

**TABLED
PASSED**
AUG 02 2012

Cherokee Council House
Cherokee North Carolina

APR 16 2012

DATE

ORDINANCE NO. 182 (2012)

WHEREAS, The President of the United States signed the Tribal Law and Order Act of 2010, (Pub.L. 111-211, 124 Stat. 2258) (TLOA) on July 29, 2010, and

WHEREAS, The TLOA amended 25 U.S.C. § 1302(a)(7)(B), and added §§ 1302a(7)(C) and 1302(b) and (c), and

WHEREAS, Subject to restrictions contained in 25 U.S.C. § 1302(b) and (c), the effect of these amendments is to raise the maximum punishment provided for by law for certain crimes committed in Indian Country from one year to three years incarceration and a maximum fine from five thousand dollars (\$5,000.00) to fifteen thousand dollars (\$15,000.00), and

WHEREAS, The existing law of the Eastern Band of Cherokee Indians already complies with the restrictions contained in 25 U.S.C. § 1302(c), and

WHEREAS, There exists a need to modify the criminal code to increase the maximum penalties provided for by law in order to provide additional flexibility on the part of the prosecution as well as the Court in administering justice in criminal cases in this jurisdiction.

NOW THEREFORE, BE IT ORDAINED by the Tribal Council of the Eastern Band of Cherokee Indians assembled, at which a quorum is present that the following Sections of the Cherokee Code be amended to provide for a maximum term of imprisonment of not more than three years instead of one and a maximum fine of not more than fifteen thousand dollars (\$15,000.00) instead of five thousand dollars (\$5,000.00):

C.C. § 14-5.5(d)(2) Aggravated Stalking

C.C. § 14-5.11(b) Abusing a Corpse

C.C. § 14-5.12(b)(3) Violation of Privacy

C.C. § 14-5.20(b) Cruelty to Animals

C.C. § 14-10.30(b) Robbery With a Dangerous Weapon

C.C. § 14-10.31(b) Robbery

C.C. § 14-10.40(b) & (c) Burglary

C.C. § 14-10.50(b) Arson in the First Degree

C.C. § 14-10.60(c) Grand Larceny

C.C. § 14-25.4(b) False Reports and Alarms

C.C. § 14-30.5(c) Child Abuse in the First Degree

C.C. § 14-30.7(c) Transporting a Child Outside the Territory of the Eastern Band of Cherokee Indians with Intent to Violate Custody Order.

C.C. § 14-34.15(b) Purchase or Possession of Firearms, etc... by Persons Subject to Domestic Violence Order

C.C. § 14-40.12(b) Patient Abuse and Neglect

C.C. § 14-40.13(e) Domestic Abuse, Neglect, and Exploitation of Disabled or Elder Adults

C.C. § 14-40.14(b) Maiming

C.C. § 14-40.15(b) Discharging a Firearm Into Occupied Property

C.C. § 14-40.30(c) Kidnapping

C.C. § 14-40.31(b) False Imprisonment

C.C. § 14-40.32(b) Custodial Interference

C.C. § 14-40.40(b) Homicide in the First Degree

C.C. § 14-40.41(b) Homicide in the Second Degree

C.C. § 14-40.42(b) Causing a Suicide

C.C. § 14-40.43(b)(1) Aiding or Soliciting a Suicide

C.C. § 14-40.50(d) Assault With a Deadly Weapon With Intent to Kill and Inflicting Serious Injury

C.C. § 14-40.51(a), (b), & (d) Assault With a Deadly Weapon or Inflicting Serious Physical Injury on Law Enforcement, Probation, or Parole Officer

C.C. § 14-52(a), (b), & (d) Assault With a Deadly Weapon or Inflicting Serious Physical Injury on an Emergency Medical Technician, Medical Responder, Emergency Department Nurse, or Emergency Department Physician

C.C. § 14-53(a) & (c) Assault With a Deadly Weapon on a Governmental Employee

CC § 14-54(c) Assault Inflicting Serious Bodily Injury

C.C. § 14-40.66(d) Manufacture of Methamphetamine and Injury to Law Enforcement Officers and Others

C.C. § 14-60.2(b) Extortion

C.C. § 14-60.10(b) Forgery

C.C. § 14-60.20(b) Embezzlement

C.C. § 14-60.30(b) False Pretenses

C.C. § 14-60.31(b) Securing Execution of Documents by Deception

C.C. § 14-60.38(b) Making a False Credit Report

C.C. § 14-70.1(f) Perjury in the First Degree

C.C. § 14-70.10(b) Tampering with Witness

C.C. § 14-70.11(b) Tampering with Evidence

C.C. § 14-70.12(b) Tampering with Public Records

C.C. § 14-70.13(b) Impersonation of a Public Servant

C.C. § 14-70.15(b) False Arrest

C.C. § 14-70.17(b) Obstructing Justice

C.C. § 14-70.18(b) Providing Contraband

C.C. § 14-70.30(b) Bribery

C.C. § 14-70.32(c) Improper Gifts to Public Officials

C.C. § 14-70.42(d) Misusing Tribal Money or Property

C.C. § 14-70.43(b) Compensation for Past Official Behavior

C.C. § 14-70.44(b) Official Unlawful Action

C.C. § 14-70.45(b) Special Influence

C.C. § 14-80.2(b) Incest

C.C. § 14-80.3(c) Bigamy

C.C. § 14-80.7(h) Obscene Literature and Exhibitions (third offense only)

C.C. § 14-90.3 Soliciting or Recruiting Criminal Street Gang Membership

C.C. § 14-95.21(b) Punishment Levels

BE IT FURTHER ORDAINED by the Tribal Council of the Eastern Band of Cherokee Indians assembled, at which a quorum is present that the following Sections of the Cherokee Code be specifically amended as set out hereinbelow:

C.C. § 14-2.3(c) Solicitation *as follows*:

~~Solicitation shall be punishable by the same penalties as the completed crime, a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.~~

C.C. § 14-10.61(c) Receiving or Possessing Stolen Property *as follows*:

If the value of the property exceeds \$1,000.00, a violation of this Section shall be punishable by imprisonment for a term not exceeding three years, a fine not exceeding \$15,000 or both, and a sentence of exclusion for a period not exceeding ten years may be imposed in addition to the punishment authorized above.

C.C. § 14-34.3 Punishment *as follows*:

Persons subject to the criminal jurisdiction of the Cherokee Court who violate the provisions of section 14-34.1 or 14-34.2 of this article shall be subject to

punishment by a fine of up to \$1,000.00, imprisonment for not more than one year for each offense, or both, *except that persons subject to the criminal jurisdiction of the Cherokee Court who violate the provisions of section 14-34.1 by possessing or carrying, or by causing, encouraging, or aiding a minor less than 18 to possess or carry a firearm or powerful explosive in violation of said section shall be subject to punishment by a fine of up to \$15,000, imprisonment for not more than three years, or both.*

C.C. § 14-70.21(b) Bail Jumping as follows:

Bail jumping shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both, *except that if a violation of this section shall be punishable by a fine not to exceed \$15,000.00, by a term of imprisonment not to exceed three years, or both, if the crime or offense for which the individual has failed to appear upon is a crime or offense that is punishable by a maximum possible sentence of greater than one year.*

C.C. § 14-95.21(a) Punishment Levels as follows:

Any person subject to a class A penalty shall be imprisoned in active custody for not less than one year nor more than three years and pay a fine of not less than \$5,000.00 nor more than \$15,000.00 and shall be subject to exclusion for a period of not less than ten years nor more than life. This punishment shall not be suspended unless a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least one year, and the imprisonment may not be spent on electronic home confinement.

C.C. § 15-7 Indian Civil Rights Act as follows:

The Eastern Band of Cherokee Indians adopts all the protections afforded in ~~the Indian Civil Rights Act of 1968, 25 U.S.C. 1301—1303~~ Title 25, Chapter 15 of the United States Code, as amended.

BE IT FINALLY ORDAINED that all other provisions of Chapter 14 and 15 of the Cherokee Code shall remain in full force and effect and any other ordinances inconsistent with this ordinance are rescinded, and that this ordinance shall become effective when ratified by the Principal Chief.

Submitted by: Office of the Attorney General and Office of the Tribal Prosecutor

The attached Resolution/Ordinance No. 182 dated April 16, 2012 was:

PASSED ()

KILLED ()

and ratified in open Council on August 2, 2012 by 93 voting for the act and 0 members voting against it as follows:

VOTE	FOR	AGAINST	ABSTAIN	ABSENT	TABLE
Bo Taylor				X	
Perry Shell	X				
Gene Crowe	X				
Mike Parker	X				
David Wolfe	X				
Bill Taylor	X				
Jim Owle	X				
Diamond Brown	X				
Adam Wachacha	X				
Alan Ensley	X				
Terri Henry	X				
Tommye Saunooke	X				
Total:	93	0	0	7	0

Jim Owle

TRIBAL COUNCIL CHAIRMAN

Riley - Acting

CLERK

Michael Hill

PRINCIPAL CHIEF

APPROVED ()

VETOED ()

VETO UPHeld () VETO DENIED ()

DATE: 8-16-12

I hereby certify that the foregoing act of the Council was duly:

PASSED ()

KILLED ()

and ratified by Council Chairperson, Clerk, and Principal Chief of the Eastern Band of Cherokee Indians.

In testimony, whereof, I have hereunto set my hand and affixed the seal of the said Band of Indians. Superintendent, Cherokee Indian Agency.

INTERPRETED ()

OMITTED ()