

Date: SEP 05 2024

ORDINANCE NO. 290 (2023)

An ordinance criminalizing the commission of domestic violence in the presence of a child.

WHEREAS, the Cherokee Code already defines a minor as a “person under 18 years of age” in multiple locations; and

WHEREAS, to maintain consistency throughout the Cherokee Code it is important to update Article V; and

WHEREAS, the wording in C.C. 14-20.4 needed to be updated to clarify the age difference between the perpetrator and victim and to better define ward; and

NOW THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Tribal Council assembled, at which a quorum is present, C.C. 14-40.2 is established to read as follows:

Sec. 14-40.2. Commission of domestic violence in the presence of a child.

(a) Definitions. The following definitions shall apply in this Section.

(1) “Child” means any person under the age of 18.

(2) “Domestic violence” has the same meaning as in 14-40.1(b).

(3) “Intimate partner” has the same meaning as in 14-40.1(f)(1) and “member of intimate partner’s family or household” has the same meaning as in 14-40.1(f)(2).

(4) “In the presence of a child” means:

a. in the physical presence of a child; or

b. where a child may see or hear an act of domestic violence; or

c. in any location in which a reasonable person should know that a child may see or hear any act(s) constituting domestic violence.

(b) It is unlawful to commit any act of domestic violence in the presence of a child.

(c) Commission of domestic violence in the presence of a child may only be charged against the predominant aggressor in a domestic dispute.

(d) Penalties.

(1) Unless a person’s conduct is covered under some other provision of law providing greater punishment, a first conviction of commission of domestic violence in the presence of a child shall be punishable by a fine not less than \$1,000 nor more than \$5,000 to be divided equally between the Tribe’s domestic violence and child advocacy programs, by a term of imprisonment not more than one year; or by any combination of these penalties.

(2) Unless a person’s conduct is covered under some other provision of law providing greater punishment, a second or subsequent conviction of domestic

47 violence in the presence of a child shall be punishable by a fine not less than
48 \$2,000 nor more than \$15,000 to be divided equally between the Tribe's
49 domestic violence and child advocacy programs, by a term of imprisonment
50 not more than three years; or any combination of these penalties.

51 (3) Unless a person's conduct is covered by some other provision of law
52 providing greater punishment, any act of domestic violence causing or
53 attempting to cause serious bodily injury or death to an intimate partner or
54 member of intimate partner's family or household or domestic violence
55 involving the use of a dangerous weapon against an intimate partner or
56 intimate partner's family or household in the presence a child shall be
57 punishable by a fine not less than \$2,000 nor more than \$15,000 to be divided
58 equally between the Tribe's domestic violence and child advocacy programs;
59 by a term of imprisonment not more than three years; or by any combination
60 of these penalties.

61 (4) All monies collected in fines under this Subsection shall be divided equally
62 and placed in the budgets of the DV/SA Program and the Child Advocacy
63 Program in designated line items to fund any services related to their
64 missions.

65
66 Submitted by Mike Parker, and Bo Crowe, Wolfstown Tribal Council Representative

67
68
69
70