature, and quantity of the substance analyzed
569 provided that:
- 570 i. The Tribe notifies the defendant and files notice with the court at least 30 days before
571 trial of its intention to introduce the certified report into evidence under this subsection
572 and provides a copy of the certified report to the defendant, and
- 573 ii. The defendant fails to make a written objection to the admission of the certified report
574 into evidence at least 15 days before the trial. Failure to make such a written objection
575 shall be deemed a waiver of the defendant's right to confront the person performing the
576 chemical analysis at trial.
- 577 (b) Nothing in subsection (a) precludes the right of any party to call any witness or to introduce
578 any evidence supporting or contradicting the results contained in the certified report under
579 subsection (a). The defendant shall have the right to confront the person performing the
580 chemical analysis unless that right is waived in accordance with the procedures in
581 subsection (a). However, if the defendant objects to the admission of the certified report in
582 subsection (a) and if the defendant is found guilty of an offense under this section, the

583 defendant will be responsible for all costs associated with obtaining the testimony of the
584 person performing the chemical analysis.

585 (c) When a certified report under subsection (e) is sought to be admitted into evidence by the
586 Tribe, a statement signed by each successive person in the chain of custody of the substance
587 analyzed shall be required as evidence of the chain of custody of the substance analyzed.
588 The statement shall indicate the date when the substance analyzed was in the custody and
589 control of the persons whose signatures appear on the statement and that he/she delivered
590 the substance analyzed to the next consecutive person whose signature appears on the
591 statement. The statement shall contain a sufficient description of the material or its
592 container so as to distinguish it as the particular item in the chain of custody and shall state
593 that the material was delivered in essentially the same condition as received. The statement
594 may be placed on the same document as the certified report provided for in subsection (e) of
595 this section. A statement under this subsection shall be prima facie evidence that the persons
596 whose signatures appears on the statement had custody and control of the substance
597 analyzed on the dates indicated on the statement and that those persons made delivery of the
598 substance analyzed to the next consecutive person whose signature appear on the statement
599 and it shall not be necessary to call each person whose signature appears on the statement to
600 testify at trial in order to establish the chain of custody of the substance analyzed. The
601 provisions of this subsection may be utilized by the Tribe only if:

- 602 i. The Tribe notifies the defendant at least 30 days before trial of its intention to
603 introduce the statement into evidence under this subsection and provides defendant
604 with a copy of the statement, and
- 605 ii. The defendant fails to file a written objection to the introduction of the statement into
606 evidence at least 15 days before trial. Failure to make such a written objection shall be
607 deemed a waiver of the defendant's right to confront the persons whose signatures are
608 contained in the statement.

609 (d) Nothing in subsection (c) precludes the right of any party to call any witnesses or to
610 introduce any evidence supporting or contradicting the chain of custody of the substance
611 analyzed. The defendant shall have the right to confront all persons who had physical
612 custody or control of the substance analyzed unless that right is waived in accordance with
613 the procedures of subsection (c). However, if the defendant objects to the admission of the
614 statement in subsection (c) and if the defendant is found guilty of an offense under this
615 section, the defendant will be responsible for all costs associated with obtaining the
616 testimony of the persons whose signatures appear in statement.

617 (e) When a person is subject to random drug testing as a result of a term of probation or
618 electronic home confinement or provides a blood or urine sample under the provisions of
619 Chapter 20 of the North Carolina General Statutes, scientific evidence demonstrating the
620 possession of a controlled substance in the blood or urine of the person shall be admissible
621 and shall constitute a rebuttable presumption of prima fascia evidence of willful possession
622 of a controlled substance in violation of this article.

623 **Sec. 14-95.33. Cooperation between law-enforcement agencies.**

624 (a) The Chief of the Cherokee Indian Police Department may temporarily receive assistance
625 from any law enforcement agency in enforcing the laws pursuant of this article if approved

626 in writing by Principal Chief. The assistance may consist of allowing officers of the agency
627 to work temporarily with officers of the Cherokee Indian Police Department (including in
628 an undercover capacity) and lending equipment and supplies. While working with another
629 agency under the authority of this section, an assisting officer shall have the same
630 jurisdiction, powers, rights, privileges, and immunities (including those relating to the
631 defense of civil actions and payment of judgments) as the officers of the requesting agency
632 in addition to those he normally possesses. While on duty with the other agency, he shall be
633 subject to the lawful operational commands of his superior officers in the Cherokee Indian
634 Police Department, but he shall for personnel and administrative purposes remain under the
635 control of his own agency, including for purposes of pay.

636 (b) The Chief of the Cherokee Indian Police Department may temporarily provide assistance to
637 any tribal, state or federal law enforcement agency in enforcing controlled substances laws
638 pursuant to Tribal, state or federal law if approved in writing by Principal Chief. The
639 assistance may consist of allowing officers of the Cherokee Indian Police Department to
640 work temporarily with officers of the agency (including in an undercover capacity) and
641 lending equipment and supplies. The requesting agency must ensure that while working
642 with the other agency, the Cherokee officer shall have the same jurisdiction, powers, rights,
643 privileges, and immunities (including those relating to the defense of civil actions and
644 payment of judgments) as the officers of the requesting agency in addition to those he
645 normally possesses. While on duty with the other agency, he shall be subject to the lawful
646 operational commands of his superior officers in the other agency, but he shall for personnel
647 and administrative purposes remain under the control of the Cherokee Indian Police
648 Department, including for purposes of pay. He shall furthermore be entitled to workers'
649 compensation when acting pursuant to this section to the same extent as though he were
650 functioning within the normal scope of his duties.

651 (c) As used in this section, "Law-enforcement agency" means any Tribal, federal, state or local
652 agency, force, department, or unit responsible for enforcing criminal laws, including the
653 Bureau of Indian Affairs Law Enforcement, the police department of another tribe, or any
654 local police department or sheriff's department,

655 (d) This section in no way reduces the jurisdiction or authority of Tribal law-enforcement
656 officers.

657 **Sec. 14-95.34. Restitution; civil liability.**

658 (a) When any person is convicted of an offense under this Article, the court may order him to
659 make restitution to any law-enforcement agency for reasonable expenditures made in
660 purchasing controlled substances from him or his agent as part of an investigation leading to
661 his conviction.

662 (b) When any person is convicted of an offense under this Article, the court must order him to
663 make restitution for the cost of storage, testing and disposal of controlled substances or
664 immediate precursor chemicals.

665 (c) When any person is convicted of an offense under this Article involving the manufacture of
666 controlled substances, the court must order the person to make restitution for the actual cost
667 of cleanup to the law enforcement agency that cleaned up any clandestine laboratory used to

668 manufacture the controlled substances, including personnel overtime, equipment, and
669 supplies.

670 (d) A person 18 years of age or older, who hires, employs, or intentionally uses a person under
671 18 years of age to commit a violation of this Article is liable in a civil action for damages
672 for drug addiction proximately caused by the violation. The doctrines of contributory
673 negligence and assumption of risk are no defense to liability under this section.

674 (e) Recoveries under this section shall be considered debts to the tribe.

675 **Sec. 14-95.35. Conditional discharge and expunction of records for first offense of youthful**
676 **offenders.**

677 (a) Whenever any person if he were not over 21 years of age at the time of the offense, who has
678 not previously been convicted of any offense under this Article or under any statute of the
679 United States or any state relating to scheduled controlled substances or to that drug
680 paraphernalia pleads guilty to or is found guilty of an offense under this article under which
681 the person would be subject to Class C or D penalty, the court may, without entering a
682 judgment of guilt and with the consent of such person, defer further proceedings and place
683 him on probation upon such reasonable terms and conditions as it may require. To fulfill the
684 terms and conditions of probation the court may allow the defendant to participate in a drug
685 education program approved for this purpose by the Department of Health and Human
686 Services. Upon violation of a term or condition, the court may enter an adjudication of guilt
687 and proceed as otherwise provided. Upon fulfillment of the terms and conditions and upon
688 payment of any special fines imposed under Section 14-96.1, the court shall discharge such
689 person and dismiss the proceedings against him. Discharge and dismissal under this section
690 shall be without court adjudication of guilt and shall not be deemed a conviction for
691 purposes of this section or for purposes of disqualifications or disabilities imposed by law
692 upon conviction of a crime including the additional penalties imposed for second or
693 subsequent convictions under this Article. Discharge and dismissal under this section may
694 occur only once with respect to any person. Prior to taking any action to discharge and
695 dismiss under this section the court shall make a finding that the defendant has no record of
696 previous convictions under the laws of the Tribe, the United States, or any state.

697 (b) Convictions for violations of this article, ~~Cherokee Code Section 14-25.2~~, North Carolina
698 General Statutes 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or 90-113.11, or
699 90-113.12, ~~or 90-113.21~~ or any similar state or federal law shall be considered previous
700 convictions. This section shall not apply to any prior conviction of drug paraphernalia,
701 marijuana, or Schedule VI controlled substance.

702 (c) Upon the dismissal of such person, and discharge of the proceedings against him under
703 subsection (a) of this section, such person, if he were not over 21 years of age at the time of
704 the offense, may apply to the court for an order to expunge from all official records (other
705 than the confidential file to be retained by the Clerk of Court under subsection (c)) all
706 recordation relating to his arrest, indictment or information, trial, finding of guilty, and
707 dismissal and discharge pursuant to this section. The applicant shall attach to the application
708 the following:

- 709 (1) An affidavit by the applicant that he has been of good behavior during the period of
710 probation since the decision to defer further proceedings on the offense in question and
711 has not been convicted of any felony, or misdemeanor, other than a traffic violation,
712 under the laws of the United States or the laws of this state or any other state;
- 713 (2) Verified affidavits by two persons who are not related to the applicant or to each other
714 by blood or marriage, that they know the character and reputation of the petitioner in
715 the community in which he lives, and that his character and reputation are good;
- 716 (3) Affidavits of the clerk of court, Chief of the Cherokee Indian Police Department,
717 where appropriate, and sheriff of the county of which the petitioner is a resident,
718 showing that the applicant has not been convicted of a felony or misdemeanor other
719 than a traffic violation under the laws of the tribe or the State of North Carolina at any
720 time prior to the conviction for the offense in question or during the period of
721 probation following the decision to defer further proceedings on the offense in
722 question.

723 The judge to whom the petition is presented is authorized to call upon a probation officer for any
724 additional investigation or verification of the petitioner's conduct during the probationary period
725 deemed desirable.

726 If the court determines, after hearing, that such person was dismissed and the proceedings against
727 him discharged and that he was not over 21 years of age at the time of the offense, it shall enter
728 such order. The effect of such order shall be to restore such person in the contemplation of the
729 law to the status he occupied before such arrest or indictment or information. No person as to
730 whom such order was entered shall be held thereafter under any provision of any law to be guilty
731 of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge
732 such arrest, or indictment or information, or trial in response to any inquiry made of him for any
733 purpose.

734 The court shall also order that said conviction and the records relating thereto be expunged from
735 the records of the court, and direct all law-enforcement agencies bearing records of the same to
736 expunge their records of the conviction. The clerk shall forward a certified copy of the order to
737 the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of
738 police or other arresting agency, as appropriate, shall forward such order to the State Bureau of
739 Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of
740 Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

- 741 (d) The clerk of court shall maintain a confidential file containing the names of persons granted
742 conditional discharges. The information contained in the file shall be disclosed only to
743 Judges of the Cherokee Court for the purpose of ascertaining whether any person charged
744 with an offense under this Article has been previously granted a conditional discharge.
- 745 (e) Whenever any person is charged with violation of 14-95.5, upon dismissal by the state of
746 the charges against him upon a finding of not guilty or other adjudication of innocence, such
747 person may apply to the court for an order to expunge from all official records all
748 recordation relating to his arrest, indictment or information, or trial. If the court determines,
749 after hearing that such person was not over 21 years of age at the time any of the
750 proceedings against him occurred, it shall enter such order. No person as to whom such
751 order has been entered shall be held thereafter under any provision of any law to be guilty of

752 perjury or otherwise giving a false statement by reason of his failures to recite or
753 acknowledge such arrest, or indictment or information, or trial in response to any inquiry
754 made of him for any purpose.

755 **Sec. 14-95.36. Conditional discharge for first offense after completion of treatment.**

756 Upon the first conviction only of any offense under this article under which the person
757 would be subject to class C or D penalty, ~~except for a conviction under 14-95.6(e) or 14-95.7(d),~~
758 the court may place defendant on probation under this section for an offense under this Article.
759 The probation, if imposed, shall be for not less than one year and shall contain a minimum
760 condition that the defendant who was found guilty or pleads guilty pay all fines required under
761 Section 14-96.1 and complete a substance abuse assessment by the Analenisgi program of the
762 Tribe and follow all recommendations, including enrollment in and successful completion,
763 within 150 days of the date of the imposition of said probation, the program of drug treatment at
764 a program approved by the Analenisgi program of the Tribe. If no recommendation for treatment
765 is made, the defendant must provide proof of completion of all recommendations within 150
766 days of the date of imposition of said treatment. If defendant is able to show successful
767 completion of recommendations of the substance abuse assessment within the time allowed by
768 the Court, and the defendant has not been convicted of any violations of probation, then the
769 defendant may file a motion asking to withdraw his/her plea and ask that the charges be
770 dismissed.

771 For the purposes of determining whether the conviction is a first conviction or whether a
772 person has already had discharge and dismissal, no prior offense occurring more than seven
773 years before the date of the current offense shall be considered. If a person already has had a
774 discharge and dismissal, it shall be indicated in his/her record as "dismissed - conditional
775 discharge." In addition, convictions for violations of this article, ~~Cherokee Code Section 14-25.2,~~
776 or North Carolina General Statutes 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or
777 90-113.11, or 90-113.12, ~~or 90-113.21~~ shall be considered previous convictions. This section
778 shall not apply to any prior conviction of drug paraphernalia, marijuana, or Schedule VI
779 controlled substance.

780 Failure to successfully complete the recommendations including an approved program of
781 drug treatment shall constitute grounds to revoke probation and deny application for expunction
782 of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and
783 dismissal and discharge pursuant to this section. For purposes of this subsection, the phrase
784 "Failure to successfully complete the recommendations including an approved program of drug
785 treatment " includes failure to attend scheduled classes without a valid excuse, failure to
786 complete the course within 150 days of imposition of probation, willful failure to pay the
787 required fee for the treatment, or any other manner in which the person fails to complete the
788 treatment successfully. Analenisgi shall report any failure of a person to complete successfully
789 the program of instruction to the court which imposed probation. Upon receipt of the
790 Analenisgi's report that the person failed to complete the program successfully, the Court shall
791 revoke probation and/or deny application for expunction of all recordation of defendant's arrest,
792 indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to this
793 section. A person may obtain a hearing before the court of original jurisdiction prior to
794 revocation of probation or denial of application for expunction.

795 **Sec. 14-95.37. Transfer to Cherokee Wellness Court.**

796 Upon the conviction of any offense under this article the court may transfer the case to
797 Cherokee Wellness Court pursuant to the provisions of Chapter 7C. Upon unsuccessful discharge
798 from the Wellness Court program and transfer back to the Cherokee Court, the Cherokee Court
799 shall immediately activate the sentence or the balance of the sentence that was stayed including
800 the collection of all outstanding fines, fees and costs, notwithstanding any term of imprisonment
801 imposed by the Wellness Court. Payment of required fines shall be stayed until discharge from
802 the Wellness Court.