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CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: JAN 04 2018

ORDINANCE NO. 70 (2018)

WHEREAS, Cherokee Code Chapter 14 established, through Tribal Council Ordinance No. 117 (2000), that the Tribe has subject matter jurisdiction over certain criminal offenses; and

WHEREAS, the categories of criminal offenses set forth in Chapter 14 are not currently defined and published in a manner that meshes well with federal court jurisdiction; and

WHEREAS, Chapter 14 should be amended to define the Tribe's categories of criminal offenses in a manner that is consistent with expressions of federal court jurisdiction is necessary because people who violate Tribal criminal laws are sometimes prosecuted in federal court; and

WHEREAS, Chapter 14 should also be amended to set forth when, as a result of conviction for certain criminal offenses, civil rights of the defendant may be revoked and later restored.

NOW THEREFORE BE IT ORDAINED by the Tribal Council of the Eastern Band of Cherokee Indians assembled, at which a quorum is present, the Tribe amends Cherokee Code Chapter 14 by inserting at C.C. § 14-1.3 definitions of classes of criminal offenses, and by inserting at C.C. § 14-1.4 provisions for revoking and restoring certain rights lost as a result of criminal convictions, and to read as follows:

Sec. 14-1.3. Criminal Offenses Defined.

(a) Felony. A felony offense is any offense with a prescribed punishment that includes a term of imprisonment, the maximum of which exceeds one year.

(b) Misdemeanor. A misdemeanor offense is any offense with a prescribed punishment that includes a term of imprisonment, the maximum of which equals one year or less.

(c) Petty. A petty offense is any offense with a prescribed punishment that includes a term of imprisonment, the maximum of which equals six months or less.

(d) Infraction. An infraction is any offense with a prescribed punishment that does not include the possibility of imprisonment.

Sec. 14-1.4. Exclusion and Other Conviction Consequences.

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

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

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

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 Chief Judge Thomas Cochran, Cherokee Court