

TABLED

CHEROKEE COUNCIL HOUSE CHEROKEE, NORTH CAROLINA

Date: JAN 07 2016

ORDINANCE NO. 79 (2015)

WHEREAS, the offense of driving while impaired is described in the motor vehicle laws expressed in Chapter 20 of the North Carolina General Statutes which has been adopted by the Tribe at Section 20-1 of the Cherokee Code; and

WHEREAS, the Cherokee Indian Police Department (CIPD) has reviewed Section 14-96.1 of the Cherokee Code (C.C.); and

WHEREAS, based on the CIPD's experience it is necessary to amend C.C. 14-96.1 to clarify the offense of driving while impaired is included as a violation involving the use or possession of alcohol, in order to impose on a defendant charged with such offense a mandatory additional fine of \$1,000 pursuant to C.C. 14-96.1; and

WHEREAS, the CIPD has determined that there is an additional need for further amendments to C.C. 14-96.1 in order to impose a mandatory additional fine of \$500.00 on a person deferred to drug court as a result of a violation involving the use, possession, sale, distribution or manufacture of alcohol or a controlled substance, including any offense of driving while impaired.

NOW THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Tribal Council assembled, at which a quorum is present, that C.C. 14-96.1 be amended to specify that a conviction of the offense of driving while impaired imposes a mandatory additional fine of \$1,000 on the defendant, and that a person deferred to drug court as a result of a violation involving the use, possession, sale, distribution or manufacture of alcohol or a controlled substances, including an offense of driving while impaired, must pay a mandatory additional fine of \$500, as described in the amendment as follows:

Sec. 14-96.1. - Additional fine for crimes involving alcohol and controlled substances.

- (a) The fine described in this section shall be imposed in addition to any other penalties imposed under this chapter, within the limits provided by federal law.
- (b) If an adult person is convicted of violating any provision of this chapter and/or any offense of driving while impaired set forth in Chapter 20 of the North Carolina General Statutes and adopted by the Tribe at Section 20-1 of the Cherokee Code, the Cherokee Court shall make an express finding in the record as to whether the violation involved the use, possession, sale, distribution or manufacture of alcohol or a controlled substance. If

the court answers this question affirmatively, then it shall impose on the defendant a mandatory additional fine of \$1,000.00 which shall be collected by the Court and paid to the Budget and Finance Office and appropriated for use by the Cherokee Police Department. Fines paid under this section shall be appropriated 50 percent to the drug abuse resistance education (D.A.R.E.) program in the Cherokee Central School system and a parent curriculum that coincides with the D.A.R.E. program, and 50 percent to the Community Watch Program. The Budget and Finance Office shall place the appropriated amounts in two separate line items in the Cherokee Police Department's budget.

- (c) Fines paid under this section and appropriated to the Community Watch Program shall be used by the Cherokee Police Department to fund that program and for the benefit of Community Watch Committees as may be established in each Tribal community. The Department's expenditures for the Community Watch Program shall be made in consultation with the Department's Community Watch designee, who shall oversee the Community Watch Programs on the Cherokee Indian Reservation.
- (d) In this section, "convicted" means a person entered a guilty plea or a plea of nolo contendere, a jury returned a verdict of guilty, or the court entered a finding of guilt, regardless of the form of judgment or sentence. If a person is convicted and granted a Prayer for Judgment Continuance (PJC) this additional fine still must be paid.

(1) If a person is convicted as defined herein and their case is deferred to drug court, a \$500 mandatory additional fine shall be imposed on defendant, instead of the \$1,000 mandatory fine described in subsection (b).

(Ord. No. 408, 9-26-2002; Ord. No. 351, 9-13-2004; Ord. No. 620, 2-23-2005; Ord. No. 589, Art. II, 2-8-2007)

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.

Submitted by the Office of the Attorney General on behalf of the Cherokee Indian Police Department