

# An Act

## **Legislative Act 22-08**

**A LEGISLATIVE ACT ADDING SECTIONS TO TITLE 63 OF THE CHEROKEE NATION CODE ANNOTATED CONCERNING PUBLIC HEALTH AND SAFETY; PROVIDING A CIVIL REGULATORY SCHEME REQUIRING SEX OFFENDER REGISTRATION FOR CERTAIN INDIVIDUALS LIVING, WORKING, OR ATTENDING SCHOOL IN THE CHEROKEE NATION, AND REQUIRING NOTIFICATION TO THE COMMUNITY OF CERTAIN SEX OFFENDERS**

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

### **SECTION 1. CODIFICATION; LEGISLATIVE HISTORY.**

This Act shall be codified at sections 1001 et seq. of Title 63. There is no prior legislation pertaining to this matter. All of the sections herein shall be added as new sections to the Cherokee Nation Code.

### **SECTION 2. TITLE 63 CNCA § 1001 SHALL BE ADDED TO READ AS FOLLOWS:**

#### **§ 1001. Short Title.**

This Act, Sections 1001 et seq. of Title 63, shall be known and may be cited as the “Cherokee Nation Sex Offender Registration and Notification Act” or the “Cherokee Nation SORNA.”

### **SECTION 3. TITLE 63 CNCA § 1002 SHALL BE ADDED TO READ AS FOLLOWS:**

#### **§ 1002. Purpose; Findings; and Legislative Intent.**

1. The Council finds that repeat sex offenders, sexual offenders who use physical violence or duress, and sex offenders who prey on children, the elderly, and the mentally impaired are sex offenders who present an extreme threat to the public safety and pose a high risk of re-offending after release from custody. The Council further finds that the privacy interest of persons adjudicated guilty of these crimes is less important than the Nation’s compelling interest in public safety. Sex offenders are extremely likely to use physical violence and to repeat their offenses, and most sex offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sex offender victimization to society at large, while incalculable, extremely high. The Council also finds that federal crime statistics show that one out of every three Native American women is raped in her lifetime. Moreover, Native American women experience 7 sexual assaults per 1,000, compared with 4 per 1,000 among Blacks, 3 per 1,000 among Caucasians, 2 per 1,000 among Hispanics, and 1 per 1,000 among Asian-American women.

2. The high level of threat that a sex offender presents to the public safety, and the long-term effects suffered by victims of sex offenses, provide the Nation with sufficient justification to implement a strategy that includes:

- a. Requiring the registration of sex offenders, with a requirement that complete and accurate information be maintained and accessible for use by law enforcement authorities, communities, and the public.
- b. Providing for community and public notification concerning the presence of sex offenders.
- c. Prohibiting sex offenders from working with children or the elderly, either for compensation or as a volunteer.

3. The Nation has a compelling interest in protecting the public from sex offenders and in protecting children and the elderly from predatory sexual activity, and there is sufficient justification for requiring sex offenders to register and for requiring community and public notification of the presence of sex offenders. Further, the Nation's control over internal relations is effected by the presence of sex offenders within the community and the regulation of such individuals is necessary to protect the health and welfare of the Nation's citizens.

4. It is the purpose of the Council that, upon the court's written finding in a civil proceeding that an individual is a sex offender with a relationship to the community, in order to protect the public, it is necessary that the sex offender be registered with the Marshal Service and that members of the community and the public be notified of the sex offender's presence in the community. The designation of a person as a sex offender is neither a sentence nor a punishment but simply a status designation.

5. By adopting the simple remedy of providing information regarding convictions for sex offenses to the public, the Nation assists communities in being better able to protect themselves through their increased awareness.

6. It is the intent of the Council to address the problem of sex offenders by:

- a. Requiring sex offenders to register with the Marshal, as provided in this Act; and
- b. Requiring community and public notification of the presence of a sex offender, as provided in this Act.

7. The Council further declares that it is the policy of the Nation to require the exchange, in accordance with this Act, of relevant information about sex offenders among public agencies and officials and to authorize the release in accordance with this Act of necessary and relevant information about sex offenders to members of the general public as a means of assuring public protection and that the exchange or release of that information is not punitive.

8. It is also the intent of the legislature to address the mandate of the United States that Indian tribes comply with federal law requiring tribal registration of sex offenders living,

working, or attending school within their jurisdictions or to lose tribal jurisdiction over such registration to the state should the tribe fail to comply, as provided in Section 127 of the Adam Walsh Act (PL 109-248, July 27, 2006). The regulation of sex offenders thereby directly effects the political integrity of the Nation and regulation of such individuals directly effects tribal self-government.

9. The Cherokee Nation Marshal Service is authorized hereby to contract or enter any memorandum of understanding or agreement with any other agency of any government or with private contractors to complete any of the duties assigned by this Act to the Marshal Service, or as necessary to comply with the federal Adam Walsh Act (PL-109-248, July 27, 2006). In any case where such a contract or agreement requires a waiver of sovereign immunity by the Cherokee Nation, the Principal Chief is hereby authorized to sign such waiver without seeking a resolution from the Cherokee Nation Council.

**SECTION 4. TITLE 63 CNCA § 1003 SHALL BE ADDED TO READ AS FOLLOWS:**

**§ 1003. Definitions.**

As used in this Act, the term:

1. “Adam Walsh Act” means the federal legislation embodied in PL 109-248 (July 27, 2006) and any subsequent amendments thereto.
2. “Aggravated sex offender” means any person who has received a conviction for a crime, including a deferred sentence imposed in violation of Section 991C of Title 22 of the Cherokee Nation Statutes, for a crime provided for in Section 843 of Title 21 of the Cherokee Nation Statutes if the offense involved sexual abuse or sexual exploitation as these terms are defined in that section, or any of Sections 885, 1111, 1123, or 1123.1 of Title 21 of the Cherokee Nation Statutes.
3. “Change in enrollment or employment status” means the commencement or termination of enrollment or employment or a change in location of enrollment or employment.
4. “Cherokee Nation Indian Country” means any trust or restricted lands within the Indian Territory that were ceded by the United States to the Cherokee Nation pursuant to the Treaties of May 6, 1828, February 14, 1833, and December 29, 1835, 7 Stat. 478, the Indian Removal Act of 1830, 4 Stat. 411, and the fee patent executed by President Martin Van Buren on December 31, 1838, diminished only by sales under the Acts of February 28, 1877, 19 Stat. 265, June 2, 1886, 24 Stat. 121, March 3, 1893, ch. 209, 27 Stat. 612, 645, and Proclamation No. 5, 20 Stat. 1222 (1893), or as otherwise determined by federal law or courts of competent jurisdiction including those lands later acquired or acknowledged through federal action or court decision.
5. “Conviction” means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld. A conviction includes receipt of a suspended sentence or any probationary term, and includes those for which an individual is currently serving a sentence or any form of probation or parole including receipt of a deferred sentence imposed in violation of Section 991c of Title 22 of the Cherokee Nation

Statutes. A conviction includes, but is not limited to, a conviction by a federal or military tribunal, including courts-martial conducted by the Armed Forces of the United States, and includes a conviction or entry of a plea of guilty or nolo contendere resulting in a sanction by a state, the United States, or an acceptable foreign jurisdiction. A sanction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility. A conviction shall also include court-ordered civil commitment. A sanction is by an acceptable foreign jurisdiction if it is by Canada, Great Britain, Australia, New Zealand, or any foreign jurisdiction for which the United States State Department in its Country Reports on Human Rights Practices has concluded that an independent judiciary generally enforced the right to a fair trial in that country during the year in which the conviction occurred. For purposes of this act with respect to juvenile offenders, a conviction shall include only: (1) a conviction of a juvenile who has been certified as an adult, or (2) an adjudication of delinquency of a juvenile aged fourteen (14) years or over when the adjudication was for (a) a crime involving a sexual act with another by force or the threat of serious violence, or (b) a crime involving a sexual act with another by rendering the victim unconscious or by involuntarily drugging the victim, provided that no other conviction of a juvenile or adjudication of a juvenile as delinquent shall be considered a conviction for purposes of this Act. To the extent that such information is considered confidential by any other law, such information shall be made public pursuant to this act.

6. "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

7. "Entering the Nation" includes but is not limited to being discharged from a correctional facility or jail or secure treatment facility after imprisonment by order of the Cherokee Nation courts or being under supervision within the Nation for the commission of a violation enumerated in Section 1004.

8. "Habitual sex offender" means any person who has received a conviction for any crime or an attempt to commit a crime listed in Section 1004(A)(1) or Section 1004(A)(3) of this title and who subsequently receives another conviction of a crime or an attempt to commit a crime listed in Section 1004(A)(1) or Section 1004(A)(3) of this title or who has received a third conviction for any crime or an attempt to commit a crime listed in Section 1004(A)(2).

9. "Instant message name" means an identifier that allows a person to communicate in real time with another person using the Internet.

10. "Institution of higher education" means a career center, community college, college, state university, or independent postsecondary institution.

11. "Marshal Service" means the executive branch agency developed, managed, directed, and overseen by the Marshal.

12. "Marshal" or "the Marshal" means the "office of Marshal" as created by the 1999 Cherokee Nation Constitution, Article VII, § 14.

13. "Nation" means the Cherokee Nation.

14. “Other jurisdiction” means a state, the United States, Canada, Great Britain, Australia, New Zealand, or any foreign jurisdiction for which the United States State Department in its Country Reports on Human Rights Practices has concluded that an independent judiciary generally enforced the right to a fair trial in that country during the year in which the conviction occurred.

15. “Residence” or “resides” means any place where the person has a home, or any place where a person lives for five (5) or more consecutive days, or seven (7) cumulative days in any sixty-day (60-day) period, or an aggregate period of thirty (30) days or more in a calendar year.

16. “State” means a state, territory, or possession of the United States, a federally recognized Indian tribe, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, or the United States Virgin Islands.

17. “Student” shall mean an individual who enrolls in or attends an educational institution, including a public or private secondary school, trade or professional school, or an institution of higher education.

18. “Work” shall include self-employment or any employment for an entity whether compensated or not.

**SECTION 5. TITLE 63 CNCA § 1004 SHALL BE ADDED TO READ AS FOLLOWS:**

**§ 1004. Persons and crimes to which act applies.**

A. The provisions of the Cherokee Nation Sex Offenders Registration and Notification Act, Section 1001 et seq. of this title, shall apply to any individual designated as a sex offender. The designation of sex offender shall be given to any person residing, working or attending school within the Cherokee Nation who:

1. has, regardless of the date on which the offense or conviction occurred, received a conviction for a first offense for a crime or an attempt to commit a crime or conspiracy to commit a crime provided for in:

a. Section 535 of Title 21 of the Cherokee Nation Statutes if the offense involved the detention of a minor;

b. Section 681 of Title 21 of the Cherokee Nation Statutes if the offense involved sexual assault;

c. Section 741 of Title 21 of the Cherokee Nation Statutes if the offense involved sexual abuse or sexual exploitation and the offender is not the parent;

d. Section 843 of Title 21 of the Cherokee Nation Statutes if the offense involved sexual abuse or sexual exploitation as those terms are defined in that Section;

e. Sections 843.1 or 843.3 of Title 21 of the Cherokee Nation Statutes if the offense involved sexual abuse or sexual exploitation;

f. Sections 1021(A)(3), 1021(A)(4), 1021(B), 1021.2, 1021.3, 1024.2, 1040.8, or 1040.13 of Title 21 of the Cherokee Nation Statutes if the offense involved child pornography;

- g. Sections 866, 885, 886, or 891 of Title 21 of the Cherokee Nation Statutes if the offense involved sexual abuse or sexual exploitation; or
- h. Sections 1040.13a, 1087, 1088, 1111, 1123, 1123.1 or 1171 of Title 21 of the Cherokee Nation Statutes; or

2. has, regardless of the date on which the offense or conviction occurred, received a conviction for a second offense for a crime or for an attempt to commit a crime or for conspiracy to commit a crime provided for in Section 1021(A)(1) or 1021(A)(2) of Title 21 of the Cherokee Nation Statutes; or

3. has, regardless of the date on which the offense or conviction occurred, received a conviction for a federal offense committed on Cherokee Nation Indian Country for a crime or for an attempt to commit a crime or for conspiracy to commit a crime provided for in Sections 1591, 1801, 2241, 2242, 2243, 2244, 2245, 2251, 2251A, 2252, 2252A, 2252B, 2252C, 2260, 2421, 2422, 2423, 2424, 2425 of Title 18 of the United States Code, or any other federal crime for which the United States Attorney General or the Adam Walsh Act require registration as a sex offender.

B. The provisions of the Cherokee Nation Sex Offender Registration and Notification Act shall apply:

1. to any person who is convicted of a crime, an attempt to commit a crime, or a conspiracy to commit a crime enumerated in subsection A of this section in the courts of the Cherokee Nation; and

2. to any person who is convicted of a crime, an attempt to commit a crime, or a conspiracy to commit a crime enumerated in subsection A of this section in a federal court for a crime committed in Cherokee Nation Indian Country; and

3. to any person who resides, works or attends school within the Cherokee Nation and who has received a conviction for a crime, an attempt to commit a crime, or a conspiracy to commit a crime which if committed or attempted in the Cherokee Nation, would be one of those crimes enumerated in subsection A of this section or an attempt of one of those as enumerated in subsection A of this section. For military offenses, the crimes for which an individual must register pursuant to this Act shall be those specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119.

C. The provisions of the Cherokee Nation Sex Offender Registration and Notification Act shall not apply to any such person while the person is incarcerated or civilly committed.

## **SECTION 6. TITLE 63 CNCA § 1005 SHALL BE ADDED TO READ AS FOLLOWS:**

### **§ 1005. Sex offender screening tool.**

A. The District Court shall select a sex offender screening tool to be used in determining the level of risk of a person subject to registration pursuant to the provisions of the Sex Offenders Registration Act. The court may use the tool selected by the State of Oklahoma pursuant to

Section 582.5 of Title 63 the Oklahoma Statutes or a substantially similar tool that comports with the requirements of the federal Adam Walsh Act. The court may analyze other screening tools as they become available and revise or replace the existing screening tool, if warranted.

B. The chosen sex offender screening tool must use an objective point system under which a person is assigned a designated number of points for each of the various factors. The offense for which the person is convicted shall serve as the basis for the minimum tier assigned to the person. In developing or selecting the sex offender screening tool, the court shall use or shall select a screening tool that may be adapted to use the following general guidelines:

1. Tier One: a designated range of points on the sex offender screening tool indicating that the person poses a low danger to the community and will not likely engage in criminal sexual conduct;

2. Tier Two: a designated range of points on the sex offender screening tool indicating that the person poses a moderate danger to the community and may continue to engage in criminal sexual conduct; and

3. Tier Three: a designated range of points on the sex offender screening tool indicating that the person poses a serious danger to the community and will continue to engage in criminal sexual conduct. Those persons determined by the court to be aggravated sexual offenders or habitual sex offenders shall automatically be deemed Tier Three sex offenders regardless of any screening tool.

C. An individual assigned a risk level pursuant to this section may appeal the level to the Supreme Court by filing a petition in error within thirty (30) days of the date the designation is entered. On appeal, the Supreme Court shall not modify the risk level to one below the standards required by the Adam Walsh Act. The Supreme Court may override a risk level assigned by the District Court only if the Supreme Court:

1. Believes that the risk level assessed is not an accurate prediction of the risk the offender poses to the community; and

2. Documents the reason for the override in the case file of the offender.

D. All records and files relating to a person for whom a court is required under this Act to determine a level of risk, shall be released to the court for the purpose of determining the risk level of the person. In a hearing to determine the level of the offender, the regular rules of evidence shall not apply, and the court may consider any evidence it deems relevant to the determination.

## **SECTION 7. TITLE 63 CNCA § 1006 SHALL BE ADDED TO READ AS FOLLOWS:**

### **§ 1006. Designation as sex offender; Determination of offender's tier level.**

A. When an offender who meets the sex offender criteria described in Section 1004 of this Act is before the court for sentencing for a current offense, regardless of whether or not the

individual is sentenced to a term of incarceration, receives a suspended sentence or any probationary term, including a deferred sentence imposed in violation of Section 991c of Title 22 of the Cherokee Nation Statutes, the court must, as near as possible to the time of pronouncing the judgment and sentence, hold a separate civil hearing to designate the individual as a sex offender to whom this Act applies. At the designation hearing, the court shall:

1. Designate the person as a sex offender;
2. Make a determination of the tier level of the person using the sex offender screening tool developed or selected pursuant to Section 1005 of this title and assign to the person a tier level of one, two, or three;
3. Notify the person of the obligation to register as a sex offender as provided for in Section 1007 of this Act;
4. Notify the Marshal Service of the order of designation within 24 hours. The Marshal Service shall ensure that the sex offender's fingerprints and palm prints are taken and registration information is collected within 72 hours after receipt of the court's written sex offender designation and findings; and
5. Notify the individual of the requirements of registration and community and public notification requirements under this Act.

B. If the offender is sentenced to a term of imprisonment or supervision, a copy of the court's written sex offender finding must be submitted to the facility where the offender will be incarcerated.

C. The clerk of the court that convicts and sentences a sex offender for the offense or offenses requiring registration under this Act shall forward to the Marshal Service a certified copy of any order entered by the court imposing any special condition or restriction on the sex offender which restricts or prohibits access to the victim or to minors.

D. If any person or agency obtains information which indicates that an individual who lives, works, or attends school in Cherokee Nation Indian Country, or who has received a conviction for a crime on Cherokee Nation Indian Country enumerated in Section 1004 of this Act prior to the passage of this Act, meets the sex offender criteria but that no jurisdiction, including the Cherokee Nation or any other jurisdiction, has made a written finding that the offender is a sex offender, such person or agency shall notify the Attorney General's Office. The Attorney General's Office shall file a civil petition with the District Court requesting that the individual be designated as a sex offender. The court shall hold a hearing to determine if the offender's criminal record meets the sex offender criteria of this Act. If the court finds that the offender meets the sex offender criteria because the offender has received a conviction for a violation of a law or laws enumerated in or similar to those listed in Section 1004 of this title, the court shall:

1. Designate the person as a sex offender;
  - a. Make a determination of the tier level of the person using the sex offender



screening tool developed or selected pursuant to Section 1005 of this title and assign to the person a tier level of one, two, or three;

b. Make a determination as to the remaining duration of registration for any Tier One or Tier Two offender calculating the beginning of registration from the date of the individual's conviction for those who were not subject to incarceration for the offense or based on the release from custody for those subject to incarceration for the offense and providing ;

c. Notify the person of the obligation to register as a sex offender as provided for in Section 1007 of this Act;

d. Notify the Marshal Service of the order of designation within 24 hours. The Marshal Service shall ensure that the sex offender's fingerprints and palm prints are taken and registration information is collected within 72 hours after receipt of the court's written sex offender designation and findings; and

e. Notify the individual of the requirements of registration and community and public notification requirements under this Act.

If the Attorney General's Office fails to establish that an offender meets the sex offender criteria under this section, and the court does not make a written finding that an offender is a sex offender, the offender is not required to register with the Marshal Service as a sex offender. The Marshal Service, the Attorney General's Office, or any other law enforcement agency shall not administratively designate an offender as a sex offender without a written finding from the court that the offender is a sex offender. The Cherokee Nation Marshal Service and Attorney General's Office shall make every effort to register all such offenders as soon as practicable. For such offenders who are currently incarcerated, under supervision or otherwise remaining in the criminal justice system within the Cherokee Nation as quickly as possible and shall attempt to register such Tier III offenders within ninety (90) days of, such Tier II offenders within six (6) months of, and such Tier I offenders within one (1) year of the passage of this Act.

E. A person who resides, works, or attends school in Cherokee Nation Indian Country and who has not been designated as a sex offender by the Cherokee Nation District Court but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in any federal, state, military, tribal or other jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person was a resident of that jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sex offender, shall register in the manner provided in this Act and shall be subject to community and public notification as provided in this Act. A person who meets the criteria of this subsection is subject to the requirements and penalty provisions of this Act until the person provides the Marshal Service with an order issued by the court or government entity that designated the person as a sexual predator, as a sexually violent predator, or by another sexual offender designation in the federal, military, tribal, state, or other jurisdiction in which the order was issued, which states that such designation has been removed or demonstrates to the Marshal Service that such designation, if not imposed by a court, has been removed by operation of law or court order in the federal, military, state, tribal or other

jurisdiction in which the designation was made, and provided such person no longer meets the criteria for registration as a sex offender under the laws of the Cherokee Nation.

**SECTION 8. TITLE 63 CNCA § 1007 SHALL BE ADDED TO READ AS FOLLOWS:**

**§ 1007. Registration; Time limits; Duration; Petition for release from registration requirement; Information to be provided to offender.**

A. Any person who meets the definition of sex offender as set forth in this act shall register, in person, as follows:

1. With the Cherokee Nation Marshal Service:
  - a. if the person is not incarcerated, within one (1) business day of receiving a conviction including a deferred sentence imposed in violation of Section 991c of Title 22 of the Cherokee Nation Statutes, or
  - b. not less than ten (10) business days prior to the release of the person from incarceration, except as provided in subsection B of this section; and
2. With the local law enforcement authority having jurisdiction in the area where the person resides or intends to reside either temporarily or permanently. The registration is required within three (3) business days after entering the jurisdiction of the local law enforcement authority;
3. With the local law enforcement authority having jurisdiction in the area where the person works or intends to work. The registration is required within three (3) business days after entering the jurisdiction of the local law enforcement authority; and
4. With the security office of the educational institution and the local law enforcement authority having jurisdiction in the area where the person is enrolled as a student either full-time or part-time. The registration is required within three (3) business days after entering the jurisdiction of the local law enforcement authority;
5. With the Cherokee Nation Marshal Service and the local law enforcement authority no less than three (3) business days prior to abandoning or moving from the address of the previous registration or any change to employment or change to student status.

For purposes of this section, “local law enforcement authority” means:

- a.
  - i. the Cherokee Nation Marshal Service if the person resides or intends to reside or stay on Cherokee Nation Indian Country, or
  - ii. the municipal police department, if the person resides or intends to reside or stay at any place outside of Cherokee Nation Indian Country but within the jurisdiction of any municipality, or

- iii. the county sheriff, if the person resides or intends to reside or stay at any place outside of Cherokee Nation Indian Country and outside the jurisdiction of any municipality, and
  - b.
    - i. the Cherokee Nation Marshal Service if the person works or intends to work at any place on Cherokee Nation Indian Country, or
    - ii. the municipal police department, if the person works or intends to work at any place outside of Cherokee Nation Indian Country but within the jurisdiction of any municipality, or
    - iii. the county sheriff, if the person works or intends to work at any place outside of Cherokee Nation Indian Country and outside the jurisdiction of any municipality, and
  - c. the police or security department of any educational institution if the person:
    - i. enrolls as a full-time or part-time student,
    - ii. is a full-time or part-time employee at an institution of higher learning, or
    - iii. resides or intends to reside or stay on any property owned or controlled by the institution of higher learning.

B. Any person who:

- 1. Has received a conviction for an offense in another jurisdiction, which offense if committed or attempted in the Cherokee Nation, would have been punishable as one or more of the offenses listed in Section 1004 of this title, and
- 2. Who enters the Cherokee Nation and who has not been designated as a sex offender by a court of the Cherokee Nation but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person was a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sex offender shall register, in person, as follows:
  - a. With the Cherokee Nation Marshal Service when:
    - i. the person enters and intends to be in the Nation for any purpose for five (5) consecutive days or longer, calculated beginning with the first day,
    - ii. has any type of full-time or part-time employment, with or without compensation for more than five (5) cumulative days in any sixty-day

period, or

iii. is enrolled as a full-time or part-time student within the Cherokee Nation. Such registration is required within three (3) business days after entering the Nation;

b. With the Cherokee Nation Marshal Service no less than three (3) business days prior to abandoning or moving from the address of the previous registration; and

C. When a person has been designated as a sex offender by the Cherokee Nation District Court, the person shall be required to register as follows:

1. For a period of fifteen (15) years, if the person is a Tier One registrant;
2. For a period of twenty-five (25) years, if the person is Tier Two registrant; and
3. For life, if the person is Tier Three registrant.

The registration period shall begin, (1) if the person is sentenced to incarceration for the registration offense, from the date the person is released from custody, or (2) if the person receives a non-incarcerative sentence for the registration offense, from the date the offender is sentenced. The information received pursuant to the registration with the Cherokee Nation Marshal Service required by this section shall be maintained by the Cherokee Nation Marshal Service for at least ten (10) years from the date of the last registration. Any person required to register by another jurisdiction shall be required to maintain such registration pursuant to Section 1006(E) of this Title.

D. Any person who:

1. has been assigned to the Tier I designation and who has been registered for a period of ten (10) years, or
2. has been assigned to the Tier III designation and was required to register on the basis of a juvenile delinquency adjudication and who has been registered for a period of twenty-five (25) years

may petition the District Court for the purpose of removing the tier level and sex offender designation and allowing the person to no longer be subject to the registration requirements of the Sex Offenders Registration Act, thereby reducing the registration period. The District Court may reduce the registration duration and lift the registration requirements for such an offender only if the offender can show by clear and convincing evidence the following:

- a. The registrant has not been convicted of any offense, regardless of its designation as a misdemeanor or felony during the registration period; and
- b. The registrant has successfully completed any periods of supervised release, probation, and parole without any revocation or acceleration; and

c. The registrant has successfully completed an appropriate sex offender treatment program certified by either the Attorney General of the United States or the Attorney General of the Cherokee Nation.

E. When registering an individual as provided in this section the Cherokee Nation Marshal Service shall:

1. Inform the registrant of the duty to register and obtain the information required for registration as described in this section;
2. Inform the registrant that if the registrant changes address within Cherokee Nation Indian Country, the registrant shall give notice of the move and the new address to the Cherokee Nation Marshal Service in writing no later than three (3) business days before the offender establishes residence or is temporarily domiciled at the new address;
3. Inform the registrant that if the registrant changes address outside of Cherokee Nation Indian Country, the registrant shall give notice of the move and shall register the new address with the Cherokee Nation Marshal Service and with a designated law enforcement agency in the new jurisdiction not later than ten (10) calendar days before the offender establishes residency or is temporarily domiciled in the new jurisdiction, if such jurisdiction has a registration requirement;
4. Inform the registrant that if the registrant participates in any full-time or part-time employment, outside of Cherokee Nation Indian Country, with or without compensation for more than fourteen (14) cumulative days in any sixty-day (60-day) period or an aggregate period of thirty (30) days or more in a calendar year, then the registrant has a duty to register as a sex offender in the jurisdiction where the offender is so employed;
5. Inform the registrant that if the registrant enrolls in any type of school outside of Cherokee Nation Indian Country as a full-time or part-time student then the registrant has a duty to register as a sex offender in the jurisdiction where the school is found;
6. Inform the registrant that if the registrant enrolls in any school within the Cherokee Nation as a full-time or part-time student, then the registrant has a duty to register as a sex offender with both the Cherokee Nation Marshal Service and the security office of the school, if any; and
7. Inform the registrant that if the registrant participates in any full-time or part-time employment at any school, with or without compensation, or participates in any vocational course or occupation at any school in the Cherokee Nation, then the registrant has a duty to notify the Cherokee Nation Marshal Service and the security office of the school in writing of such employment or participation at least three (3) days before commencing or upon terminating such employment or participation; and
8. Inform the registrant that if the registrant graduates, transfers, drops, terminates or otherwise changes enrollment or employment at any school in the Cherokee Nation, then the registrant shall notify the Cherokee Nation Marshal Service and the school security

department in writing of such change in enrollment or employment within three (3) business days of the change;

9. Inform the registrant that if the registrant changes his/her name or alias, a telephone or pager information, vehicle, color of vehicle or vehicle registration, or any e-mail or instant message address or other internet address or identifier, or makes plans to travel outside of the United States, the registrant must notify the Cherokee Nation Marshal Service within three (3) business days of the change;

10. Require the registrant to read and sign a form stating that the duty of the person to register under the Sex Offenders Registration Act has been explained.

F. Any person who resides outside Cherokee Nation Indian Country and who has been convicted of an offense or received a deferred judgment for an offense in the Cherokee Nation, or in another jurisdiction, which offense if committed or attempted in the Cherokee Nation would have been punishable as one or more of the offenses listed in Section 1004 of this title, and who is the spouse of a person living in the Cherokee Nation shall be registered with the Cherokee Nation Marshal Service when the person enters and intends to be in Cherokee Nation Indian Country for any purpose for five (5) consecutive days or longer, calculated beginning with the first day or an aggregate period of five (5) days or longer in a calendar year. Such registration is required at least three (3) business days prior to entering Cherokee Nation Indian Country.

G. The duty to register as a sex offender in the Cherokee Nation shall not be prevented if, at the time of registration, it is determined that the person owns or leases a residence in violation of Section 1017 of this title.

**SECTION 9. TITLE 63 CNCA § 1008 SHALL BE ADDED TO READ AS FOLLOWS:**

**§ 1008. Required registration information; Conviction data, fingerprints and palm prints; Notice of certain changes to registration information.**

A. Any registration with the Cherokee Nation Marshal Service required by the Sex Offender Registration and Notification Act shall be in a form approved by the Marshal Service and shall include, at a minimum, the following information, in digitized form, about the person registering:

1. The name of the person and all aliases, pseudonyms and nicknames used or under which the person has been known, including ethnic or tribal names;

2. A complete description of the person, including, social security number (both actual and purported numbers), age, race, sex, date of birth (both actual and purported dates), height, weight, hair and eye color, identifying marks and tattoos, a photograph and fingerprints and palm prints;

3. When requested by the Cherokee Nation Marshal Service, such registrant shall submit to a blood, saliva or other scientifically accepted test for purposes of a deoxyribonucleic acid (DNA) profile to be submitted to the Combined DNA Index System Database (CODIS). Submission to testing for individuals registering shall be

within thirty (30) days of registration. Registrants who already have valid samples on file in CODIS shall not be required to submit duplicate samples for testing;

4. The offenses listed in Section 1004 of this title for which the person has received a conviction, where the offense was committed, where the person received the conviction, the date of the conviction, a brief description of the crime or crimes committed by the offender, and the name under which the person received the conviction;

5. All telephone numbers for fixed locations and cellular numbers, including pager numbers;

6. The name and location of each hospital or penal institution to which the person was committed for each offense listed in Section 1004 of this title;

7. Where the person previously resided, where the person currently resides either permanently or temporarily, how long the person has resided there, how long the person expects to reside there, and how long the person expects to remain in the Cherokee Nation:

a. Addresses shall include a rural route address and a post office box.

b. A post office box shall not be provided in lieu of a physical residential address. In instances where there is no physical address, the registrant shall give a specific description to the location.

c. If the sex offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, the sex offender shall also provide to the Marshal Service written notice of the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home.

d. If a sex offender's place of residence is a vessel, live-aboard vessel, or houseboat, the sex offender shall also provide to the Marshal Service written notice of the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat;

8. A description of all occupants residing with the person registering, including, but not limited to, name, date of birth, gender, relation to the person registering, and how long the occupant has resided there;

9. If the sex offender is enrolled, employed, or carrying on a vocation at an institution of higher education, the sex offender shall also provide to the Marshal Service the name, address, and county of each institution, including each campus attended, and the sex offender's enrollment or employment status;

10. The name of any entity for whom the sex offender works whether for remuneration or voluntarily or as an unpaid intern or whether the person is self-employed, the position held by the sex offender, and the address where the sex offender will work or, if not a fixed location, as definite a description of the work location as is possible;

11. All professional licenses held by the person;

12. The license plate number, vehicle identification number, and description of all vehicles owned, operated, or regularly driven by the sex offender, including watercraft and airplanes, and a description of where these vehicles are habitually parked, docked, or otherwise kept;

13. A copy of the person's passport, and if the person is an alien, a copy of the person's immigration documentation;

14. A copy of the person's driver's license and/or any other identification cards;

15. The tier level of the person;

16. Any and all electronic mail addresses, instant message names, or other designations or monikers used for self-identification or routing in Internet communications or postings prior to using such electronic mail address or instant message name and any such electronic mail address or instant message name existing or otherwise in use at the time of registration;

17. The name of the federally recognized Indian tribe in which the person is enrolled, and a copy of the person's tribal enrollment card or Certificate Degree of Indian Blood;

18. The text of the registration offense;

19. Criminal history of the person, including dates of all arrests and convictions, status of parole, probation or supervised release, registration status, and outstanding arrest warrants;

20. The age, gender, and race of the offender's victims;

and

21. Any other information determined necessary by the department, including; non-privileged personnel and treatment records and evidentiary genetic markers when available.

- B. 1. Any person subject to the provisions of the Sex Offenders Registration Act who:
- a. changes their name or alias, a permanent or temporary address, telephone or pager information, employment or termination thereof, school attendance, vehicle, color of vehicle or vehicle registration, or any e-mail or instant message



address or other internet address or identifier, or

b. who makes plans to travel outside of the United States,

shall report in person to the Cherokee Nation Marshal Service and give a written notice of the change and the new address, name, employment, school, e-mail or instant message address, vehicle information, or plans for international travel as applicable, no later than three (3) business days prior to the change taking place or the beginning of the travel. Within three (3) business days of receipt of the updated information, the Marshal Service shall notify the jurisdictions listed in Section 1010(A) of this Title, and shall update the information in the registration database. The Marshal Service shall notify the United States Marshals Service within twenty-four (24) hours of receipt of information that an individual will be traveling outside of the United States. In cases where the change of residence is to a foreign jurisdiction, the Marshal Service shall also update the National Sex Offender Registry Information within three (3) business days.

2. If a new address of a residence, school or workplace is outside of Cherokee Nation Indian Country:

a. The Cherokee Nation Marshal Service shall, within three (3) business days, notify the new local law enforcement authority by teletype, electronic transmission, or letter of the change of address.

b. The offender shall notify the new local law enforcement authority of any previous registration; and

c. The new local law enforcement authority shall notify the most recent registering agency by electronic transmission, teletype or letter of the offender's registration of the new address in the new jurisdiction.

3. A sex offender who remains at an address after reporting his or her intent to vacate such address shall, within three (3) days after the date upon which the offender indicated he or she would or did vacate such residence, report in person to the Marshal Service for the purpose of reporting his or her address at such residence. An offender who makes a report as required under subparagraph 1 but fails to make a report as required under this subparagraph commits a crime.

**SECTION 10. TITLE 63 CNCA § 1009 SHALL BE ADDED TO READ AS FOLLOWS:**

**§ 1009. Notice of and access to registries; Biological samples; Habitual or aggravated sex offender designation; Immunity.**

A. Conviction data, digital DNA results, and fingerprints and palm prints shall be promptly transmitted at the time of registration to the Federal Bureau of Investigation (FBI) if the information was not previously sent at the time of conviction, and to the Oklahoma State Bureau of Investigation (OSBI) or other law enforcement agency if required pursuant to a Memorandum

of Agreement or Understanding.

B. The Marshal Service shall maintain a file of all sex offender registrations. A copy of the information contained in the registration shall promptly be available to all tribal, federal, state, and local law enforcement agencies, the Group Leader of Education, the Group Leader of Health, and the National Sex Offender Registry maintained by the Federal Bureau of Investigation. The file shall promptly be made available for public inspection or copying pursuant to rules promulgated by the Cherokee Nation Marshal Service. The Cherokee Nation Marshal Service shall promptly provide all municipal police departments and all county sheriff departments a list of those sex offenders registered and living on Cherokee Nation Indian Country within such agency's respective municipality or county.

C. The Group Leader of Education is authorized to copy and shall distribute information from the sex offender registry to individual public and private educational facilities within Cherokee Nation Indian Country with a notice using the following or similar language: "A person whose name appears on this registry has been convicted of a sex offense. Continuing to employ a person whose name appears on this registry may result in civil liability for the employer or criminal prosecution pursuant to Section 1015 of Title 63 of the Cherokee Nation Statutes."

D. The Group Leader of Health is authorized to distribute information from the sex offender registry to any nursing home or long-term care facility. Nothing in this subsection shall be deemed to impose any liability upon or give rise to a cause of action against any person, agency, organization, or company for failing to release information in accordance with the Sex Offender Registration and Notification Act.

E. The Marshal Service's sex offender registration list is a public record and shall be available upon request, without restriction, at a cost that is no more than what is charged for other records provided by the Marshal Service pursuant to the Cherokee Nation Freedom of Information Act.

1. The department is authorized to disseminate this public information by any means deemed appropriate.

2. When the Marshal Service provides information regarding a registered sex offender to the public, Marshal Service personnel must advise the person making the inquiry that positive identification of a person believed to be a sex offender cannot be established unless a fingerprint comparison is made, and that it is illegal to use public information regarding a registered sex offender to facilitate the commission of a crime.

3. Except in cases when the release is to law enforcement, to a prosecuting attorney, to a court, or pursuant to a valid court order, the release of the sex offender registration list under this section shall not include the following information:

- d. social security number of the sex offender,

- e. victim identification,

- f. arrests not resulting in conviction,
- g. travel and immigration document numbers.

4. E-mail addresses and instant mail addresses shall not be released to the public generally, however, the Marshal Service shall allow the public to inquire as to whether a specified address belongs to a registered sex offender, and when such an address is registered to a sex offender, the Marshal Service is permitted to confirm such registration.

F. When the Marshal Service sends a copy of or otherwise makes the sex offender registry available to any public or private school offering any combination of prekindergarten through twelfth grade classes or child care facility licensed by the State of Oklahoma or the Nation, the agency shall provide a notice using the following or similar language: "A person whose name appears on this registry has been convicted of a sex offense. Continuing to employ a person whose name appears on this registry may result in civil liability for the employer or criminal prosecution pursuant to Section 1015 of Title 63 of the Cherokee Nation Statutes or under the statutes of the State of Oklahoma."

G. 1. Samples of blood, saliva, or other biological material for DNA testing required by subsection A of this section shall be taken by employees or contractors of the Marshal Service or by any employee or contractor of a government agency with which the Nation enters an agreement for DNA testing and storage purposes. Said individuals shall be properly trained to collect blood, saliva, or such biological samples as are required for testing. Persons collecting samples for DNA testing pursuant to this section shall be immune from civil liabilities arising from this activity.

2. If the Marshal Service collects DNA, it shall ensure the collected samples are mailed or hand-delivered to the contracted lab within ten (10) days of the time the subject appears for testing or such period as is required by the laboratory, whichever is shorter. The Marshal Service shall use sample kits provided by the contracted lab and procedures promulgated by the contracted lab.

3. Persons subject to DNA testing pursuant to this section shall be required to pay to the Marshal Service a fee to be established by the Marshal Service.

H. If the probation and parole officer supervising a person subject to registration receives information to the effect that the status of the registered sex offender has changed in any manner that affects proper supervision of the person including, but not limited to, a change in the physical health of the person, address, employment, or educational status, higher educational status, incarceration, or terms of release, the supervising officer or administrator shall notify the Marshal Service of that change.

**SECTION 11. TITLE 63 CNCA § 1010 SHALL BE ADDED TO READ AS FOLLOWS:**

**§ 1010. Forwarding of registration information and tier level; Community notification; Absconders.**

A. No less than three (3) business days from the date on which a person registers as a sex offender or updates information under this Act, the Marshal Service shall forward the registration information, as provided in Section 1009 of this Title, and tier level to:

1. The Federal Bureau of Investigation;
2. The United States Marshals Service;
3. The Bureau of Indian Affairs;
4. The city or county law enforcement authority and district attorney's office in the county in which the person expects to reside, work, or attend school, if the person expects to reside, work, or attend school outside of Cherokee Nation Indian Country;
5. The Oklahoma Department of Corrections;
6. Cherokee Nation Human Resources and any other agency responsible for conducting employment-related background checks;
7. Cherokee Nation Indian Child Welfare and the Oklahoma Department of Human Services;
8. The probation office of the registrant, if any, and
9. Any other organization or agency as required by the Adam Walsh Act.

B. The Marshal Service is responsible for the online maintenance of current information regarding each registered sex offender and such information shall be accessible to the public. The registry shall include the information listed in subparagraph 2 of paragraph D of this section. The site shall enable searches by name, county, city and/or town, or zip code or geographic radius.

1. The information required to be included on the sex offender website shall be posted on the website within three (3) business days;
2. The sex offender website shall include a function under which organizations and members of the public who provide an e-mail address to which notices can be sent can request notification when a sex offender commences residence, employment, or school attendance within the zip code or a geographic area specified by the requestor;
3. Upon posting on the website of new residence, employment, or school attendance information, for a sex offender within an area specified by the requestor, the system will automatically send an e-mail notice to the requestor that identifies the sex offender.
4. The website shall include links to sex offender safety and education resources.
5. The website shall include a warning that information on the site should not be

used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported address and that any such action could result in civil or criminal penalties.

6. The website shall include instructions on how to seek correction of information that an individual contends is erroneous.

C. The Marshal Service must maintain access for state, local, and federal law enforcement agencies to obtain instantaneous locator file and offender characteristics information on all released registered sex offenders for purposes of monitoring, tracking, and prosecution.

D. 1. Upon registration of any person designated as a sex offender, or upon updating of registration information of any person designated as a sex offender, the Marshal Service shall post on the website and may notify, by any method of communication it deems appropriate, anyone that the Marshal Service deems appropriate, including, but not limited to:

a. the family of the sex offender,

b. any prior victim of the sex offender if the whereabouts of such victim(s) is known,

c. residential neighbors and churches, community parks, schools, convenience stores, businesses and other places within a one-mile radius of the offender's registered permanent or temporary address that children or other potential victims may frequent,

d. any nursing facility, specialized facility, residential care home, continuum-of-care facility, assisted living center, and adult day care facility, or similar facility within a one-mile radius of the offender's registered permanent or temporary address, and

e. any individual or organization who specifically requests that they be notified of such registration.

2. The posting on the website and any notification shall, at a minimum, include the following information:

a. the name of the sex offender,

b. the physical address of each residence of the sex offender, the address of each place where the sex offender is an employee, and the address of any place where the sex offender is or will be a student,

c. a physical description of the sex offender, including, but not limited to, age, height, weight, eye color and hair color,

- d. a current photograph of the sex offender,
  - e. the tier level of the person and whether or not the person is an absconder,
  - f. a description of the vehicle that the sex offender is known to drive including license plate number, and
  - g. a description of the offense for which the sex offender is registered and any other sex offenses for which the sex offender has been convicted.
3. The notification may also, but is not required to, include the following information:
- a. any conditions or restrictions upon the probation, parole or conditional release of the sex offender,
  - b. a description of the primary targets of the sex offender, and
  - c. the name and telephone number of the probation or parole officer of the sex offender, if any.
4. The Marshal Service shall make the notification provided for in this subsection regarding a sex offender available to any person upon request.
5. The Marshal Service shall not display on the website or otherwise provide to the public any arrest for which the offender did not receive a conviction, the offender's social security number, travel and immigration document numbers, or the identity of any victim(s).

**SECTION 12. TITLE 63 CNCA § 1011 SHALL BE ADDED TO READ AS FOLLOWS:**

**§ 1011. Verification of offender's address.**

A. The Marshal Service shall conduct verification of the registration information of each registered sex offender by requiring the registrant to verify their registration information in-person at the Marshal Service Office as follows:

- 1. on an annual basis, if the tier level of the person is one, or
- 2. every six (6) months, if the tier level of the person is two, or
- 3. every ninety (90) days, if the tier level of the person is three.

The Marshal Service may determine the appropriate times and days for reporting by the sex offender which shall be consistent with the reporting requirements of this paragraph.

B. Each verification shall include the following:

1. Verification by the registrant of existing information for accuracy where the registrant shall inform the Marshal Service if any of the information required to be submitted pursuant to Section 1008 of this title has changed;
2. Taking a current photograph; and
3. Production of proof by the registrant of the identity of the person and current address.

C. The Marshal Service shall, within two (2) business days, electronically submit and update all information provided by the sex offender to those law enforcement departments listed in Section 1010(B) of this Title.

D. In addition to the in-person verification required by this section, the Marshal Service may develop a system by which Marshal Service personnel go to the sex offender's registered physical addresses in Cherokee Nation Indian Country and verify the residence of the sex offender at such temporary or permanent address.

E. In any case where the Marshal Service receives notice from any other jurisdiction that a registered offender is transferring his/her place of residence, employment, or school to a location within Cherokee Nation Indian Country and the offender fails to register with the Marshal Service within the required time, the Marshal Service shall provide notice of this failure to register to the other jurisdiction from which the Marshal Service received notice that the offender would be transferring a residence, employment, or school into Cherokee Nation Indian Country.

F. The Cherokee Nation Marshal Service shall notify the applicable offices of the Federal Bureau of Investigation and the United States Marshal Service and local law enforcement authority of the appropriate county or city, if the Marshal Service is unable to verify the address of a sex offender within thirty (30) days of an initial attempt to verify the registrant's address. The Marshal Service may notify the Office of the Attorney General whenever it comes to the attention of the Marshal Service that a sex offender is not in compliance with any provisions of this Act. If the Marshal Service receives information that a sex offender may have absconded, the Marshal Service shall:

1. seek an arrest warrant for the offender's arrest if the legal requirements for doing so are satisfied; and
2. notify the United States Marshal Service and any relevant local law enforcement authority; and
3. update the registration database and the National Sex Offender Registry to reflect the offender's status as an absconder and seek to enter the sex offender into the National Crime Information Center Wanted Person File.

**SECTION 13. TITLE 63 CNCA § 1012 SHALL BE ADDED TO READ AS FOLLOWS:**

**§ 1012. Notifying offenders of obligation to register.**

A. The Marshal Service, prior to release from incarceration of a person subject to the provisions of the Sex Offender Registration and Notification Act, Section 1001 et seq. of this title, and each judge who suspends the sentence of a person subject to the provisions of the Sex Offenders Registration Act or orders any probationary term, including a deferred sentence imposed in violation of Section 991c of Title 22 of the Cherokee Nation Statutes, for a person subject to the provisions of the Sex Offenders Registration Act, shall prior to discharge or release of said person:

1. Explain to the person the duty to register pursuant to the Sex Offender Registration and Notification Act;
2. Require the person to sign a written statement that the duty to register has been explained and the person understands the duty to register; and
3. Obtain the address at which the person is to reside upon discharge or release.

B. The Marshal Service shall coordinate with federal law enforcement, and surrounding states and Indian tribes to establish necessary procedures for notifying offenders that reside in other state or tribal jurisdictions but work or attend school within the Cherokee Nation of the obligation to register pursuant to this act and the procedure for registration of those offenders.

**SECTION 14. TITLE 63 CNCA § 1013 SHALL BE ADDED TO READ AS FOLLOWS:**

**§ 1013. False or misleading registration information.**

No person subject to the provisions of the Sex Offender Registration and Notification Act, Sections 1001 et seq. of this title, shall furnish any false or misleading information in the registration required by said act.

**SECTION 15. TITLE 63 CNCA § 1014 SHALL BE ADDED TO READ AS FOLLOWS:**

**§ 1014. Immunity.**

All public agencies and employees and officials of the Cherokee Nation, and all individuals or entities acting at the request or upon the direction of any law enforcement agency, are immune from civil liability for damages for good faith compliance with the requirements of this Act or for the release of information under this Act, and shall be presumed to have acted in good faith in compiling, recording, reporting, or releasing the information. The presumption of good faith is not overcome if a technical or clerical error is made, including but not limited to errors made because information is incomplete or incorrect because a sex offender fails to report or falsely



reports his or her current place of permanent or temporary residence.

Nothing in this act shall be deemed to impose any liability upon or to give rise to a cause of action against any public official, public employee, or public agency for releasing information to the public or for failing to release information in accordance with the Sex Offender Registration and Notification Act. Nothing in this act shall be construed to prevent law enforcement officers from notifying members of the public of any persons that pose a danger under circumstances that are not enumerated in the Sex Offenders Registration Act.

**SECTION 16. TITLE 63 CNCA § 1015 SHALL BE ADDED TO READ AS FOLLOWS:**

**§ 1015. Penalties.**

A. Except as otherwise specifically provided, any person required to register pursuant to the provisions of the Sex Offenders Registration and Notification Act who violates any provision of said act shall, upon conviction, be guilty of a crime. Any person convicted of a violation of this section shall be punished pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes. Any non-Indian shall be subject to civil exclusion from the Cherokee Nation. Any non-Indian individual found to be in violation of this section shall be subject to a civil action for exclusion from Cherokee Nation Indian Country. Such action shall be commenced by the Office of the Attorney General by filing a petition for exclusion in the District Court. The individual shall be excluded upon a written finding, by the District Court, after notice and an opportunity to be heard being provided to the defendant, by clear and convincing evidence, that: (1) the individual is non-Indian; (2) the individual is required to register pursuant to the Sex Offenders Registration and Notification Act; and (3) the individual is residing on Cherokee Nation Indian Country in violation of this subsection. The individual shall remove himself or herself from Cherokee Nation Indian Country no less than thirty (30) days from the entry of the District Court's order that he or she is in violation of this subsection or be in contempt of court. Any individual found to be in contempt of court under this section may be removed from the Cherokee Nation Indian Country by the Marshal Service. Any individual ordered to be excluded from the Cherokee Nation Indian Country under this subsection shall be required to notify the Marshal Service of the other jurisdiction in which the individual intends to reside upon leaving the Cherokee Nation Indian Country, and the Marshal Service shall notify such other jurisdiction of the intended relocation.

B. A sex offender who works, whether for compensation or as a volunteer, at any business, school, day care center, park, playground, or other place where children regularly congregate, commits a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes.

C. Any person who misuses public records information relating to a sex offender to secure a payment from such an offender, who knowingly distributes or publishes false information relating to such an offender which the person misrepresents as being public records information, or who materially alters public records information with the intent to misrepresent the information, including documents, summaries of public records information provided by law enforcement agencies, or public records information displayed by law enforcement agencies on websites or provided through other means of communication, commits a crime punishable by up to six

months of imprisonment or a One-Thousand Dollar (\$1,000.00) fine or both.

D. An arrest on charges of failure to register, the service of an information or a complaint for a violation of this section, or an arraignment on charges for a violation of this section constitutes actual notice of the duty to register when the sex offender has been provided and advised of his or her statutory obligation to register under subsection 1012. A sex offender's failure to immediately register as required by this section following such arrest, service, or arraignment constitutes grounds for a subsequent charge of failure to register. A sex offender charged with the crime of failure to register who asserts, or intends to assert, a lack of notice of the duty to register as a defense to a charge of failure to register shall immediately register as required by this section.

A sex offender who is charged with a subsequent failure to register may not assert the defense of a lack of notice of the duty to register. Registration following such arrest, service, or arraignment is not a defense and does not relieve the sex offender of criminal liability for the failure to register.

E. Any person who has reason to believe that a sex offender is not complying, or has not complied, with the requirements of this section and who, with the intent to assist the sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, his or her noncompliance with the requirements of this section:

1. Withholds information from, or does not notify, the law enforcement agency about the sex offender's noncompliance with the requirements of this section, and, if known, the whereabouts of the sex offender;
2. Harbors, or attempts to harbor, or assists another person in harboring or attempting to harbor, the sex offender;
3. Conceals or attempts to conceal, or assists another person in concealing or attempting to conceal, the sex offender; or
4. Provides information to the law enforcement agency regarding the sex offender which the person knows to be false information,

commits a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes. This paragraph does not apply if the sex offender is incarcerated in or is in the custody of a state or tribal correctional facility, a private correctional facility, a local jail, or a federal correctional facility.

**SECTION 17. TITLE 63 CNCA § 1016 SHALL BE ADDED TO READ AS FOLLOWS:**

**§ 1016. Registered offenders prohibited from certain employment; Penalties; Civil damages.**

A. It is unlawful for any person required to register pursuant to the Cherokee Nation Sex Offenders Registration and Notification Act to work with or provide services to children or to

work on school premises. Violation of this section shall be a crime punishable by imprisonment up to one year or a fine not to exceed Five Thousand Dollars (\$5,000.00) or by both such fine and imprisonment.

B. It is unlawful for any person or business which contracts for work to be performed on school premises to knowingly and willfully allow any employee who is required to be registered pursuant to the Cherokee Nation Sex Offenders Registration and Notification Act to work with children or to work on school premises. Upon conviction for any violation of the provisions of this subsection, the violator shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00). In addition, the violator may be liable for civil damages.

C. A person or business who offers or provides services shall ensure compliance with subsection B of this section.

D. It is unlawful for any law enforcement agency to employ any person as a peace officer or criminal investigator who has received a conviction for any offense requiring the individual to register as a sex offender pursuant to this Act. The Marshal Service shall notify the Council on Law Enforcement Education and Training (CLEET) if any peace officer, private investigator, or security guard, is CLEET-certified and receives a conviction for a crime enumerated in Section 1004 of this Title occurring within Cherokee Nation Indian Country. Any violator of this section shall be subject to a civil fine of no more than Five Thousand Dollars (\$5,000.00).

**SECTION 18. TITLE 63 CNCA § 1017 SHALL BE ADDED TO READ AS FOLLOWS:**

**§ 1017. Residency restriction; Penalty.**

A. It is unlawful for any person registered pursuant to the Sex Offender Registration and Notification Act to reside, either temporarily or permanently, within a two-thousand-foot radius of any public or private school site, educational institution, a playground or park that is zoned by city, county, state, federal or tribal government, or a licensed child care center. Establishment of a day care center or park in the vicinity of the residence of a registered sex offender will not require the relocation of the sex offender or the sale of the property. On the effective date of this act, the distance indicated in this section shall be measured from the nearest property line of the residence of the person to the nearest property line of the public or private school site, educational institution, playground, park, or licensed child care facility; provided, any nonprofit organization established and housing sex offenders prior to the effective date of this provision shall be allowed to continue its operation.

B. Nothing in this provision shall require any person to sell or otherwise dispose of any real estate or home acquired or owned prior to the conviction of the person as a sex offender.

C. The provisions of this section shall not apply to any registered sex offender residing in a hospital or other facility certified or licensed to provide medical services.

D. It is prohibited for any non-Indian person required to register pursuant to the Sex Offenders Registration and Notification Act to reside on Cherokee Nation Indian Country, either temporarily or permanently. Any non-Indian individual found to be in violation of this section shall be subject to a civil action for exclusion from Cherokee Nation Indian Country. Such action

shall be commenced by the Office of the Attorney General by filing a petition for exclusion in the District Court. The individual shall be excluded upon a written finding, by the District Court, after notice and an opportunity to be heard being provided to the defendant, by clear and convincing evidence, that: (1) the individual is non-Indian; (2) the individual is required to register pursuant to the Sex Offenders Registration and Notification Act; and (3) the individual is residing on Cherokee Nation Indian Country in violation of this subsection. The individual shall remove himself or herself from Cherokee Nation Indian Country no less than thirty (30) days from the entry of the District Court's order that he or she is in violation of this subsection or be in contempt of court. Any individual found to be in contempt of court under this section may be removed from the Cherokee Nation Indian Country by the Marshal Service. Any individual ordered to be excluded from the Cherokee Nation Indian Country under this subsection shall be required to notify the Marshal Service of the other jurisdiction in which the individual intends to reside upon leaving the Cherokee Nation Indian Country, and the Marshal Service shall notify such other jurisdiction of the intended relocation.

E. Any person willfully violating the provisions of this section by intentionally moving into any neighborhood or to any real estate or home within the prohibited distance shall, upon conviction, be guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes.

**SECTION 19. PROVISIONS NOT CUMULATIVE.**

The provisions of this act shall not be cumulative to existing law and the provisions of this act shall supersede any existing law in conflict herewith.

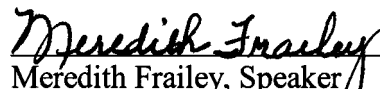
**SECTION 20. SEVERABILITY.**

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 21. EFFECTIVE DATE.**

It being necessary for the welfare of the Cherokee Nation, the Council hereby declares that this Act shall go into effect ninety (90) days after its passage by the full Council.

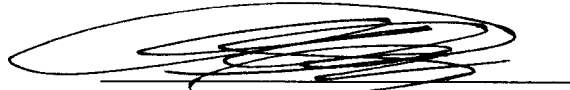
Enacted by the Council of the Cherokee Nation on the 13<sup>th</sup> day of October, 2008.

  
Meredith Frailey, Speaker  
Council of the Cherokee Nation

**ATTEST:**

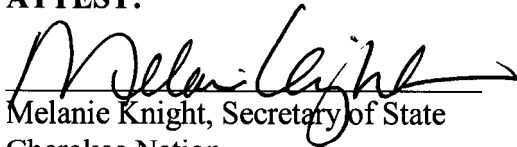
  
Don Garvin, Secretary  
Council of the Cherokee Nation

Approved and signed by the Principal Chief on this 15th day of October, 2008.



Chadwick Smith, Principal Chief  
Cherokee Nation

**ATTEST:**



Melanie Knight, Secretary of State  
Cherokee Nation

**YEAS AND NAYS AS RECORDED:**

Tina Glory Jordan	<u>Yea</u>	Meredith A. Frailey	<u>Yea</u>
Bill John Baker	<u>Yea</u>	Chris Soap	<u>Yea</u>
S. Joe Crittenden	<u>Yea</u>	Cara Cowan Watts	<u>Yea</u>
Jodie Fishinghawk	<u>Yea</u>	Buel Anglen	<u>Yea</u>
Janelle Lattimore Fullbright	<u>Yea</u>	Bradley Cobb	<u>Yea</u>
David W. Thornton, Sr.	<u>Yea</u>	Chuck Hoskin, Jr.	<u>Yea</u>
Don Garvin	<u>Yea</u>	Julia Coates	<u>Yea</u>
Harley Buzzard	<u>Yea</u>	Jack D. Baker	<u>Yea</u>
Curtis G. Snell	<u>Yea</u>		

# Cherokee Nation Act/Resolution Proposal Form



Act



Resolution

**ADMINISTRATIVE CLEARANCE:**

Program/Project Manager:

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Signature \_\_\_\_\_ Date \_\_\_\_\_

Department Director:

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Signature \_\_\_\_\_ Date \_\_\_\_\_

Group Leader:

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Signature \_\_\_\_\_ Date \_\_\_\_\_

Finance Approval (if needed):

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Signature \_\_\_\_\_ Date \_\_\_\_\_

Government Resources Group:

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Signature \_\_\_\_\_ Date \_\_\_\_\_

Administration Approval:

*Melani Knight* 9/15/08  
 Signature \_\_\_\_\_ Date \_\_\_\_\_

**TITLE:** A LEGISLATIVE ACT ADDING SECTIONS TO TITLE 63 OF THE CHEROKEE NATION CODE ANNOTATED CONCERNING PUBLIC HEALTH AND SAFETY; PROVIDING A CIVIL REGULATORY SCHEME REQUIRING SEX OFFENDER REGISTRATION FOR CERTAIN INDIVIDUALS LIVING, WORKING, OR ATTENDING SCHOOL IN THE CHEROKEE NATION, AND REQUIRING NOTIFICATION TO THE COMMUNITY OF CERTAIN SEX OFFENDERS

Department Contact: Becky M. Johnson

Resolution Presenter: Becky M. Johnson

Council Sponsor: Cara Cowan-Watts, Julia Coates, David Thornton

**NARRATIVE:**  
*(See Attached Outline for Information Needed)*  
 The purpose of the legislation is that, upon the court's written finding that an individual is a sex offender, in order to protect the public, it is necessary that the sex offender be registered with the Marshal Service and that members of the community and the public be notified of the sex offender's presence. This legislation is required in an effort to comply with the federal Adam Walsh Act.

**LEGISLATIVE CLEARANCE**

Legislative Aide:

*Shelli Brittain* 9-15-08  
 Signature/Initial \_\_\_\_\_ Date \_\_\_\_\_

Standing Committee:

*Hules*

9-25-08

Next Meeting Date

Chairperson:

*Tracy*  
 Signature/Initial \_\_\_\_\_ Date \_\_\_\_\_

Returned to Presenter: \_\_\_\_\_  
 Date

09-15-08P05:50 RCVD