



Council of the Cherokee Nation

Cherokee Nation Tribal
Council
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Legislation Details (With Text)

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Title: AN ACT AMENDING TITLE 21 OF THE CHEROKEE NATION CODE ANNOTATED AND DECLARING AN EMERGENCY

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Indexes:

Code sections: Title 21 - Crimes and Punishments

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Date	Ver.	Action By	Action	Result
9/15/2021	1	OFFICE OF THE CHIEF	Signed	
9/13/2021	1	TRIBAL COUNCIL	Approved	Pass
8/26/2021	1	RULES COMMITTEE	Approved and Forwarded to Council	Pass

AN ACT AMENDING TITLE 21 OF THE CHEROKEE NATION CODE ANNOTATED AND DECLARING AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act amends Title 21 of the Cherokee Nation Code Annotated and shall be codified at Title 21, Section 2101, Subsection 15 of the Cherokee Nation Code Annotated.

Section 2. Purpose

The purpose of this Act is to amend the definition of “drug paraphernalia” referenced herein to exclude the use of syringes or needles prescribed for a harm reduction program for infection control or infection prevention measures.

Section 3. Legislative History

LA-10-90	LA-32-03	LA-20-08	LA-03-21
LA-13-91	LA-36-03	LA-22-08	LA-07-21
LA-24-02	LA-08-06	LA-08-12	LA-18-21
LA-25-02	LA-10-06	LA-09-12	LA-19-21

LA-39-02	LA-18-06	LA-35-12	LA-29-21
LA-40-02	LA-29-06	LA-10-13	
LA-41-02	LA-31-06	LA-09-16	
LA-42-02	LA-34-06	LA-12-18	
LA-31-03	LA-09-07	LA-28-20	

Section 4. Amendments

Title 21 shall be amended as follows:

§ 2101. Definitions

1. **"Administer"** means the direct application of a controlled dangerous substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient, animal or research subject by:

a. A practitioner (or, in his presence, by his authorized agent); or

b. The patient or research subject at the direction and in the presence of the practitioner.

2. **"Agent"** means a peace officer appointed by and who acts in behalf of Cherokee Nation or an authorized person who acts on behalf of or at the direction of a person who manufactures, distributes, dispenses, prescribes, administers or uses for scientific purposes controlled dangerous substances but does not include a common or contract carrier, public warehouseman or employee thereof, or a person required to register under the Uniform Controlled Dangerous Substances Act.

3. **"Bureau of Narcotics and Dangerous Drugs"** means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice.

4. **"Coca leaves"** includes cocaine and any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine or ecgonine.

5. "**Commissioner**" or "**Director**" means the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.

6. "**Control**" means to add, remove or change the placement of a drug, substance or immediate precursor under the Uniform Controlled Dangerous Substances Act.

7. "**Controlled dangerous substance**" means a drug, substance or immediate precursor in Schedules I through V of the Uniform Controlled Dangerous Substances Act.

8. "**Counterfeit substance**" means a controlled substance which, or the container or labeling of which without authorization, bears the trademark, trade name or other identifying marks, imprint, number or device or any likeness thereof of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

9. "**Deliver**" or "**delivery**" means the actual, constructive or attempted transfer from one person to another of a controlled dangerous substance whether or not there is an agency relationship.

10. "**Dispense**" means to deliver a controlled dangerous substance to an ultimate user or human research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding, necessary to prepare the substance for such distribution. "Dispenser" is a practitioner who delivers a controlled dangerous substance to an ultimate user or human research subject.

11. "**Distribute**" means to deliver other than by administering or dispensing a controlled dangerous substance.

12. "**Distributor**" means a person who distributes.

13. "**Drug**" means articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National

Formulary, or any supplement to any of them; articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and articles intended for use as a component of any article specified in the paragraph; but does not include devices or their components, parts or accessories.

14. **"Drug-dependent person"** means a person who is using a controlled dangerous substance and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled dangerous substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence.

15. **"Drug paraphernalia"** means all equipment, products and materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body, a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substance Act. It includes, but is not limited to:

- a. Kits used or intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled dangerous substance or from which a controlled dangerous substance can be derived;
- b. Kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled dangerous substances;
- c. Isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled dangerous substance;
- d. Testing equipment used or intended for use in identifying, or in analyzing the strength, effectiveness or purity of controlled dangerous substances;

e. Scales and balances used or intended for use in weighing or measuring controlled dangerous substances;

f. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or intended for use in cutting controlled dangerous substances;

g. Separation gins and sifters used or intended for use in removing twigs and seeds from or in otherwise cleaning or refining, marijuana;

h. Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled dangerous substances;

i. Capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of controlled dangerous substances;

j. Containers and other objects used or intended for use in parenterally injecting controlled substances into the human body;

k. Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled dangerous substances into the human body; [excluding syringes or needles issued by a harm reduction program or medical provider for infection control or infection prevention.](#)

l. Objects used or intended for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

i. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls,

ii. Water pipes,

iii. Carburetion tubes and devices,

iv. Smoking and carburetion masks,

v. Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand,

vi. Miniature cocaine spoons and cocaine vials,

vii. Chamber pipes,

viii. Carburetor pipes,

ix. Electric pipes,

x. Air-driven pipes,

xi. Chillums,

xii. Bonges,

xiii. Ice pipes or chillers.

Provided however, drug paraphernalia shall not include separation gins intended for use in preparing tea or spice, clamps used for constructing electrical equipment, water pipes designed for ornamentation or pipes designed for smoking tobacco.

16. "**Hazardous material**" means materials, whether solid, liquid or gas; which are toxic to human, animal, aquatic or plant life, and the disposal of which materials is controlled by Nation or federal guidelines.

17. **"Imitation controlled substance"** means a substance that is not a controlled dangerous substance, which by dosage unit appearance, color, shape, size, markings or by representations made would lead a reasonable person to believe that the substance is a controlled dangerous substance. In the event the appearance of the dosage unit is not reasonably sufficient to establish that the substance is an "imitation controlled substance", the court or authority concerned should consider, in addition to all other factors, the following factors as related to "representations made" in determining whether the substance is an imitation controlled substance:

- a. Statements made by an owner or by any other person in control of the substance concerning the nature of the substance, or its use or effect;
- b. Statements made to the recipient that the substance may be resold for inordinate profit;
- c. Whether the substance is packaged in a manner normally used for illicit controlled substances;
- d. Evasive tactics or actions utilized by the owner or person in control of the substance to avoid detection by law enforcement authorities;
- e. Prior convictions, if any, of an owner, or any other person in control of the object, under Nation, state, or federal law related to controlled substances or fraud;
- f. The proximity of the substance to controlled dangerous substances.

18. **"Immediate precursor"** means a substance which the Director has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used, or likely to be used, in the manufacture of a controlled dangerous substance, the control of which is necessary to prevent, curtail or limit such manufacture.

19. **"Indian"** includes:

a. Any person who is a citizen of the Cherokee Nation;

b. Any person who a citizen or member of any other federally recognized Indian tribe, including Alaska Native entities;

c. Any person who is eligible to become a member of any federally recognized Indian tribe; and

d. Any person who would be considered an "Indian" for the purposes of federal criminal prosecution under 18 U.S.C. § 1152 and/or 18 U.S.C. § 1153.

20. **"Indian country"** means that area defined by 18 U.S.C. § 1151.

21. **"Isomer"** means the optical isomer, except as used in 21 CNCA § 2204(C) and 21 CNCA § 2206(A)(4), "isomer" means the optical, positional or geometric isomer. As used in 21 CNCA § 2206(A)(4), the term "isomer" means the optical or geometric isomer.

22. **"Laboratory"** means a laboratory approved by the Director as proper to be entrusted with the custody of controlled dangerous substances for scientific and medical purposes and for purposes of instruction.

23. **"Manufacture"** means the production, preparation, propagation, compounding or processing of a controlled dangerous substance, either directly or indirectly by extraction from substances of natural or synthetic origin, or independently by means of chemical synthesis. "Manufacturer" includes any person who packages, repackages or labels any container of any controlled dangerous substance, except practitioners who dispense or compound prescription orders for delivery to the ultimate consumer.

24. **"Marijuana"** means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.

25. **"Medical purposes"** means an intention to utilize a controlled dangerous substance for physical or mental treatment, diagnosis or for the prevention of a disease condition not in violation of any state or federal law and not for the purpose of physiological or psychological dependence or other abuse.

26. **"Narcotic drug"** means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

a. Opium, coca leaves and opiates;

b. A compound, manufacture, salt, derivative or preparation of opium, coca leaves or opiates;

c. Cocaine, its salts, optical and geometric isomers, and salts of isomers;

d. Ecgonine, its derivatives, their salts, isomers and salts of isomers;

e. A substance, and any compound, manufacture, salt, derivative or preparation thereof, which is chemically identical with any of the substances referred to in subparagraphs a through d of this paragraph, except that the words "narcotic drug" as used in this act shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine.

27. **"Nation"** means Cherokee Nation.

28. **"Opiate"** means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under the Uniform Controlled Dangerous Substances Act, the dextrorotatory isomer of 3- methoxy-n-methyl-morphinan and its salts (detromethorphan). It does include its racemic and levorotatory forms.

29. **"Opium poppy"** means the plant of the species *Papaver somniferum* L., except the seeds thereof.

30. **"Peace officer"** means a police officer, marshal, deputy marshal, sheriff, deputy sheriff, prosecuting attorney's investigator, investigator from the Office of the Attorney General, or any other person elected or appointed by law to enforce any of the criminal laws of this Nation or of the United States.

31. **"Person"** means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

32. **"Poppy straw"** means all parts, except the seeds, of the opium poppy, after mowing.

33. **"Practitioner"** means:

a. A physician, dentist, podiatrist, veterinarian, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to, use for scientific purposes or administer a controlled dangerous substance in the course of professional practice or research in this Nation; or

b. A pharmacy, hospital, laboratory or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with

respect to, use for scientific purposes or administer a controlled dangerous substance in the course of professional practice or research in this Nation.

34. **"Production"** includes the manufacture, planting, cultivation, growing or harvesting of a controlled dangerous substance.

35. **"Synthetic controlled substance"** means a substance that is not a controlled dangerous substance, but a substance that produces a like or similar physiological or psychological effect on the human central nervous system that currently has no accepted medical use in treatment in the United States and has a potential for abuse. The court or authority concerned with establishing that the substance is a synthetic controlled substance should consider, in addition to all other factors, the following factors as related to "representations made" in determining whether the substance is a synthetic controlled substance:

a. Statements made by an owner or by any other person in control of the substance concerning the nature of the substance, its use or effects;

b. Statements made to the recipient that the substance may be resold for an inordinate profit;

c. Prior convictions, if any, of an owner or any person in control of the substance, under Nation or federal law related to controlled dangerous substances;

d. The proximity of the substance to any controlled dangerous substance.

36. **"Tetrahydrocannabinols"** means all substances that have been chemically synthesized to emulate the tetrahydrocannabinols of marijuana.

37. **"Tribal citizen"** means any person who is a citizen or is eligible for citizenship in Cherokee Nation.

38. **"Ultimate user"** means a person who lawfully possesses a controlled dangerous

substance for his own use or for the use of a member of his household or for administration to an animal owned by him or by a member of his household.

Section 5. Provisions as cumulative

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

Section 6. Severability

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

Section 7. Effective Date/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.

Section 8. Self-Help Contributions

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