

# An Act

## **Legislative Act 10-13**

### **ACT RELATING TO THE SENTENCING OF CRIMINALS WITHIN THE CHEROKEE NATION**

#### **BE IT ENACTED BY THE CHEROKEE NATION:**

#### **Section 1. Title and Codification**

##### **Section (code section) 1. Title and Codification**

Example: This act shall be known as the Cherokee Nation Law and Order Act of 2013 and codified as \_\_\_\_\_ (Title) \_\_\_\_\_ (Section) \_\_\_\_\_ of the Cherokee Nation Code Annotated.

#### **Section 2. Purpose**

The purpose of this Act is to enhance the penalties for certain crimes, pursuant to the increased sentencing authority granted under the Tribal Law and Order Act of 2012. This act, known as the Tribal Law and Order Act Update, shall amend portions of Titles 21, 47 and 51 of the Cherokee Nation Code Annotated.

#### **Section 3. Legislative History**

Title 21 § 10  
Title 21 § 650.4  
Title 21 §1280  
Title 21 §1031  
Title 21 §1086  
Title 21 §1190(E)  
Title 21 §1276  
Title 21 §1280  
Title 21 §1289.15  
Title 21 §1304  
Title 21 §1503  
Title 21 § 1533  
Title 21 §1692  
Title 21 §1704  
Title 21 §1706  
Title 21 §1761.1  
Title 21 §1790

Title 21 §1131  
Title 21 §1133  
Title 47 §11-901  
Title 47 §11-902  
Title 63 §2-401  
Title 63 §2-411

#### **Section 4. Definitions**

For purposes of this Title:

#### **Section 5.**

Title 21 §67, shall be added as follows:

#### **§ 67. Sentence—Transfer to Bureau of Prisons**

The District Court, upon the request of the Marshal or the Attorney General, may refer any person sentenced to a term of imprisonment in the Nation to the Bureau of Prisons for transfer of the inmate to the nearest appropriate and available Bureau of Prisons facility.

Title 21 §10, shall be amended as follows:

#### **§ 10. Punishment of crimes**

Except in cases where a different punishment is prescribed by this chapter or by some existing provisions of law, every offense declared to be a crime is punishable by the maximum punishment provided for by the Indian Civil Rights Act, 25 U.S.C. 1302(7). The court may not impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year or a fine of \$5,000, or both; except that the court may subject a defendant to a term of imprisonment greater than 1 year but not to exceed 3 years for any 1 offense, or a fine greater than \$5,000 but not to exceed \$15,000, or both, if the defendant is a person accused of a criminal offense who (1) has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or (2) is being prosecuted for an offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States.

Title 21 §649, shall be amended as follows:

#### **§ 649. Assault, battery or assault and battery upon police officer or other peace officer— Penalties**

A. Every person who, without justifiable or excusable cause, knowingly commits any assault upon the person of an officer of the Cherokee Nation Marshal Service, police officer, sheriff, deputy sheriff, highway patrolman, corrections personnel, or other nation peace officer employed by any

nation, state or federal governmental agency to enforce nation laws while said officer is in the performance of his or her duties is upon conviction, guilty of a crime, punishable by imprisonment in a penal institution not exceeding six (6) months, or by a fine not exceeding One Thousand Dollars (\$1000.00), or by both such fine and imprisonment.

Title 21 §650.4, shall be amended as follows:

**§ 650.4. Assault, battery or assault and battery upon an emergency medical technician or other emergency medical care provider—Punishment**

A. Every person who, without justifiable or excusable cause, knowingly commits any assault upon the person of an emergency medical technician or other emergency medical care provider, upon conviction, is punishable by imprisonment in a penal institution not exceeding six (6) months, or by a fine not exceeding one thousand dollars (\$1000.00), or by both such fine and imprisonment.

B. Every person who, without justifiable or excusable cause and with intent to do bodily harm, commits any assault, battery or assault and battery upon the person of an emergency medical technician or other emergency medical care provider, upon conviction, is guilty of a crime, punishable by imprisonment in the penal institution not exceeding six (6) months, or by a fine not exceeding Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

Title 21 §1280, shall be amended as follows:

**§ 1280. Punishment**

Any person violating the provisions of the preceding sections, sections 1277 to 1279, shall, on conviction, be punished by a fine of not less than One Hundred Fifty Dollars (\$100.00), nor more than One Thousand Five Hundred Dollars (\$1000.00) and shall be imprisoned in the penal institution for not less than three (3) nor more than twelve (12) months.

Title 21 §1031 shall be amended as follows:

**§ 1031. Punishment for violations**

Any person violating any of the provisions of this act shall be guilty of a crime ~~and, upon conviction, shall be imprisoned in the penal institution for not less than thirty (30) days nor more than one (1) year;~~ and the court in which any such conviction is had shall notify the county superintendent of Public health of such conviction.

Title 21 §1086 shall be amended as follows:

**§ 1086. Allowing offense on premises--Punishment**

Any owner, proprietor, keeper, manager, conductor, or other person, who knowingly permits or suffers the violation of any provision of this article, in any house, building, room, tent, lot or premises under his control or of which he has possession, ~~upon conviction, shall be guilty of punished for the first offense by imprisonment within the penal institution for a period of not less than six (6) months nor more than (1) year, and by a fine of not more than Three Hundred Dollars (\$300.00), and upon conviction for any subsequent offense under this article shall be punished~~

subject to the maximum punishment for a crime.

Title 21 §1190(E) shall be amended as follows:

**§ 1190. Hazing—Prohibition—Presumption as forced activity—Penalty—Definition**

E. Any individual convicted of violating the provisions of subsection A of this section shall be guilty of a crime, ~~and may be punishable by imprisonment for not to exceed ninety (90) days in the penal institution, or by the imposition of a fine not to exceed Five Hundred Dollars (\$500.00), or by both such imprisonment and fine.~~

Title 21 §1276 shall be amended as follows:

**§ 1276. Degree of Punishment**

Any person violating the provisions of any one of the foregoing sections, shall ~~on the first conviction be adjudged be guilty of a crime and be punished by a fine of not less than Twenty five Dollars (\$25.00) nor more than Two hundred fifty Dollars (\$250.00), or by imprisonment in the penal institution not to exceed thirty (30) days or both at the discretion of the court. On the second and every subsequent conviction, the party offending shall on conviction be fined not less than Fifty Dollars (\$50.00) nor more than One Thousand Dollars (\$250.00) or be imprisoned in the penal institution not less than thirty (30) days nor more than three (3) months or both, at the discretion of the court.~~

Title 21 §1280 shall be amended as follows:

**§ 1280. Punishment**

Any person violating the provisions of the three preceding section, sections 1277 to 1279, shall, on conviction ~~shall be guilty of a crime, be punished by a fine of not less than Fifty Dollars (\$50.00), nor more than Five Hundred Dollars (\$500.00) and shall be imprisoned in the penal institution for not less than three (3) nor more than twelve (12) months.~~

Title 21 §1289.15 shall be amended as follows:

**§ 1289.15. Penalties**

Any person adjudged guilty of violating the preceding sections shall be ~~guilty of a crime, punished by a fine of not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00), or imprisonment in the penal institution for not less than ten (10) days nor more than six (6) months, or by both such fine and imprisonment.~~

Title 21 §1304 shall be amended as follows:

**§ 1304. Letters—Mailing threatening or intimidating letters**

Any person who shall send, deliver, mail or otherwise transmit to any person, or persons, in this nation any letter, document or other written or printed matter, anonymous or otherwise, designed to threaten or intimidate such person or persons, or designed to put him or them in fear of life, bodily

harm or the destruction of his or their property, upon conviction shall be deemed guilty of committing a crime, ~~and upon conviction thereof, shall be punished by a fine of not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00), and by imprisonment in the penal institution or penitentiary for a period of not less than ninety (90) days not more than one (1) year.~~

Title 21 §1503 shall be amended as follows:

**§ 1503. Defrauding hotels, inns, restaurants, etc.**

Any person who shall obtain food, lodging, services or other accommodations at any hotel, inn, restaurant, boarding house, rooming house, motel or auto camp, with intent to defraud the owner or keeper thereof, if the value of such food, lodging, services or other accommodations is Five Hundred Dollars (\$500.00) or more, ~~be of the value shall be upon conviction shall be~~ is guilty of a crime ~~and upon conviction thereof shall be fined not exceeding One Hundred Dollars (\$100.00), or be imprisoned in the penal institution not exceeding three (3) months, or punished by both such fine and imprisonment.~~ Proof that such lodging, food, services or other accommodations were obtained by false presents or by false or fictitious show or pretense of any baggage or other property, or that he gave a check on which payment was refused, or that he left the hotel, inn, restaurant, boarding house, rooming house, motel trailer camp or auto camp, without payment or offering to pay for such food, lodging, services or other accommodation, or that he surreptitiously removed or attempted to remove his baggage, or that he registered under a fictitious name, shall be prima facie proof of the intent to defraud mentioned in this section; but this act shall not apply where there has been agreement in writing for delay in payment.

Title 21 § 1533 shall be amended as follows:

**§ 1533. Falsely personating officers and others**

Every person who falsely personates any public officer, civil or military, or any fireman, or any emergency medical technician or other emergency medical care provider, or any private individual having special authority by law to perform any act affecting the rights or interests of another, or assumes, without authority, any uniform or badge by which such are usually distinguished, and in such assumed character does any act whereby another person is injured, defrauded, vexed or annoyed, upon conviction, is guilty of a crime ~~punishable by imprisonment in the penal institution not exceeding six (6) months, or by a fine not exceeding Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.~~

Title 21 §1692 shall be amended as follows:

**§ 1692. Penalty**

Any person found guilty of violating the provisions of this act shall be fined not less than ~~Ten~~ One Hundred Dollars (\$100.00) nor more than ~~Five~~ One Hundred Dollars (\$1500.00), or be imprisoned in the penal institution for not more than ~~thirty (30) days~~ one (1) year, or both such fine and imprisonment.

Title 21 §1704 shall be amended as follows:

**§ 1704. Grand and petit larceny defined**

Grand larceny is larceny committed in either of the following cases:

1. When the property taken is of value exceeding ~~Five Hundred~~~~Fifty~~ Dollars (\$~~500~~.00).
2. When such property, although not of value exceeding ~~Five Hundred~~~~Fifty~~ Dollars (\$~~500~~.00) in value, is taken from the person of another.

Larceny in other cases is petit larceny.

Title 21 §1706 shall be amended as follows:

### **§ 1706. Punishment for petit larceny**

Petit larceny shall be punishable by a fine of not less than Ten Dollars (\$10.00) or more than Five Hundred Dollars (\$500.00), or imprisonment in the penal institution not to exceed six (6) month~~st~~~~thirty (30) days~~, or by both such fine and imprisonment, at the discretion of the court.

Title 21 §1761.1 shall be amended as follows:

### **§ 1761.1. Dumping, etc. of trash on public or private property prohibited—Penalties**

- A. Any person who deliberately places, throws, drops, deposits or discards any garbage, trash, waste, rubbish, refuse, debris or other deleterious substance on any public property or on any private property of another without consent shall be guilty of a crime.
- B. Any person convicted of violating the provisions of subsection A of this section shall be punished by a fine of not less than Two Hundred Dollars (\$200.00) nor more than ~~Five~~~~One~~ Thousand Dollars (~~\$1~~~~5~~000.00) or by imprisonment in the penal institution for not more than thirty (30) days, or by both such fine and imprisonment.
- C. In addition to the penalty prescribed by subsection B of this section, the court may direct the person to make restitution to the property owner affected; to remove and properly dispose of the garbage, trash, waste, refuse or debris from the property; to pick up, remove and properly dispose of garbage, trash, waste rubbish, refuse, debris and other nonhazardous deleterious substances from public property; or any combination of the foregoing which the court, in its discretion, deems appropriate. The dates, times and location of such activities shall be scheduled by the marshal pursuant to the order of the court in such a manner as not to interfere with the employment or family responsibilities of the person.
- D. In addition to the penalty prescribed in subsection B and the restitution prescribed in subsection C, the court may order the defendant to pay into the reward fund as prescribed in Section 1334 of this title an amount not to exceed One Thousand Dollars (\$1000.00).
- E. Any full-time peace officer in this nation included but not limited to the marshal, state highway patrol, county sheriffs and deputies, municipal law enforcement department, and any other employee of this nation have peace officer authority upon investigation of the disposal of any substance in violation of this section which contains three or more items bearing a common address in a form which tends to identify the latest owner of the items shall create a rebuttable presumption that all competent persons residing at such address committed the lawful act. The discovery or use of such evidence shall not be sufficient to qualify for the reward provided in Section 1334 of Title 22 of the Cherokee Nation Statutes.
- F. Any person convicted of violating the provisions of subsection A of this section with any flaming or glowing substance, or any substance which may cause a fire shall be punished by a fine of not less than Two Thousand Dollars (\$2,000.00) nor more than Five Thousand Dollars (\$5,000.00) or by imprisonment for not more than sixty (60) days, or by both such

fine and imprisonment. The penalties collected from the payment of the citations shall, after deduction of court costs, be paid to the fire department of the district in which the flaming or glowing substance was discarded. Any person violating the provisions of this subsection shall be liable for all damages caused by the violation. Damages shall be recoverable in any court of competent jurisdiction.

G. During a burn ban declared by the Principal Chief, any person convicted of violating the provisions of subsection A of this section with any flaming or glowing substances, or any substance which may cause a fire shall be punished by a fine of not less than Four Thousand Dollars (\$4,000.00) nor more than Ten Thousand Dollars (\$10,000.00) or by imprisonment for not more than one hundred twenty (120) days, or by both such fine and imprisonment. The penalties collected from the payment of the citations shall, after deduction of court costs, be paid to the fire department of the district in which the flaming or glowing substance was discarded. Any person violating the provisions of this subsection shall be liable for all damages caused by the violation. Damages shall be recoverable in any court of competent jurisdiction.

Title 21 §1790 shall be amended as follows:

### **§ 1790. Penalties**

Any person violating any provision of this act shall be punished by a fine not exceeding Five ~~Hundred Thousand~~ Dollars (\$5000.00) or by imprisonment for not exceeding twelve (12) months, or by both such fine and imprisonment.

Title 21 §1131 shall be amended as follows:

### **§ 1131. Punishment – Domestic Abuse Assault And Battery**

A. Domestic abuse assault and battery shall be punishable by imprisonment in a penal institution not exceeding ~~one ninety~~ (190) ~~year~~days, or by a fine of not more than ~~Five Three~~ Thousand Five ~~Hundred~~ Dollars (~~\$35~~5000.00), or both, at the discretion of the court; and

1. Any person convicted of domestic abuse as defined in this provision, that was committed in the presence of a child shall be punished by imprisonment in a penal institution not less than six (6) months, nor more than one (1) year, or by a fine not exceeding Five Thousand Dollars (\$5000.00), or by both such fine and imprisonment.

2. Any person who is convicted of a second or subsequent domestic violence assault and battery offense shall be punished by imprisonment in a penal institution not exceeding ~~one~~three years, or by fine of not more than Five Thousand Dollars (\$5000.00), or both such fine and imprisonment at the discretion of the court.

Title 21 §1133 shall be amended as follows:

### **§ 1133. Domestic Abuse Strangulation – Punishment**

Upon conviction of domestic abuse by strangulation, defendant shall be punished by incarceration for a period of not less than one (1) year but no more than three years, or by a fine of not more than Five Thousand Dollars (\$5,000.00) plus restitution, or by both such fine and incarceration. Upon a second or subsequent conviction, the defendant shall be punished by imprisonment for a period of not less than three (3) years, or by a fine of not more than Fifteen Thousand Dollars (\$15,000.00), or

by both such fine and imprisonment. Provided, the prosecutor may refer such case for federal prosecution on a first offense or a second or subsequent offense.

Title 21 §1134 shall be added as follows:

### **§ 1134. Stalking**

#### **A. Definitions**

For purposes of this Section:

1. "Harasses" means conduct directed toward a person that includes, but is not limited to, repeated or continuing Unconsented Contact, that would cause a reasonable person to suffer Emotional Distress, and that actually causes Emotional Distress to the victim. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.

2. "Course of Conduct" means a pattern of conduct composed of a series of two (2) or more separate acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

3. "Emotional Distress" means significant mental suffering or distress that may, but does not necessarily require, medical or other professional treatment or counseling.

4. "Unconsented Contact" means any contact with another individual that is initiated or continued without the consent of the individual, or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Constitutionally protected activity is not included within the meaning of unconsented contact. Unconsented contact includes but is not limited to any of the following:

a. following or appearing within the sight of that individual;

b. approaching or confronting that individual in a public place or on private property;

c. appearing at the work place or residence of that individual;

d. entering onto or remaining on property owned, leased, or occupied by that individual;

e. contacting that individual by telephone;

f. sending mail or electronic communications to that individual; and

g. placing an object on, or delivering an object to, property owned, leased, or occupied by that individual.

5. "Member of the Immediate Family" means any spouse, parent, Child, person related within the third degree of consanguinity or affinity or any other person who regularly resides in the household or who has regularly resided in the household within the prior six (6) months.

B. Any person who willfully, maliciously, and repeatedly follows or Harasses another person in a manner that:

1. would cause a reasonable person or a Member of the Immediate Family of that person as defined in Subsection F below to feel frightened, intimidated, threatened, harassed, or molested; or

2. actually causes the person being followed or harassed to feel terrorized, frightened, intimidated, threatened, harassed, or molested, upon conviction, shall be guilty of the crime of Stalking which is punishable by a fine of not more than five thousand dollars (\$5,000), by imprisonment for not more than one (1) year, or both.

C. Any person who violates the above provisions when any of the following conditions exist at the time of the offense shall be guilty of a separate offense which is punishable by a fine of not more than five thousand dollars (\$5,000), by imprisonment for a term not exceeding three (3) years, or both:



1. there is a temporary restraining order, a protective order, emergency ex parte order or an injunction in effect prohibiting the behavior described in this Section against the same party, when the person violating such provisions has actual notice of the issuance of such order or injunction;

2. said person is on probation or parole, a condition of which prohibits the behavior described in this Section against the same party; or

3. said person, within ten (10) years preceding the violation of this Section, completed the execution of sentence or conviction of a crime involving the use or threat of violence against the same party, or against a Member of the immediate family of such party.

D. Any person who is convicted of a second act of Stalking within ten (10) years of the completion of sentence for a prior conviction under this Section shall be punished by a fine of not more than fifteen thousand dollars (\$15,000), by imprisonment for a term not exceeding three (3) years, or both.

E. Evidence that the defendant continued to engage in a Course of Conduct involving repeated Unconsented Contact with the victim after having been requested by the victim to discontinue the same or a different form of Unconsented Contact, and to refrain from any further Unconsented Contact with the victim, shall give rise to a rebuttable presumption that the continuation of the Course of Conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

Title 47 §11-901 shall be amended as follows:

### **§ 11-901. Reckless driving**

A. It shall be deemed reckless driving for any person to drive a motor vehicle in a careless or wanton manner without regard for the safety of persons or property in violation of the conditions outlined in Section 11-801.

B. Every person convicted of reckless driving shall be punished upon a first conviction by imprisonment for a period of not less than five (5) days nor more than ninety (90) days, or by fine of not less than One Hundred Twenty-five Dollars (\$25100.00) nor more than Five Hundred Dollars (\$500.00), or by both such fine and imprisonment; on a second or subsequent conviction punishment shall be imprisonment for not less than ten (10) days nor more than six (6) months, or by fine of not less than One Hundred and Fifty Dollars (\$150.00) nor more than One Thousand Dollars (\$1,000.00), or both such fine and imprisonment.

Title 47 §11-902 shall be amended as follows:

### **§ 11-902. Persons under the influence of alcohol or other intoxicating substance or combination thereof**

A. It is unlawful and punishable as provided in subsection C of this section for any person to drive, operate, or be in actual physical control of a motor vehicle within this nation who:

1. Has a blood or breath alcohol concentration, as defined in Section 756 of this title, of ten-eight-hundredths (0.108) or more at the time of a test of such person's blood or breath administered within two (2) hours after the arrest of such person;

2. is under the influence of alcohol;

3. is under the influence of any other intoxicating substance to a degree which renders such person incapable of safely driving or operating a motor vehicle; or

4. is under the combined influence of alcohol and any other intoxicating substance to a degree which renders such person incapable of safely driving or operating a motor vehicle.

B. The fact that any person charged with a violation of this section is or has been lawfully entitled to use alcohol or a controlled dangerous substance or any other intoxicating substance shall not constitute a defense against any charge of violating this section.

As used in this title, the term "other intoxicating substance" shall mean any controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of Title 63 of the Cherokee Nation Statutes, and any other substance, other than alcohol, which is capable of being ingested, inhaled, injected, or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions.

C. 1. Every person who is convicted of a violation of the provisions of this section shall be deemed guilty of a crime for the first offense and shall ~~be punished by~~ : a) participate in a substance abuse assessment and evaluation approved by the District Court and shall follow all recommendations made in the assessment and evaluation b) be punished by imprisonment in jail for not less than ten (10) days nor more than one (1) year, and c) a be fined of not more than One Thousand Dollars (\$1000.00).

2. Any person who is convicted within ten (10) years following the completion of the execution of any sentence after a previous conviction or deferred judgment of for a violation of this section or a violation pursuant to the provisions of any law of any state prohibiting the offenses provided in subsection A of this section and is convicted of a second or subsequent offense pursuant to the provisions of this section or has a prior conviction after October 31, 1984, and within ten (10) years prior to the conviction pursuant to the provisions of this section, in a municipal criminal court of record for the violation of a municipal ordinance prohibiting the offense provided for in subsection A of this section or a state district court shall be deemed guilty of a crime and shall be sentenced to: a) participate in a substance abuse assessment and evaluation approved by the District Court and shall follow all recommendations made in the assessment and evaluation at the defendant's expense, or b) incarceration for not less than one (1) year and not to exceed three (3) years and a fine of not more than Two Thousand Five Hundred dollars (\$2500.00), or c) treatment, imprisonment and a fine within the limitations prescribed in subparagraphs a and b of this paragraph. However, if the treatment in recommended for the defendant does not include residential or inpatient treatment for a period of not less than ten (10) days, the person shall serve a term of imprisonment of at least ten (10) days. In the event a conviction for a second and subsequent offense does not result in a sentence of incarceration as provided for in this subsection, the person shall be required to serve not less than ten (10) days of community service, or to undergo in-patient rehabilitation or treatment in a public or private facility with at least minimum security for a period of not less than forty eight (48) consecutive hours, notwithstanding the provisions of Sections 991a-2 and 996.3 of Title 22 of the Cherokee Nation Statutes.

3. Any person who is convicted of a third or subsequent offense pursuant to the provisions of this section or a violation pursuant to the provisions of any law of any state or a violation pursuant to the provisions of any law of any federally-recognized Indian tribe shall participate in a substance abuse assessment and evaluation as approved by the District Court and shall be sentenced to: a) follow all recommendations made in the substance abuse assessment and evaluation at the defendant's expense, followed by not less than one (1) year of supervision and periodic testing at the defendant's expense, four hundred eighty (480) hours of community service, and use of an ignition interlock device, or b) incarceration for not less than one (1) year and not less than three (3) years and a fine of not more than Five Thousand Dollars (\$5000.00), or c) treatment, imprisonment and a fine within the limitations prescribed in subparagraphs a and b of this paragraph. However, if the person does not

undergo residential or inpatient treatment the person shall serve a term of imprisonment of at least ten (10) days.

D. Any person who is found guilty of a violation of the provisions of this section may be referred, prior to sentencing, to an alcoholism evaluation facility designated by the Department of Mental Health and Substance Abuse Services for the purposes of evaluating the receptivity to treatment and prognosis of the person. The court shall order the person to reimburse the facility for the evaluation in an amount not to exceed Seventy-Five Dollars (\$75.00). The facility shall, within seventy-two (72) hours, submit a written report to the court for the purposes of assisting the court in its final sentencing determination.

Title 47 §11-902.4 shall be added as follows:

**§ 11-902.4. Operating or being in actual physical control of motor vehicle while under the influence while under age—Penalties**

A. It is unlawful, and punishable as provided in subsection B of this section, for any person under twenty-one (21) years of age to drive, operate, or be in actual physical control of a motor vehicle within this state who:

1. Has any measurable quantity of alcohol in the person's blood or breath at the time of a test administered within two (2) hours after an arrest of the person;
2. Exhibits evidence of being under the influence of any other intoxicating substance as shown by analysis of a specimen of the person's blood, breath, saliva, or urine in accordance with the provisions of Sections 752 of this title; or
3. Exhibits evidence of the combined influence of alcohol and any other intoxicating substance.

B. Any person under twenty-one (21) years of age who violates any provision of this section shall be subject to the seizure of the driver license of that person at the time of arrest or detention and the person, upon conviction, shall be guilty of operating or being in actual physical control of a motor vehicle while under the influence while under age and shall be punished:

1. For a first conviction, by:
  - a. a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00),
  - b. assignment to and completion of twenty (20) hours of community service,
  - c. requiring the person to attend and complete a treatment program, or
  - d. any combination of fine, community service, or treatment;

2. Upon a second conviction, by:
  - a. assignment to and completion of not less than two hundred forty (240) hours of community service, and
  - b. the requirement, after the conclusion of the mandatory revocation period, to install an ignition interlock device or devices for a period of not less than thirty (30) days.

In addition, a second conviction may be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), or by requiring the person to attend and complete a treatment program, as recommended by the assessment required pursuant to subparagraph c of paragraph 2 of subsection D of this section, or by both; or

3. Upon a third or subsequent conviction, by:
  - a. assignment to and completion of not less than four hundred eighty (480) hours of community service, and
  - b. the requirement, after the conclusion of the mandatory revocation period, to install an ignition interlock device or device for a period of not less than thirty (30) days.

In addition, a third or subsequent conviction may be punished by a fine of not less than One Hundred

Dollars (\$100.00) nor more than Two Thousand Dollars (\$2,000.00), or by requiring the person to attend and complete a treatment program, as recommended by the assessment required pursuant to subparagraph c of paragraph 2 of subsection D of this section, or by both.

C. The court may assess additional community service hours in lieu of any fine specified in this section.

D. In addition to any penalty or condition imposed pursuant to the provisions of this section, the person shall be subject to:

1. Upon a first conviction:

a. the cancellation or denial of driving privileges as ordered by the court,

b. the continued installation of an ignition interlock device or devices, at the expense of the person after the mandatory period of cancellation, denial or revocation of driving privileges;

2. Upon a second or subsequent conviction:

a. the cancellation or denial of driving privileges,

b. an assessment of the person's degree of alcohol abuse, which may result in treatment as deemed appropriate by the court, and

d. the continued installation of an ignition interlock device or devices, at the expense of the person, after the mandatory period of cancellation, denial or revocation of driving privileges; and

E. Nothing in this section shall be construed to prohibit the filing of charges pursuant to 11-902 of this title when the facts warrant.

F. As used in this section:

1. The term "conviction" includes a juvenile delinquency adjudication by a court; and

2. The term "revocation" includes the cancellation or denial of driving privileges by any state's Department of Public Safety.

Title 47 §762 shall be added as follows:

**§ 762. Administration of tests--Authorization--Liability--Laboratories--Independent analysis--Costs**

A. Only a licensed medical doctor, licensed osteopathic physician, licensed chiropractic physician, registered nurse, licensed practical nurse, physician's assistant, duly certified by any State, an employee of a hospital or other health care facility authorized by the hospital or health care facility to withdraw blood, or other qualified person authorized by the Oklahoma Board of Tests for Alcohol and Drug Influence acting at the request of a law enforcement officer may withdraw blood for purpose of having a determination made of its concentration of alcohol or the presence or concentration of other intoxicating substance. Only qualified persons authorized by the Board may collect breath, saliva or urine, or administer tests of breath under the provisions of this title.

B. If the person authorized to withdraw blood as specified in subsection A of this section is presented with a written statement:

1. Authorizing blood withdrawal signed by the person whose blood is to be withdrawn;

2. Signed by a duly authorized peace officer that the person whose blood is to be withdrawn has agreed to the withdrawal of blood;

3. Signed by a duly authorized peace officer that the person whose blood is to be withdrawn has been placed under arrest and that the officer has probable cause to believe that the person, while intoxicated, has operated a motor vehicle in such manner as to have caused the death or serious physical injury of another person, or the person has been involved in a traffic accident and has been removed from the scene of the accident that resulted in the death or great bodily injury, as defined in Cherokee Nation Statutes, of any person to a hospital or other health care facility outside the Cherokee Nation before the law enforcement officer was able to effect an arrest for such offense; or

4. In the form of an order from a district court that blood be withdrawn, the person authorized to

withdraw the blood and the hospital or other health care facility where the withdrawal occurs may rely on such a statement or order as evidence that the person has consented to or has been required to submit to the clinical procedure and shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to perform the procedure, the employer of such person, and the hospital or other health care facility shall not be liable in any action alleging lack of consent or lack of informed consent.

C. No person specified in subsection A of this section, no employer of such person, and no hospital or other health care facility where blood is withdrawn shall incur any civil or criminal liability as a result of the proper withdrawal of blood when acting at the request of a law enforcement officer, or when acting in reliance upon a signed statement or court order if the act is performed in a reasonable manner according to generally accepted clinical practice. No person specified in subsection A of this section shall incur any civil or criminal liability as a result of the proper collection of breath, saliva or urine when acting at the request of a law enforcement officer or when acting pursuant to a court order.

D. The blood, breath, saliva or urine specimens obtained shall be tested by the appropriate test as determined by the Board, or tested by a laboratory that is exempt from the Board rules to determine the alcohol concentration thereof, or the presence or concentration of any other intoxicating substance which might have affected the ability of the person tested to operate a motor vehicle safely.

E. When blood is withdrawn or saliva or urine is collected for testing of its alcohol concentration or other intoxicating substance presence or concentration, at the request of a law enforcement officer, a sufficient quantity of the same specimen shall be obtained to enable the tested person, at his or her own option and expense, to have an independent analysis made of such specimen. The excess blood, saliva or urine specimen shall be retained by a laboratory approved by the Board, in accordance with the rules and regulations of the Board, or by a laboratory that is exempt from the Board rules, for sixty (60) days from the date of collection. At any time within that period, the tested person or his or her attorney may direct that such blood, saliva or urine specimen be sent or delivered to a laboratory of his or her own choosing and approved by the Board for an independent analysis. Neither the tested person, nor any agent of such person, shall have access to the additional blood, saliva or urine specimen prior to the completion of the independent analysis, except the analyst performing the independent analysis and agents of the analyst.

F. When a test of breath is performed for the purpose of determining the alcohol concentration thereof, except when such test is performed by means of an automated analyzer as designated by the Board, a sufficient quantity of breath, or of the alcohol content of a fixed or measured quantity of breath, shall be obtained, in accordance with the rules and regulations of the Board, to enable the tested person, at his or her own option and expense, to have an independent analysis made of such specimen. The excess specimen of breath, or of its alcohol content, shall be retained by the law enforcement agency employing the arresting officer, in accordance with the rules and regulations of the Board, for sixty (60) days from the date of collection. At any time within that period, the tested person, or his or her attorney, may direct that such specimen be sent or delivered to a laboratory of his or her own choosing and approved by the Board for an independent analysis. Neither the tested person, nor any agent of such person, shall have access to the additional specimen of breath, or of its alcohol content, prior to the completion of the independent analysis thereof, except the analyst performing the independent analysis and agents of the analyst.

G. The costs of collecting blood, breath, saliva or urine specimens for the purpose of determining the alcohol or other intoxicating substance thereof, by or at the direction of a law enforcement officer, shall be borne by the law enforcement agency employing such officer; provided, if the person is convicted for any offense involving the operation of a motor vehicle while under the influence of or while impaired by alcohol or an intoxicating substance, or both, as a direct result of the incident

which caused the collection of blood, saliva or urine specimens, an amount equal to the costs shall become a part of the court costs of the person and shall be collected by the court and remitted to the law enforcement agency bearing the costs. The cost of collecting, retaining and sending or delivering to an independent laboratory the excess specimens of blood, breath, saliva or urine for independent analysis at the option of the tested person shall also be borne by such law enforcement agency. The cost of the independent analysis of such specimen of blood, breath, saliva or urine shall be borne by the tested person at whose option such analysis is performed. The tested person, or his or her agent, shall make all necessary arrangements for the performance of such independent analysis other than the forwarding or delivery of such specimen.

H. Tests of blood or breath for the purpose of determining the alcohol concentration thereof, and tests of blood, saliva or urine for the purpose of determining the presence or concentration of any other intoxicating substance therein, under the provisions of this title, whether administered by or at the direction of a law enforcement officer or administered independently, at the option of the tested person, on the excess specimen of such person's blood, breath, saliva or urine, to be considered valid and admissible in evidence under the provisions of this title, shall have been administered or performed in accordance with the rules and regulations of the Board, or performed by a laboratory that is exempt from the Board rules.

I. Any person who has been arrested for any offense arising out of acts alleged to have been committed while the person was operating or in actual physical control of a motor vehicle while under the influence of alcohol, any other intoxicating substance or the combined influence of alcohol and any other intoxicating substance who is not requested by a law enforcement officer to submit to a test shall be entitled to have an independent test of his or her blood, breath, saliva or urine which is appropriate as determined by the Board for the purpose of determining its alcohol concentration or the presence or concentration of any other intoxicating substance therein, performed by a person of his or her own choosing who is qualified as stipulated in this section. The arrested person shall bear the responsibility for making all necessary arrangements for the administration of such independent test and for the independent analysis of any specimens obtained, and bear all costs thereof. The failure or inability of the arrested person to obtain an independent test shall not preclude the admission of other competent evidence bearing upon the question of whether such person was under the influence of alcohol, or any other intoxicating substance or the combined influence of alcohol and any other intoxicating substance.

J. Any agency or laboratory certified by the Board or any agency or laboratory that is exempt from the Board rules, which analyses breath, blood, or urine shall make available a written report of the results of the test administered by or at the direction of the law enforcement officer to:

1. The tested person, or his or her attorney; and
2. The Office of the Attorney General.

The results of the tests provided for in this title shall be admissible in civil actions.

Title 47 §763 shall be added as follows:

**§ 756. Admission of evidence shown by tests**

A. Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle while under the influence of alcohol or any other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance, evidence of the alcohol concentration in the blood or breath of the person as shown by analysis of the blood or breath of the person performed in accordance with the provisions of Sections 752 of this title or evidence of the presence or concentration of any other intoxicating substance as shown by analysis of such person's blood, breath, saliva, or urine

specimens in accordance with the provisions of Sections 752 of this title is admissible. Evidence that the person has refused to submit to either of said analyses is also admissible. For the purpose of this title, when the person is under the age of twenty-one (21) years, evidence that there was, at the time of the test, any measurable quantity of alcohol is prima facie evidence that the person is under the influence of alcohol in violation of Section 11-906.4 of this title. For persons twenty-one years of age or older:

1. Evidence that there was, at the time of the test, an alcohol concentration of five-hundredths (0.05) or less is prima facie evidence that the person was not under the influence of alcohol;

2. Evidence that there was, at the time of the test, an alcohol concentration in excess of five-hundredths (0.05) but less than eight-hundredths (0.08) is relevant evidence that the person's ability to operate a motor vehicle was impaired by alcohol. However, no person shall be convicted of the offense of operating or being in actual physical control of a motor vehicle while such person's ability to operate such vehicle was impaired by alcohol solely because there was, at the time of the test, an alcohol concentration in excess of five-hundredths (0.05) but less than eight-hundredths (0.08) in the blood or breath of the person in the absence of additional evidence that such person's ability to operate such vehicle was affected by alcohol to the extent that the public health and safety was threatened or that said person had violated a state statute or local ordinance in the operation of a motor vehicle; and

3. Evidence that there was, at the time of the test, an alcohol concentration of eight-hundredths (0.08) or more shall be admitted as prima facie evidence that the person was under the influence of alcohol.

B. For purposes of this title, "alcohol concentration" means grams of alcohol per one hundred (100) milliliters of blood if the blood was tested, or grams of alcohol per two hundred ten (210) liters of breath if the breath was tested.

C. To be admissible in a proceeding, the evidence must first be qualified by establishing that the test was administered to the person within two (2) hours after the arrest of the person.

Title 63 §2-401 shall be amended as follows:

### **§ 2-401. Prohibited acts A-Penalties**

A. Except as authorized by the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, it shall be unlawful for any person:

1. To distribute, dispense, or solicit the use of or use the services of a person less than eighteen (18) years of age to distribute or dispense a controlled dangerous substance or possess with intent to manufacture, distribute, or dispense a controlled dangerous substance;

2. To create, distribute, or possess with intent to distribute, a counterfeit controlled dangerous substance; or

3. To distribute any imitation controlled substances as defined by Section 2-101 of this title, except when authorized by the Food and Drug Administration of the United States Department of Health and Human Services.

B. Any person who violates the provisions of this section with respect to:

1. A substance classified in Schedule I or II which is a narcotic drug or lysergic acid diethylamide (LSD), upon conviction, shall be guilty of a crime;

2. Any other controlled dangerous substance classified in Schedule I, II, or III, or IV, upon conviction, shall be guilty of a crime;

3. A substance classified in Schedule V, upon conviction, shall be guilty of a crime;

4. An imitation controlled substance as defined by Section 2-101 of this title, upon conviction, shall be guilty of a crime and shall be sentenced to a term of imprisonment for a period of not more than one (1) year and a fine of not more than One Thousand Dollars (\$1,000.00); Δ

person convicted of a second or subsequent violation of the provisions of this paragraph shall shall be sentenced to a term of imprisonment for not more than three (3) years and a fine of not more than Five Thousand Dollars (\$5,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment.~~or~~

5. Except when authorized by the Food and Drug Administration of the United States Department of Health and Human Services, it shall be unlawful for any person to manufacture, distribute, or possess with intent to distribute a synthetic controlled substance. Any person convicted of violating the provisions of this paragraph is guilty of a crime.
- C. Any person who is at least eighteen (18) years of age and who violates the provisions of this section by using or soliciting the use of services of a person less than eighteen (18) years of age to distribute or dispense a controlled dangerous substance or by distributing a controlled dangerous substance to a person under eighteen (18) years of age is punishable by twice the fine and by twice the imprisonment otherwise authorized.
- D. Except as authorized by the Uniform Controlled Dangerous Substances Act, it shall be unlawful for any person to manufacture or attempt to manufacture any controlled dangerous substance. Any person violating the provisions of this section with respect to the unlawful manufacturing or attempting to unlawfully manufacture any controlled dangerous substance, upon conviction, is guilty of a crime.
- E. Any person convicted of any offense described in this section may, in addition to the fine imposed, be assessed an amount not to exceed ten percent (10%) of the fine imposed. Such assessment shall be paid into a revolving fund for enforcement of controlled dangerous substances created pursuant to Section 2-107 of this title.

Title 63 §2-411 shall be amended as follows:

#### **§ 2-411. General penalty clause**

Any person who violates any provision of this act not subject to a specific penalty provision is guilty of a crime punishable by confinement for not more than three (3) years, or by a fine of not more than Five Fifteen Hundred Thousand Dollars (\$15,000.00) or both.

#### **Section 6. Provisions as cumulative**

The provisions of this act shall be cumulative to existing law.

#### **Section 7. Severability**

The provisions of this act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

#### **Section 8. Effective Date**


The provisions of this act shall become effective thirty (30) days from and after the date of its passage and approval.

#### **Section 9. Self-Help Contributions**

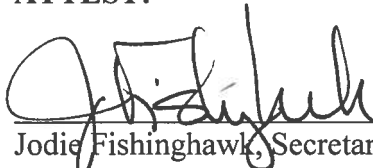


To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.

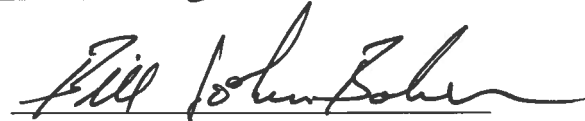
Enacted by the Council of the Cherokee Nation on the 11<sup>th</sup> day of March, 2013.

  
Tina Glory-Jordan, Speaker  
Council of the Cherokee Nation

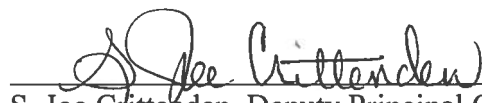
**ATTEST:**

  
Jodie Fishinhawk, Secretary  
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 14<sup>th</sup> day of March, 2013.

  
Bill John Baker, Principal Chief  
Cherokee Nation

**ATTEST:**

  
S. Joe Crittenden, Deputy Principal Chief  
Cherokee Nation

**YEAS AND NAYS AS RECORDED:**

Tina Glory Jordan	<u>Yea</u>	Meredith A. Frailey	<u>Yea</u>
Joe Byrd	<u>Yea</u>	Dick Lay	<u>Yea</u>
Frankie Hargis	<u>Yea</u>	Cara Cowan Watts	<u>Yea</u>
Jodie Fishinhawk	<u>Absent</u>	Buel Anglen	<u>Yea</u>
Janelle Lattimore Fullbright	<u>Yea</u>	Lee Keener	<u>Yea</u>
David W. Thornton, Sr.	<u>Yea</u>	Charles Hoskin, Jr.	<u>Yea</u>
Don Garvin	<u>Yea</u>	Julia Coates	<u>Yea</u>
David Walkingstick	<u>Yea</u>	Jack D. Baker	<u>Yea</u>
Curtis G. Snell	<u>Yea</u>		