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CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: MAR 06 2025

ORDINANCE NO.: 416 (2025)

*An ordinance to allow for private individuals to charge
Simple Assault and Battery without the need for a law enforcement officer.*

WHEREAS, Cherokee Code 15-9 provides that only sworn law enforcement officers shall be able to file charges in the Cherokee Court; and

WHEREAS, that section also contains an exception to this, listing a number of charges that may be charged by private individuals; and

WHEREAS, this is necessary to allow individuals who have been victims of crimes to take charges out when officers were not called or did not witness the crime; and

WHEREAS, recently the Cherokee Court noticed a conflict of language under C.C. 15-9 (c)(11), that allows an individual to charge simple assault but not simple battery; and

WHEREAS, keeping this language would prevent an individual from obtaining private charges if that person was physically struck in an altercation; and

WHEREAS, the following changes need to be made to allow for private individuals to charge simple battery in addition to simple assault.

NOW THEREFORE BE IT ORDAINED, by the Tribal Council of the Eastern Band of Cherokee Indians, in council assembled at which a quorum is present, that Cherokee Code Sec. 15-9(c)(11) is hereby amended to read as follows:

Sec. 15-9. - Infractions, misdemeanor trials, and private charges.

- (a) Any offenses for which no period of imprisonment is prescribed shall be deemed infractions and shall be civil in nature, notwithstanding any procedure for prosecution of said offenses through the criminal process. There shall be no right to trial by jury for infractions, and the same shall be tried before a Judge of the Cherokee Court, unless such offenses are joined for trial by the Court with other offenses for which the defendant does possess a right to a trial by jury.
- (b) Misdemeanor Trials by Judge; Request for De Novo Jury Trial. Any offenses for which a maximum possible punishment of 12 months or less is prescribed shall be deemed a misdemeanor. Misdemeanors shall be tried before a Judge of the

1 Cherokee Court, unless such offenses are joined for trial by the Court with felony
2 offenses, in which case the offenses so combined shall be scheduled for a trial by
3 jury. A defendant convicted of a misdemeanor by a judge of the Cherokee Court
4 may, within ten calendar days of conviction, request a de novo trial by jury which
5 shall be granted by a Judge of the Cherokee Court and the case placed on the docket
6 for the next available jury pre-trial or trial session.

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9 (1) Upon conviction of a misdemeanor by a Judge of the Cherokee
10 Court, and after a request for trial by jury is given, a Judge may upon
11 motion of the Defendant or the Tribe, review and modify any
12 conditions of pre-trial release prior to the Defendant's jury trial.
13 (2) A Cherokee Court Judge who convicts a Defendant of one or more
14 misdemeanors shall inform the Defendant in open court of his or her
15 right to request a trial by jury de novo on all charges upon which the
16 Defendant was convicted.
17 (3) A request for trial by jury after a conviction may be given orally by
18 the Defendant in open court in the presence of a Judge of the
19 Cherokee Court, or by written request filed with the Clerk of the
20 Cherokee Court. Such request must be made within ten calendar
21 days of the conviction by the Court. If no request for a trial by jury
22 is made within ten calendar days of conviction, the judgment entered
23 pursuant to the conviction shall be a final judgment of the Cherokee
24 Court.
25 (4) There shall be no right to request a trial by jury after any plea
26 agreement is entered into by the Defendant and the Tribe and
27 accepted by a Judge of the Cherokee Court.
28 (5) If the prosecutor for the Tribe and the Defendant agree in writing,
29 and upon acceptance of the agreement by a Judge of the Cherokee
30 Court, a Defendant may waive the right to be tried before a Judge of
31 the Cherokee Court on a misdemeanor. Upon such waiver, the case
32 shall be placed on the next available jury pre-trial or trial session.
33 (6) A Defendant may request a trial by jury after a conviction for an
34 infraction provided the Defendant has also been convicted of a
35 related misdemeanor. If a Defendant is convicted only of an
36 infraction by a Judge of the Cherokee Court, there is no right to
37 request a de novo trial by jury.
38 7) A request for a jury trial de novo pursuant to this section stays the
39 execution of all portions of the judgment, including but not limited
40 to, all of the following: payment of costs, payment of a fine,
41 probation or special probation, active punishment, and any other
42 lawfully imposed condition of the judgment. Nothing in this
43 subsection shall limit the Court's authority to set conditions of pre-
44 trial release prior to the Defendant's jury trial.
45 (8) If a defendant has paid a fine or costs and then makes a request for
46 a de novo trial by jury, the amount paid must be remitted to the

1 defendant if the defendant is subsequently acquitted or the charges
2 are thereafter dismissed, but the remission shall be delayed pending
3 the outcome of the jury trial or dismissal of charges.

4 (9) Unless otherwise provided, the defendant may withdraw the request
5 for a jury trial de novo only in open court and with the consent of
6 the Judge presiding. Upon the Court accepting the defendant's
7 request to withdraw the request for a trial by jury, execution of the
8 judgment shall occur.

9 (10) If the Defendant requests a jury trial de novo from a conviction
10 before a Judge of the Cherokee Court for driving while impaired or
11 an offense pursuant to the Cherokee Controlled Substances Act, and
12 thereafter, with the consent of the Court, withdraws the request for
13 a jury trial de novo, the Court shall then obtain an updated copy of
14 the Defendant's motor vehicle and criminal history records from the
15 Tribal prosecutor. For driving while impaired or controlled
16 substances offenses, the Court shall vacate the previous judgment,
17 and impose a new judgment based upon any new sentencing factors
18 the Court deems relevant and appropriate to the Defendant in light
19 of applicable law; and provided such sentencing is conducted in
20 accordance with applicable law.

21 (11) The offense of driving while impaired is a misdemeanor.

22 (12) Offenses under the Cherokee Controlled Substances Act for which
23 a Class C or D penalty is affixed are misdemeanors. If a Defendant
24 is charged with a Class C or D penalty offense, the Defendant may
25 be punished at a greater offense level pursuant to applicable
26 Controlled Substance Act sentencing provisions, however for the
27 purposes of this section, the offense is a misdemeanor. Offenses for
28 which a Class A or B penalty is affixed are not considered
29 misdemeanors for the purposes of this section.

30 (13) This section shall apply to all offenses committed on or after January
31 1, 2022.

32 (c) All criminal offenses and infractions charged in the Cherokee Court shall be
33 initiated only by an Officer of the Cherokee Police Department, by any other duly
34 sworn law enforcement officer with jurisdiction to investigate crimes on the lands
35 of the Eastern Band of Cherokee Indians, or by the Tribal Prosecutor or his/her
36 designee. There shall be one exception to this provision in the case of alleged
37 violations of the following provisions of the Cherokee Code which may be initiated
38 by a Criminal Complaint filed by a private individual:

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40 (1) Communicating threats ([§ 14-5.2](#));
41 (2) Telephone harassment ([§ 14-5.3](#));
42 (3) Stalking ([§ 14-5.5\(b\)](#), not including aggravated stalking);
43 (4) Cyberstalking ([§ 14-5.6](#));
44 (5) Noise offenses ([§ 14-5.16](#));
45 (6) Criminal mischief ([§ 14-10.9](#));
46 (7) Injuring real property ([§ 14-10.11](#));

- 1 (8) Second degree trespass (§ 14-10.16);
2 (9) Unauthorized use of a vehicle (§ 14-10.64);
3 (10) Harassment (§ 14-25.13);
4 (11) Simple assault; ~~assault and battery~~; simple affray (§ 14-40.62, ~~not including~~
5 ~~simple assault and battery~~);
6 (12) Reckless endangerment (§ 14-40.64, not including aggravated reckless
7 endangerment);
8 (13) Offensive touching (§ 14-40.65);
9 (14) Worthless checks (§ 14-60.32);
10 (15) Obtaining property in return for worthless check, draft or order (§ 14-60.33);
11 (16) Indecent exposure (§ 14-80.4).

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13 Nothing herein shall prevent the initiation of the above-charges by any other lawful means,
14 provided, however that whenever these charges are initiated by a private individual, they shall be
15 considered to be private charges and shall be subject to the provisions of this section.

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17 (d) Private charges may be ordered to mediation by a judge of the Cherokee Court.
18 (e) All parties initiating private charges shall be provided with an initial court date by
19 the magistrate. It shall be the duty of the initiating party to request subpoenas for
20 any necessary witnesses from the Cherokee Court Clerk, and to appear at the initial
21 court date. Further, it shall be the duty of the initiating party to keep track of and
22 appear at all court dates, and communicate and coordinate with the Tribal
23 Prosecutor in order to prosecute the charges.
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25 **BE IT FINALLY ORDAINED**, that all resolutions and ordinances inconsistent with this
26 ordinance are rescinded, and this ordinance shall become effective upon ratification by the
27 Principal Chief.
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30 *Submitted by the Carla Neadeau, Chief of Police, Cherokee Indian Police Department*