

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: _____

ORDINANCE NO.: _____ (2024)

WHEREAS, current Cherokee Code provisions do not provide an adequate opportunity to expunge records and present a barrier to tribal members re-entering the workforce; and

WHEREAS, amendments must be made to the Cherokee Code to provide a functional and holistic expungement remedy to allow for individuals to re-enter all aspects of society upon completion of their sentence; and

WHEREAS, Chapter 15 and various other provisions in the Cherokee Code governing expungements should be amended and re-organized to expand the availability and clarify procedures for expungements to make the Code more effective and accessible to parties representing themselves; and

NOW THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Tribal Council assembled, at which a quorum is present and upon a consensus vote, that the Cherokee Code is amended as set forth in Exhibit A,

BE IT FINALLY ORDAINED that all ordinances that are inconsistent with this ordinance are rescinded, and that this ordinance shall become effective when ratified by the Principal Chief and Vice-Chief.

Submitted by: The Tribal Employment Rights Office

1
2 **Exhibit A.**

3
4 **Chapter 7A – Juvenile Code**

5 **Sec. 7A.-61. – Confidentiality of records.**

6 (k) Except as provided in subsection (a) of this section, a juvenile's record shall be destroyed
7 only as authorized by C.C. section ~~7A-62.~~ 15-16.

8
9 ~~Sec. 7A-62.- Expunction of records of juveniles and adjudicated delinquent and~~
10 ~~undisciplined. Reserved.~~

11 ~~Sec. 7A-63. – Effect of expunction. Reserved.~~

12 ~~Sec. 7A-64. Notice of expunction. Reserved.~~

13
14 **Chapter 14 – Criminal Law**

15 **Sec. 14-1.4. – Exclusion and other conviction consequences.**

16 (a) For those offenses that allow exclusion as a punishment, exclusion may be imposed only by
17 Tribal Council in accordance with Chapter 2 of the Cherokee Code.

18 (b) Upon conviction of any felony offense, a defendant's ~~civil~~ rights to hold public office, to
19 serve on a jury, and to own or to possess any firearm shall be revoked.

20 ~~(c) Following the completion in full of every component of the defendant's sentence, the~~
21 ~~defendant may file a petition with the Cherokee Court, supported by at least three affidavits~~
22 ~~concerning the defendant's moral character, requesting that any or all civil rights previously~~
23 ~~revoked be restored. The Cherokee Court, with or without a hearing, shall promptly grant or~~
24 ~~deny the defendant's petition.~~

25
26 **Chapter 15 – Criminal Procedure**

27 **Article I. – Criminal Procedure**

28 Secs. 15-1 – 15-14

29
30 **Article II. – Collateral Relief**

31 **Sec. 15-15. Expungement of certain convictions.**

32 (a) **Definitions.** As used in this section -

33 (1) Conviction. The term “conviction” means a verdict of guilty by the trier of fact, or a
34 plea of guilty, nolo contendere, or guilty pursuant to North Carolina v. Alford, 400
35 U.S. 25 (1970).

36 (2) Expungement. The term “expungement” or “expunge” means the erasure and
37 destruction of documents, reports, files, and records in physical, electronic,
38 mechanical or any other form.

39 (3) Misdemeanor. A misdemeanor is defined pursuant to Sec. 14-1.3(b), regardless of the
40 sentence actually imposed.

41 (4) Felony. A felony is defined pursuant to Sec. 14-1.3(a), regardless of the sentence
42 actually imposed.

- 1 (b) A petition for expungement may be filed under this section for misdemeanor or felony
2 convictions entered in the Cherokee Court. Such petition shall be filed no sooner than 1 year
3 after conclusion of the Court's jurisdiction over the petitioner.
- 4 (1) A conviction for any of the following shall be excluded and shall not be eligible for
5 expungement under this section:
- 6 (i) An offense involving sexual assault, harassment, molestation, exploitation,
7 or contact.
- 8 (ii) An offense involving physical harm or bodily injury.
- 9 (iii) An offense that is a crime of violence.
- 10 (iv) An offense for which sex offender registration is required pursuant to
11 Article X of Chapter 14, whether or not the registration period has ended.
- 12 (v) An offense for the crime of domestic violence as defined or designated in
13 Sec. 14-40.1.
- 14 (vi) An offense involving embezzlement, theft, or fraud against the Eastern
15 Band of Cherokee Indians.
- 16 (2) A conviction for a misdemeanor traffic violation, except for driving while impaired
17 offenses under Chapter 20, shall not constitute a disqualifying conviction pursuant to
18 (c)(2).
- 19 (c) A petitioner shall be eligible for an expungement under this section if:
- 20 (1) At least one year has passed since the completion or satisfaction of the sentence,
21 deferred judgment, or period of probation for each conviction for which expungement
22 is sought;
- 23 (2) No misdemeanor or felony conviction has been entered against petitioner in any
24 jurisdiction since the date of the most recent conviction for which expungement is
25 sought;
- 26 (3) There are no pending criminal charges against the petitioner in any jurisdiction;
- 27 (4) The petitioner has no outstanding court costs, fees, fines, restitution, or any other
28 financial obligations ordered by the Court or assessed by the Clerk of Court;
- 29 (5) The petitioner has not previously been granted an expungement under this section;
30 and
- 31 (6) Expungement is in the best interests of justice.
- 32 (d) A petition filed pursuant to this section must be verified and shall include, at a minimum, the
33 following:
- 34 (1) An affirmation as to each ground listed in (c);
- 35 (2) A list of the case number(s), offense(s), disposition(s), date of disposition(s), and
36 date(s) of completion of sentence(s) for each offense in accordance with (c)(1);
- 37 (3) A statement that the petitioner consents to a Tribal and national criminal background
38 check;
- 39 (4) Two affirmations from persons not related to petitioner in blood or by marriage of the
40 petitioner's good character and reputation and an explanation as to why the person
41 believes that expungement is in the best interests of justice.
- 42 (e) Upon the filing of a petition, the Clerk of Court shall certify that the petitioner has not
43 previously been granted relief under this section and perform a Tribal and national criminal

- 1 background check on the petitioner. Within five (5) days of the filing of the petition, the
2 Clerk of Court shall serve a copy of the petition and any supporting exhibits, including
3 certified results of the checks performed by the Clerk of Court for eligibility for
4 expungement and Tribal and national criminal background checks, on the Tribal Prosecutor.
- 5 (f) The Tribal Prosecutor shall have ten (10) days after service to file an objection to the
6 petition. The objection shall set forth the reasons for the petitioner's disqualification based
7 upon the grounds in (b) or (c) and shall be served upon the petitioner or petitioner's attorney.
- 8 (g) After the deadline to file an objection has expired, the Clerk of Court shall set a hearing for
9 no more than sixty (60) days from the date the petition was filed. A notice of hearing shall be
10 served upon the petitioner or petitioner's attorney and the Tribal Prosecutor.
- 11 (h) The Tribal Prosecutor's Office shall identify any victim(s) in the case(s) listed in the petition,
12 notify the victim(s) of the petition and the date of the hearing, and advise the victim(s) of
13 their right to offer information relevant to the petition. A victim may present their view on
14 expungement to the Court through testimony at the hearing.
- 15 (i) Following the hearing, the Court shall determine if the petitioner has proven eligibility under
16 this section and whether expungement is in the best interests of justice. The Court may grant
17 or deny the petition in whole or in part.
- 18 (1) In determining whether expungement is in the best interests of justice, the Court may
19 consider the following non-exclusive factors:
- 20 (i) The nature, circumstances, and gravity of each offense;
21 (ii) The length of time that has passed since the date of the most recent
22 conviction;
23 (iii) The petitioner's criminal history;
24 (iv) The balance of the barriers faced by the petitioner in reintegrating within
25 the community against any threat of danger to the community or to any
26 person;
27 (v) The views and concerns presented by a victim, if applicable;
28 (vi) Evidence of good character and reputation.
- 29 (2) An order of expungement shall:
- 30 (i) State each offense granted expungement under the order and vacate the
31 judgment of guilt for each offense granted expungement;
32 (ii) Direct the Clerk of Court to compile and expunge all court records, except
33 for the records consisting of the index in accordance with (j), relating to
34 petitioner's arrest, trial, plea or adjudication of guilt, conviction, probation,
35 and appeal for each expunged offense;
36 (iii) Direct the Chief of the Cherokee Indian Police Department and all Tribal
37 law enforcement agencies and the Office of the Tribal Prosecutor to
38 expunge all records, related to the petitioner's arrest, trial, plea or
39 adjudication of guilt, conviction, probation, and appeal for each expunged
40 offense and shall mandate each office and agency to file with the Court
41 within sixty (60) days after the entry of the expungement order a
42 certification that the expungement has been completed.