

An Act

Legislative Act 17-07

A LEGISLATIVE ACT AMENDING TITLE 51, "OFFICERS" OF THE CHEROKEE NATION CODE ANNOTATED; RELATING TO THE DUTIES OF THE OFFICE OF THE MARSHAL; AND DECLARING AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This Act shall be known as the Cherokee Nation Marshal Act and shall be codified as Title 51, Chapter 6, Sections 61 et seq. of the Cherokee Nation Code Annotated.

Section 2. Purpose.

The purpose of this Act is to prescribe by law the duties and authority of the Cherokee Nation Office of Marshal as required by the Cherokee Nation Constitution drafted in 1999 and ratified in 2003. The Council recognizes the duties and powers delegated to the Office of the Marshal by said Constitution and finds that nothing herein shall be construed to diminish or abridge those duties and powers delegated to the Office of the Marshal by said Constitution.

Section 3. Legislative History

This Act repeals the present provisions of Title 51 CNCA §§ 61, 62, 63 and 64 and Title 51 CNCA § 71. On June 7, 2006, in case number JAT-05-04, the Cherokee Nation Supreme Court declared that the Cherokee Nation Constitution drafted in 1999 and ratified by the Cherokee People in 2003 was in effect as of July 26, 2003. This Act is necessary in order to comply with Article VII, Section 14 of the 1999 Cherokee Nation Constitution.

Section 4. Repeal of Title 51, Sections 61 through 71 of the Cherokee Nation Code Annotated.

The provisions concerning the Marshals and Reserve Deputy Marshals, codified at Cherokee Nation Code Annotated, Title 51, Sections 61 through 71, are hereby repealed and superseded in their entirety by this Act.

Section 5. Title 51, Cherokee Nation Code Annotated § 61 shall read as follows:

Definitions.

- A. "Administration" means the Executive Branch of the Cherokee Nation as provided for in Article VII of the Cherokee Nation Constitution.
- B. "Agency" means commissions, departments, Government-owned companies, or other instrumentalities of the Cherokee Nation.
- C. "Council" or "Tribal Council" means the Council of the Cherokee Nation as provided for in Article VI of the Cherokee Nation Constitution.
- D. "Deputy Marshal" means a police officer, regardless of rank, employed by the Marshal Service and/or deputized by the Marshal.
- E. "Government-owned company" means an entity wholly-owned by the Cherokee Nation or any agency, instrumentality, or subdivision thereof.

F. “Marshal” or “the Marshal” means the “office of Marshal” as created by the 1999 Cherokee Nation Constitution, Article VII, § 14.

G. “Marshal Service” means the executive branch agency developed, managed, directed, and overseen by the Marshal.

H. “Nation” means the Cherokee Nation.

I. “Person” means an agency, individual, a corporation, an estate, a trust, a general partnership, a limited partnership, a limited liability company, an association, or any other legal, commercial, government-owned company, or governmental entity.

J. “State” means a state, territory, or possession of the United States, a federally recognized Indian tribe, the District of Columbia or the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

Section 6. Title 51, Cherokee Nation Code Annotated § 62 :

Establishment of Marshal

The Marshal shall be appointed by the Principle Chief and confirmed by the Council for a term of five (5) years. The Marshal shall be authorized to deputize law enforcement officers, as needed, for the effective enforcement of tribal laws within the jurisdiction of the Cherokee Nation. The Marshal shall be a Cherokee citizen possessing at a minimum a degree from a four-year college or university and additional five years of experience in a supervisory capacity in law enforcement or a related field. ~~the training and experience comparable to a District Commander in the federal government~~

Section 7. Title 51, Cherokee Nation Code Annotated § 63 shall read as follows:

Duties and Authority of the Office of the Marshal.

A. Pursuant to Article VII, Section 14 of the Cherokee Nation Constitution, the “duties and authority of the Marshal shall be prescribed by law.” That Section also empowers the Marshal to “deputize such officers as necessary to carry out the law enforcement needs of the Cherokee Nation.”

B. In addition to the duties prescribed by the Constitution, the duties and authority of the Office of Marshal shall be to:

1. Plan, develop, implement and manage an overall law enforcement strategy for the effective enforcement of tribal law to include but not exclusive to budgetary fiscal management, job duties, job requirements, and training requirements of employees as well as the hiring, firing and disciplining of employees to effectively preserve the peace, protect the people within the Nation’s jurisdiction, protect the property of the Cherokee Nation and its citizens’ property living within the Nation’s jurisdiction, and ~~Direct and manage all activities of the Marshal Service, including all Marshal Service personnel;~~

~~2. Deputize officers as needed to carry out the law enforcement activities of the Cherokee Nation and authorize those deputies to carry firearms, wear prescribed uniform, badge and credentials, execute or serve warrants, summons and other orders relating to a crime committed, investigate criminal offenses using all applicable laws and regulations, make an arrest with a warrant or without a warrant if the offense is committed in the deputy’s presence or the offense is a felony and the deputy has reasonable grounds to believe the person being arrested has committed the felony and perform any other law enforcement related duty; Prepare and oversee the Marshal Service budget and ensure fiscal integrity and compliance of expenditures from said budget;~~

2.

3. Attend upon the courts, obey the court’s orders, to serve all summons and other processes which may be placed in his hands according to the tenor of the mandates therein contained, and to take all necessary and lawful measures in the execution of the judgment of the courts committed to him to execute and to arrest and cause to be tried, all persons who may be charged with criminal offenses and to provide for

~~bailiff and protection of the court ; Plan, develop and implement all law enforcement activities of the Nation including community policing;~~

- ~~4. Promulgate such rules, regulations, policies and procedures as the Marshal deems necessary to fulfill the duties of the Office and the rules of conduct of employees of the Marshal Service, which may include rules for conduct and corresponding disciplinary actions for breaches of conduct which are **to be reviewed annually and kept compliant with new enforcement codes and case laws, more stringent than those of the Cherokee Nation Human Resources Policies and Procedures** ;~~
- ~~5. Provide a law enforcement strategy, requirements, standards, qualifications and budget that is compliant to Cherokee Nation laws and regulations and **equal to or better than the codes and rules of** ~~to~~ 25 Code of Federal Regulations and 25 United States Code Annotated dealing with wages, firearms and authority of tribal law enforcement officers; Promulgate rules, regulations, policies, and procedures for the conduct of employees of the Marshal Service, which may include rules for conduct and corresponding disciplinary actions for breaches of conduct which are more stringent than those of the Cherokee Nation Human Resources Policies and Procedures;~~
- ~~6. When an arrest shall be made of a person charged with a crime, the marshal or deputy shall notify the judge having jurisdiction of the case of such arrest without delay, provided, that any accused person shall be allowed, to give bail for his appearance at court at the time set for his trial by giving bond to the court, the amount to be fixed by the judge presiding in that case. Develop and ensure application of the criteria for the job requirements, qualifications, training requirements and job duties of the deputy marshals and other employees of the Marshal Service;~~
- ~~7.5. Recommend to the Principal Chief that the Nation enter written agreements, **renegotiate agreements or withdraw from agreements** with other law enforcement agencies and jurisdictions as the Marshal deems necessary to extend police protection for Nation property and citizens across jurisdictional lines **and shall perform all functions and duties as needed**;~~
- ~~8. Perform all functions and duties as the Nation has agreed to perform under any properly entered cross deputation agreement or other similar written agreement with another law enforcement entity;~~
- ~~9. Assist in the training and development of peace officers from other jurisdictions as deemed appropriate in the Marshal's discretion;~~
- ~~10.6. Board and care for prisoners of the Cherokee Nation and to negotiate and enter contracts therefore;~~
- ~~7. Investigate reports of criminal activity against the Nation or within the Nation's jurisdiction, provide due diligence on all investigations following all applicable laws and regulations, and **Coordinate investigations with the Cherokee Nation Office of Attorney General and other applicable federal and state prosecuting attorney's offices to provide for effective enforcement of applicable laws**;~~
- ~~12. Testify at trials when properly requested or ordered to do so;~~
- ~~13. Coordinate child abuse cases with child protective services as required by applicable law;~~
- ~~14.8. Preserve the peace, protect the property of the Cherokee Nation and the property of those living within the Nation's jurisdiction, and protect the people within the Nation's jurisdiction;~~
- ~~15. Arrest and take before the nearest judicial officer in the appropriate jurisdiction all persons arrested;~~
- ~~16. Prevent and suppress all affrays, breaches of the peace, riots and insurrections which may come to the knowledge of the Marshal;~~

~~17. Coordinate with the Attorney General's Office regarding attendance at all Cherokee Nation Court sessions, upon request of the presiding judge or the Attorney General's Office, for the following duties:~~

- ~~a) bailiff duties;~~
- ~~b) transportation of prisoners;~~
- ~~c) protection of the Courthouse and the court staff;~~
- ~~d) protection of witnesses, parties and prosecutors;~~
- ~~e) and to obey the lawful orders and directions of the courts.~~

~~18. Comply with all orders of the Cherokee Nation Courts and serve warrants, process and notices in the manner prescribed by law;~~

~~19. Keep a complete office file of all investigations handled by the Office of the Marshal on behalf of the Nation;~~

20.9. **Maintain responsibility for and have charge over all National police functions within the jurisdiction of the Cherokee Nation Tribe to prevent and suppress all affrays, breaches of the peace, riots and insurrections which may come to the knowledge of the Marshal;**

~~21. Instruct, train and advise all Marshal Service employees in their functions, duties and responsibilities for the efficient maintenance of law and order within the jurisdiction of the Nation;~~

~~22. Authorize and set qualification standards for the carrying and use of firearms by Nation employees who are so authorized by law;~~

~~23. Select, hire, discipline and dismiss employees from the Marshal Service consistent with tribal law and applicable policies and procedures;~~

24.10. **Designate an individual to act as Marshal in the absence of the Marshal so long as said designation does not exceed six (6) months;**

25.11. **Keep a complete office file of all cases and investigations handled by the Marshal Service on behalf of the Nation;**

26.12. **Oversee the Security Department of the Executive Branch of the Nation, not to include those security departments operated by the Nation's Government-owned companies;**

27.13. **Perform all other duties and functions which may be prescribed in other sections and titles of the Cherokee Nation Code.**

Section 8. Title 51, Cherokee Nation Code Annotated § 64 shall read as follows:

Vacancy in Position of the Marshal.

In case of vacancy in the position of the Office of the Marshal by reason of removal, death, resignation or disability lasting for more than six (6) months, the Office of the Marshal shall be filled by appointment by the Principal Chief with confirmation by the Council. Such appointment shall be to serve out the term of the prior appointment.

Section 9. Title 51, Cherokee Nation Code Annotated § 65 shall read as follows:

Compensation of the Marshal.

The compensation of the Marshal shall not be decreased during his/her term.

Section 10. Title 51, Cherokee Nation Code Annotated § 66 shall read as follows:

Deputy marshals; delegation of authority.

A. Pursuant to Article VII, Section 14, of the Cherokee Nation Constitution, the Marshal is empowered “to deputize such officers as necessary to carry out the law enforcement needs of the Cherokee Nation.” The Marshal may from time to time make such provisions as he/she considers appropriate authorizing the performance of any function of the Marshal by any other officer or employee of the Marshal Service.

B. The Marshal is authorized to develop the organizational structure of the Marshal Service, including any special teams, squads or units as the Marshal deems necessary to perform the duties imposed upon the Marshal.

Section 11. Title 51, Cherokee Nation Code Annotated § 67 shall read as follows:

References in Cherokee Nation statutes to peace officers or Director of Marshal Service.

All references in current statutes to peace officers, sheriffs, deputy sheriffs, marshals, policemen, or constables are hereby deemed references to the Marshal and those individuals deputized by the Marshal, and all references to the Director of the Marshal Service shall be deemed references to the Marshal.

Section 12. Title 51, Cherokee Nation Code Annotated § 71 shall read as follows:

Reserve deputy marshals.

A. The Marshal may appoint as many reserve force deputy marshals as are necessary to preserve the peace and dignity of the Nation. A current list of each person holding such appointment shall be maintained by the Marshal and shall be available to the public.

B. Reserve force deputy marshals may perform duties which encompass a particular act or a series of acts at the Marshal’s discretion.

C. The Marshal or a deputy marshal shall accompany a reserve force deputy marshal in the performance of all duties assigned to such reserve force deputy marshal unless such reserve deputy has completed the required one-hundred-sixty-hour basic police course. Such reserve deputy marshals shall complete a one-hundred-sixty-hour basic police course within twelve (12) months after they have been commissioned as an individual reserve deputy marshal.

D. Reserve force deputies may receive compensation for their services. The Marshal may pay reserve force deputies for travel expenses. The Marshal Service may pay for additional training courses attended by reserve force deputies.

E. A reserve force deputy marshal shall be authorized to serve civil process.

Section 13. Provisions not cumulative.

The provisions of this act shall not be cumulative to existing law. The provisions concerning the Marshals, codified at Cherokee Nation Code Annotated, Title 51 Sections 61 through 71, are hereby repealed and superseded in their entirety by this Act.

Section 14. Severability

The provisions of this act are severable and if any part or 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 15. Emergency declared

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this act shall take effect and be in full force after its passage and approval.

**Cherokee Nation
Act/Resolution Proposal Form**

Act

Resolution

ADMINISTRATIVE CLEARANCE:

Program/Project Manager:

Signature _____ Date _____

Department Director:

Signature _____ Date _____

Group Leader:

A. Diane Hammons
Signature _____ Date _____

Finance Approval (if needed):

Signature _____ Date _____

Government Resources Group:

Kita N. Nye 10/13/06
Signature _____ Date _____

Administration Approval:

M. L. Knight 10/16/06
Signature _____ Date _____
M. L. Knight 1/12/07

LEGISLATIVE CLEARANCE

Legislative Aide:

S. Brittain 1/12/07
Signature/Initial _____ Date _____

Standing Committee:

Rules

1/25/07

Next Meeting Date

Chairperson:

Frailey
Signature/Initial _____ Date _____

Returned to Presenter: _____

Date

TITLE: A Legislative Act Amending Title 51, "Officers", of the Cherokee Nation Code Annotated; Relating to the Duties of the Office of the Marshal; and Declaring an Emergency

Department Contact: A. Diane Hammons

Resolution Presenter: A. Diane Hammons

Council Sponsor: Meredith Frailey

NARRATIVE:

(See Attached Outline for Information Needed)

The purpose of this Act is to prescribe by law the duties and authority of the Cherokee Nation Office of Marshal as required by the Cherokee Nation Constitution drafted in 1999 and ratified in 2003. The Council recognizes the duties and powers delegated to the Office of the Marshal by said Constitution and finds that nothing herein shall be construed to diminish or abridge those duties and powers delegated to the Office of the Marshal by said Constitution.

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GOVERNMENT RESOURCES

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*for re-submission for
1/25/07 Rules*

