

Cherokee Council House  
Cherokee, Qualla Boundary (NC)

Date: JUN 07 2018

ORDINANCE NO. 232 (2018)

WHEREAS, Cherokee Code Chapter 7C established The Cherokee Tribal Drug Court; and

WHEREAS, to improve the efficiency, effectiveness, and community impact of the Cherokee Tribal Drug Court, Cherokee Code Chapter 7C should be repealed in its entirety to allow the continued existence of the Cherokee Tribal Drug Court pursuant to Cherokee Code Chapter 7 Section 7-1 (a) as a specialized court under the Judicial Branch; and

NOW THEREFORE BE IT ORDAINED by the Tribal Council of the Eastern Band of Cherokee Indians assembled, at which a quorum is present that Cherokee Code Chapter 7C be repealed as follows:

~~Chapter 7C—CHEROKEE TRIBAL DRUG COURT<sup>(1)</sup>~~

Footnotes:

~~—(1)—~~

~~Editor's note—~~ Ord. No. 609, ratified January 25, 2009, amended the Code by, in effect, repealing former Ch. 7C, §§ 7C-1—7C-5, and adding a new Ch. 7C. Former Ch. 7C pertained to the Cherokee Wellness Court, and derived from Ord. No. 49, ratified December 15, 2005; and Ord. No. 589, ratified February 8, 2007.

~~Sec. 7C 1. Purpose.~~

~~This chapter shall be interpreted and construed so as to implement the following purposes and policies:~~

- ~~(a) To offer treatment to both juvenile and adult offenders who have committed a crime that is directly or indirectly related to a substance abuse or addiction issue;~~
- ~~(b) To identify and recommend potential Cherokee Tribal Drug Court participants to the Cherokee Tribal Drug Court Team for legal and clinical screening as soon as possible during the sentencing or dispositional stage of the court process;~~
- ~~(c) To strictly monitor and supervise each participant through regular and frequent drug and alcohol testing, court appearances and program requirements;~~
- ~~(d) To impose immediate sanctions and offer immediate rewards or incentives when a participant's behavior warrants such actions; and~~
- ~~(e) To make the participant a valued intricate part of the Cherokee Tribal Drug Court and to encourage and support each participant in the goal of individual wellness and sobriety.~~

(Ord. No. 609, 1-25-2009)

~~Sec. 7C 2. Definitions.~~

- ~~(a) *Cherokee Tribal Drug Court*. The Cherokee Tribal Drug Court is a trial court of special jurisdiction within the provisions of Section 7-1(a), with jurisdiction to hear all cases referred to it pursuant to Cherokee law.~~
- ~~(b) *Cherokee Tribal Drug Court Judge*. The Cherokee Tribal Drug Court Judge shall be appointed upon nomination by the Principal Chief, and confirmation by the Tribal Council for a term of four years. The Cherokee Tribal Drug Court Judge shall be an attorney licensed by the North Carolina State Bar and shall be subject to the other requirements of Section 7-8. In the case of a vacancy, the Chief Justice of the Cherokee Court may name a temporary replacement for a period not to exceed 120 days. The Cherokee Tribal Drug Court Judge is an Associate Judge of the Trial Courts of Special Jurisdiction pursuant to Section 7-1(b).~~
- ~~(c) *Tribal Drug Court Team*. The Drug Court Team shall consist of the Drug Court Judge, Case Coordinator, Case Manager and Treatment Specialist. The Drug Court Team may also include other members as set forth in the Policies and Procedures.~~

(Ord. No. 609, 1-25-2009)

~~Sec. 7C 3. Jurisdiction.~~

- ~~(a) The Cherokee Tribal Drug Court shall have jurisdiction over any case that is transferred by the Cherokee Court. Upon successful completion of the Cherokee Tribal Drug Court program, or at such a time when a participant of the Cherokee Drug Court becomes ineligible to continue in the program as set out in the Cherokee Tribal Drug Court policies and procedures, the Cherokee Tribal Drug Court will transfer jurisdiction of each case back to the Cherokee Court for any final disposition. All sanctions imposed by the Cherokee Tribal Drug Court, including terms of incarceration, must be completed before the participant returns to Cherokee Trial Court.~~
- ~~(b) Referrals to the Cherokee Tribal Drug Court may be made by the Cherokee Court once a criminal defendant has plead guilty of or has been convicted of at least one criminal charge where alcohol or drugs are involved. Cherokee Tribal Drug Court referrals may be made as a part of a conditional sentence, a sentence that is stayed, or may be made as part of a split or suspended sentence.~~
- ~~(c) Once a referral is made to the Cherokee Tribal Drug Court, the participant shall be assigned to a caseworker who shall begin the eligibility process as set out in the Policy and Procedures Manual. The Cherokee Drug Court Judge shall order any ineligible individuals back to the Cherokee Trial Court for final disposition of the defendant's case(s) pursuant to the Policies and Procedures Manual. Individuals who are determined to be eligible by the Cherokee Drug Court Team may enter the Cherokee Tribal Drug Court.~~

(Ord. No. 609, 1-25-2009; Ord. No. 321, 10-20-2016)

~~Sec. 7C 4. Reserved.~~

~~Sec. 7C 5. Rules of Evidence.~~

~~The Rules of Evidence adopted by the Eastern Band of Cherokee Indians shall not apply in any Cherokee Tribal Drug Court proceedings. The Cherokee Tribal Drug Court shall not be a court of record. All information obtained from or disclosed by a participant under the jurisdiction of Cherokee Tribal Drug Court is privileged and confidential information. However, confidential information may always be disclosed after the participant has signed a proper consent form, even if it is protected by Federal~~

~~confidentiality regulations. The regulations also permit disclosure without a participant's consent in several situations, including medical emergencies, program evaluations and communications among program staff. Offenders who refuse to sign consent forms permitting essential communications can be excluded from treatment or be terminated from Cherokee Tribal Drug Court. Additionally, a judge may order disclosure as allowed by federal, tribal and state law.~~

~~(Ord. No. 609, 1-25-2009)~~

~~Sec. 7C-6. Cherokee Tribal Drug Court procedures.~~

~~(a) Establishment of policies and procedures.~~

- ~~(1) Policies and procedures for the Cherokee Tribal Drug Court shall be established by the Cherokee Tribal Drug Court Team.~~
- ~~(2) Thereafter, the Cherokee Tribal Drug Court Team shall amend and modify the policies and procedures as necessary to improve the Cherokee Tribal Drug Court process. Any such amendments or modifications shall be by a majority vote at a Cherokee Tribal Drug Court Team meeting with each member eligible to carry one vote and notice of the meeting must be given to each member of the Cherokee Tribal Drug Court Team at least seven days prior to the meeting.~~
- ~~(3) In order for the policies and procedures to be amended or modified, there shall be present at the Cherokee Tribal Drug Court Team meeting the judge and a least four other members of the Cherokee Tribal Drug Court Team.~~

~~(b) Sessions.~~

- ~~(1) All Cherokee Tribal Drug Court sessions shall be closed to the public except for invited guests as allowed by HIPAA regulations.~~
- ~~(2) The Cherokee Tribal Drug Court is strictly a non-adversarial forum and there shall be no prosecuting or defense attorneys allowed to participate in any court proceedings.~~
- ~~(3) The Cherokee Tribal Drug Court Judge shall make all findings of facts relevant to each participant's case pursuant to the policies and procedures adopted by the Cherokee Tribal Drug Court Team.~~
- ~~(4) Cherokee Tribal Drug Court sessions shall proceed pursuant to the policies and procedures adopted by the Cherokee Tribal Drug Court Team.~~
- ~~(5) Cherokee Tribal Drug Court sessions shall require a Judge, Case Manager, Case Coordinator, and one of the following team members: community elder, treatment specialist or law enforcement officer of the Cherokee Tribal Drug Court Team in order to proceed.~~

~~(c) Sanctions. If a participant is not compliant with the requirements of the Cherokee Tribal Drug Court, sanctions against the non-compliant individual may be issued by the Cherokee Tribal Drug Court Judge. Sanctions include but are not limited to incarceration, community service work and increase in requirements issued by the Cherokee Tribal Drug Court Team.~~

~~(d) Treatment. At any time the Drug Court deems it appropriate, the Team can require a participant to enter a Substance Abuse Intensive Outpatient Program or to an inpatient facility.~~

~~(Ord. No. 609, 1-25-2009)~~

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

*Submitted by Chief Justice Kirk Saunooke and Associate Judge Shannon Swimmer*