

# TABLED

CHEROKEE COUNCIL HOUSE  
CHEROKEE, NORTH CAROLINA

Date: JAN 04 2018

ORDINANCE NO. 72 (2018)

- WHEREAS, Cherokee Code Chapter 15 sets forth the Tribe's criminal procedure; and
- WHEREAS, currently, C.C. § 15-4 describes, in a very limited manner, the position and authorities of the Probation Officer and C.C. § 15-5 describes, in a limited manner, the Tribe's pretrial release and the adult rehabilitation program; and
- WHEREAS, C.C. § 15-4 is limited in scope and does not adequately express the expanded and varied responsibilities the probation officer and detention staff are charged with since the Tribe built its own jail; and
- WHEREAS, C.C. § 15-4 should be amended to update the Tribe's approach to managing probation and detention by creating a department within the Cherokee Court to be known as the Cherokee Marshal and Community Supervision Service, and to define the scope and responsibilities of that service; and
- WHEREAS, C.C. § 15-5 should be amended to change terminology consistent with the amendments to C.C. § 15-4.

NOW THEREFORE BE IT ORDAINED by the Tribal Council of the Eastern Band of Cherokee Indians assembled, at which a quorum is present, the C.C. § 15-4 and C.C. § 15-5 are amended to read as follows:

**~~Sec. 15-4. Probation Officer.~~**

~~(a) — The position of Probation Officer and Community Service Supervisor is hereby authorized and created.~~

~~(b) — Such persons shall maintain records for all persons convicted in the Cherokee Court who are sentenced to probation or are assigned to community service work detail as a part of their judgment and shall assign and supervise the work for all such persons.~~

~~(c) — Persons assigned to work detail shall perform work for the benefit of the Tribe and community including, but not limited to: clean Police Department vehicles and grounds; clean and maintain the grounds, parking lot, and roadways to the Cherokee Hospital; clean and~~

~~maintain roadsides throughout the Cherokee Indian Reservation; clean and maintain the grounds of the Cherokee Civic Center; cut and deliver wood to the elderly and invalids residing on the Reservation; and pay the costs of community service in the sum of \$200.00.~~

~~(d) — The Probation Officer shall provide a monthly report detailing compliance with community service activity to the Prosecutor and the Chief Justice of the Cherokee Court.~~

**~~Sec. 15-5. — Pretrial release and adult rehabilitation program.~~**

~~(a) — The Tribe shall administer a Pretrial Release and Adult Delinquent Rehabilitation Program under the supervision of the Probation Office.~~

~~(b) — The program will assume jurisdiction over and responsibility for individuals released by courts of the United States, the Tribe and the State of North Carolina.~~

~~(c) — The program shall be administered in accordance with guidelines approved by the Office of Justice Services or appropriate federal agency.~~

Sec. 15-4. Cherokee Marshals and Community Supervision Service.

(a) A Department of the Cherokee Court to be known as the Cherokee Marshal and Community Supervision Service is hereby authorized and established. The Cherokee Marshal and Community Supervision Service shall be under the control and direction of the Cherokee Chief Justice and shall be led by the person holding the position of Marshal and Chief Probation Officer.

(b) The Cherokee Marshal and Community Supervision Service shall be recognized as a stand-alone law enforcement agency capable of maintaining records and qualifications required to be a law enforcement agency in North Carolina and shall have the same arrest powers and jurisdictional authority as the Cherokee Indian Police Department. (see N.C. Gen. Stat. §1E-12).

(c) The Cherokee Marshal and Community Supervision Service shall be responsible for the security of all Cherokee Court personnel and Court facilities located within the Tony Lossiah Justice Center or any building or facility used for court purposes. This includes serving as bailiffs for the Court with the authority to ensure order and deportment during any proceeding, including full powers of arrest and service of process.

(d) The Cherokee Marshal and Community Supervision Service shall be responsible for inmate transfers for court-related matters, and to that end, the Corrections division of the

Cherokee Indian Police Department currently responsible for such transfers shall be repositioned into the Cherokee Marshal and Community Supervision Service.

(e) The Cherokee Marshal and Community Supervision Service shall be responsible for monitoring all persons the Cherokee Court places on pretrial supervision or supervised probation following conviction. Employees of such Service shall supervise and maintain records for all persons who are under pretrial release conditions that include a supervision component, or are convicted in the Cherokee Court and are sentenced to supervised probation or to community service work as a part of their criminal judgment. Such employees shall also prepare and file any supervision violation petitions, and shall testify in court as to any alleged violation of supervision.

(f) The Marshal and Chief Probation Officer shall provide a quarterly report to the Tribal Prosecutor's office and to the Chief Judge of the Cherokee Court regarding persons under supervision which shall detail compliance with supervision and community service activity.

(g) Persons under the supervision of the Cherokee Marshal and Community Supervision Service and assigned to community service work shall labor for the benefit of the Tribe by completing tasks which may include, but are not limited to: cleaning Tribal vehicles; cleaning and maintaining the grounds and parking lot of the Cherokee Detention Center; cleaning and maintaining the Cherokee Hospital grounds and parking lot; cleaning and maintaining the Cherokee Civic Center grounds and parking lot; collecting litter and maintaining the roadsides of all vehicular ways contained within the exterior perimeter of the Qualla Boundary; cutting and delivering wood to the elderly and infirm persons residing on the Boundary; and paying the costs of community service in the sum of \$200.00.

(h) The Cherokee Marshal and Community Supervision Service shall be responsible for establishing and maintaining an Electronic Home Confinement (EHC) program. This shall include setting up, monitoring, and supervising those individuals whose pretrial release conditions or criminal sentence as ordered by the Cherokee Court includes an EHC component. Upon a supervisee's noncompliance with the EHC program, the Marshal and Chief Probation Officer or his/her designee shall prepare and file a written violation petition setting forth the alleged reasons the supervisee should be removed from the EHC program and placed into the custody of the Cherokee Detention Center.

#### Sec. 15-5. - Pretrial release and adult rehabilitation program.

(a) The Tribe shall administer a Pretrial Release and Adult Delinquent Rehabilitation Program under the supervision of the ~~Probation Office~~ Cherokee Marshal and Community Supervision Service.

(b) The program will assume jurisdiction over and responsibility for individuals released by courts of the United States, the Tribe and ~~the State of North Carolina~~ of the several states.

(c) The program shall be administered in accordance with guidelines approved by the Office of Justice Services or appropriate federal agency.

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*