

TABLED

Cherokee Council House
Cherokee North Carolina

SEP 01 2022

Date: _____

Ordinance No.: 389 (2022)

Short Title: An ordinance to amend Ch. 130A, 7A and 115 to include access to and protections for student education records, and Ch. 7B to include information sharing with the Tribal Court in cases of child maltreatment.

WHEREAS, the Tribe's Public Health and Human Service departments and programs include child welfare and juvenile justice programs; and

WHEREAS, information about children contained in educational student records and behavioral health information are essential to the service coordination and overall understanding of a child's needs when that child is under the care, supervision, or authority of a child serving agency like the Family Safety Program or Juvenile Services Program; and

WHEREAS, federal privacy laws known as the Family Education Rights and Privacy Act (FERPA) protect student education records and require that student records sought by child serving agencies like child welfare and juvenile justice should always first attempt to obtain a parent's consent for the release of records but when such consent is not obtained federal privacy laws for student records have careful and responsible exceptions to the general rule; and

WHEREAS, the federal law protecting student records already makes exceptions to the requirement for parental consent for child welfare and other agencies, and the federal law requires specific state or local law to address additional exceptions for juvenile justice purposes; and

WHEREAS, federal privacy laws known as the Health Insurance Portability and Accountability Act (HIPAA) protect behavioral health information and have careful and responsible exceptions to the general rule for child welfare purposes.

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 Tribal Council hereby recognizes the need for responsible information sharing between tribal educational institutions and juvenile justice system programs, as well as required sharing among the Integrated Child Welfare Team (ICWT) and the Tribal Court, and amends Chapter 130A, 7A, 7B, and 115 as set forth in Exhibit A.

BE IT FINALLY ORDAINED, that all resolutions and ordinances inconsistent with this ordinance are rescinded, and this ordinance shall become effective upon ratification by the Principal Chief.

Submitted by: Hannah Smith, Office of the Attorney General

Exhibit A

Sec. 130A-6. - Confidentiality of records.

- (a) All privileged patient medical records or records defined in 26 U.S.C. § 6103 and privileged student records from educational institutions defined in 20 U.S.C. §1232g in the possession of the Division shall be confidential and shall not be public records under chapter 132 of the Cherokee Code and shall be maintained and disposed of pursuant to the regulations or other agreements governing such documents.

Sec. 7A-61. - Confidentiality of records.

- (g) Nothing in the section shall preclude the necessary sharing of information among authorized agencies. Student records from educational institutions shall be maintained and disposed of pursuant to the regulations or other agreements governing such documents.

Sec. 7B-3100. Disclosure of information about children.

- (a) The Division of Public Health and Human Services, as well as all EBCI or Cherokee Indian Hospital Authority Behavioral Health programs/departments shall adopt rules designating certain agencies and entities that are authorized to share information concerning children in accordance with the provisions of this section and in compliance with other Tribal and federal laws.

- (1) Agencies and entities so designated shall share with one another, upon request and to the extent permitted by federal law and regulations, information that is in their possession that is relevant to any assessment of a report of child maltreatment or the provision or arrangement of protective services in a child maltreatment case by a department of social or human services pursuant to the authority granted under this chapter or to any case in which a petition is filed alleging that a child is maltreated, undisciplined, or delinquent and shall continue to do so until the juvenile justice or protective services case is closed by the department of human services, or if a petition is filed when the child is no longer subject to the jurisdiction of Juvenile Court. This is to include the verbal and documentary testimony provided by any member of the Integrated Child Welfare Team (ICWT) (this includes, social work supervisors, social workers, case managers, case aids, behavioral health clinicians, therapists, qualified professionals, and any other individual assigned to families receiving services through the ICWT, at the request of the ICWT or the Tribal Court, without the issuance of a subpoena.

- (b) Agencies and entities that ~~may~~ shall be designated as "agencies authorized to share information" include but are not limited to:

- (1) Behavioral health facilities;
- (2) Health departments;
- (3) Departments of social or human services;
- (4) Law enforcement agencies;
- (5) School administrative units;

- (6) Licensed child care facilities;
- (7) The Tribal Prosecutor's office;
- (8) A Guardian ad Litem attorney advocate appointed by the Cherokee Court; ~~and,~~
- (9) A probation officer; and ~~pursuant to the provisions of C.C. 7A-61(i).~~
- (10) The Cherokee Court, pursuant to the provisions of C.C. 7A-61(i).

Sec. 115-7.2. – Responsible information sharing with child welfare and juvenile justice agencies.

- (a) Student education records are important sources of information for agencies that serve children and families through child welfare and juvenile justice agencies and shall be responsibly shared with such agencies upon request. Federal law and regulations that define student education records and regulate how the records must be maintained by third parties found at 20 U.S.C. 1223g et. seq. and 34 CFR Part 99 subpart D shall apply to all records obtained by child welfare and juvenile justice system agencies from any tribal educational institution.