



Council of the Cherokee Nation

Cherokee Nation Tribal
Council
17763 S. Muskogee Ave.
Tahlequah, OK 74464

Legislation Details (With Text)

File #: 21-036 **Version:** 1 **Name:** CNCA 21 AMENDMENT TO FURTHER MODERNIZE THE CRIMINAL CODE

Type: Legislative Act **Status:** Passed

File created: 4/13/2021 **In control:** TRIBAL COUNCIL

On agenda: 4/29/2021 **Final action:** 5/20/2021

Enactment date: 5/17/2021 **Enactment #:** LA-19-21

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

Sponsors: Keith Austin, Joe Deere, Janees Taylor, Victoria Vazquez, Mike Shambaugh

Indexes: Criminal Law

Code sections: Title 21 - Crimes and Punishments

Attachments: 1. LA-19-21.PDF

| Date | Ver. | Action By | Action | Result |
|-----------|------|---------------------|-----------------------------------|--------|
| 5/20/2021 | 1 | OFFICE OF THE CHIEF | Signed | |
| 5/17/2021 | 1 | TRIBAL COUNCIL | Approved | Pass |
| 4/29/2021 | 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 the sections references herein of the Cherokee Nation Code Annotated.

Section 2. Purpose

The purpose of this Act is to further modernize the Nation's criminal code.

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-25-02 | LA-10-06 | LA-09-12 | |
| LA-39-02 | LA-18-06 | LA-35-12 | |
| 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:

§ 643. Force against another not unlawful, when-Self-defense-Defense of property

To use or to attempt to offer to use force or violence upon or toward the person of another is not unlawful in the following cases:

1. When necessarily committed by a public officer in the performance of any legal duty, or by any other person assisting him or acting by his direction.
2. When necessarily committed by any person in arresting one who has committed any crime, and delivering him to a public officer competent to receive him in custody.
3. When committed either by the party about to be injured, or by any other person in his aid or defense, in preventing or attempting to prevent an offense against his person, or any trespass or other unlawful interference with real or personal property in his lawful possession; provided the force or violence used is not more than sufficient to prevent such offense.
4. When committed by a parent or the authorized agent of any parent, or by any guardian, master or teacher, in the exercise of a lawful authority to restrain or correct his child, ward, apprentice or scholar, provided restraint or correction has been rendered necessary by the misconduct of such child, ward, apprentice or scholar, or by his refusal to obey the lawful command of such parent or authorized agent or guardian, master or teacher, and the force or violence used is reasonable in manner and moderate in degree.
5. When committed by a carrier of passengers, or the authorized agents or servants of such carrier, or by any person assisting them at their request, in expelling from any carriage, railroad car, vessel or other vehicle any

passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force and violence used is not more than is sufficient to expel the offending passenger, with a reasonable regard to his personal safety.

6. When committed by any person in preventing a person who is impaired by reason of intellectual or developmental disability, a mentally ill person,, insane person, or other person of unsound mind, including persons temporarily or partially deprived of reason, from committing an act dangerous to himself or to another, or enforcing such restraint as is necessary for the protection of his person or for his restoration to health, during such period only as shall be necessary to obtain legal authority for the restraint or custody of his person.

§ 644. Assault or assault and battery-Punishment

- A. Assault shall be punishable by imprisonment for a term not exceeding thirty (30) days, or by a fine of not more than Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.
- B. Assault and battery shall be punishable by imprisonment for a term not exceeding six (6) months, or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine.
- C. Any person who commits any assault and battery against a current or former intimate partner or a family or household member as defined by 22 CNCA § 60.1 shall be guilty of domestic abuse. Upon conviction, the defendant shall be guilty of a misdemeanor and punished by imprisonment for not more than one (1) year, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. Upon conviction for a second or subsequent offense, the person shall be guilty of a felony and punished by imprisonment for not more than three (3) years, or by a fine not exceeding Fifteen Thousand Dollars (\$15,000.00), or by both such fine and imprisonment. The provisions of Section 51 of this title shall apply to any second or subsequent offense.
- D. 1. Any person who, with intent to do bodily harm and without justifiable or excusable cause, commits any assault, battery, or assault and battery upon an intimate partner or a family or household member as defined by 22 CNCA § 60.1 with any sharp or dangerous weapon, upon conviction, is guilty of domestic

assault or domestic assault and battery with a dangerous weapon which shall be a felony and punishable by imprisonment in the custody of the Department of Corrections not exceeding ten (10) years, or by imprisonment in a county jail not exceeding one (1) year. The provisions of Section 51.1 of this title shall apply to any second or subsequent conviction for a violation of this paragraph.

2. Any person who, without such cause, shoots an intimate partner or a family or household member as defined by 22 CNCA § 60.1 by means of any deadly weapon that is likely to produce death shall, upon conviction, be guilty of domestic assault and battery with a deadly weapon which shall be a felony punishable by imprisonment in the custody of the Department of Corrections not exceeding life. The provisions of Section 51.1 of this title shall apply to any second or subsequent conviction for a violation of this paragraph.

- E. Any person convicted of domestic abuse committed against a pregnant woman with knowledge of the pregnancy shall be guilty of a misdemeanor, punishable by imprisonment for not more than one (1) year.
- F. Any person convicted of a second or subsequent offense of domestic abuse against a pregnant woman with knowledge of the pregnancy shall be guilty of a felony, punishable by imprisonment for not more than three (3) years.
- G. Any person convicted of domestic abuse committed against a pregnant woman with knowledge of the pregnancy and a miscarriage occurs or injury to the unborn child occurs shall be guilty of a felony, punishable by imprisonment for not more than three (3) years.
- H. Any person convicted of domestic abuse as defined in subsection C of this section that results in great bodily injury to the victim shall be guilty of a felony and punished by imprisonment for not more than three (3) years. The provisions of Section 51 of this title shall apply to any second or subsequent conviction of a violation of this subsection.
- I. Any person convicted of domestic abuse as defined in subsection C of this section that was committed in the presence of a child shall be guilty of a misdemeanor and punished by imprisonment for not less than six (6) months nor more than one (1) year, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. Any person convicted of a

second or subsequent domestic abuse as defined in subsection C of this section that was committed in the presence of a child shall be guilty of a felony and punished by imprisonment for not less than one (1) year nor more than three (3) years, or by a fine not exceeding Fifteen Thousand Dollars (\$15,000.00), or by both such fine and imprisonment. The provisions of Section 51 of this title shall apply to any second or subsequent offense.

J. For every conviction of any provision of this section, the court shall:

1. Specifically order as a condition of a suspended sentence or probation that a defendant participate in counseling or undergo treatment to bring about the cessation of domestic abuse as specified in paragraph 2 of this subsection;
2. a. The court shall require the defendant to participate in counseling or undergo treatment for domestic abuse by an individual licensed practitioner or a domestic abuse treatment program. If the defendant is ordered to participate in a domestic abuse counseling or treatment program, the order shall require the defendant to attend the program for a minimum of fifty-two (52) weeks, complete the program, and be evaluated before and after attendance of the program by a program counselor or a private counselor. Three unexcused absences in succession or seven unexcused absences in a period of fifty-two (52) weeks from any court-ordered domestic abuse counseling or treatment program shall be prima facie evidence of the violation of the conditions of probation.
 - b. A program for anger management, couples counseling, or family and marital counseling shall not solely qualify for the counseling or treatment requirement for domestic abuse pursuant to this subsection. The counseling may be ordered in addition to counseling specifically for the treatment of domestic abuse or per evaluation as set forth below. If, after sufficient evaluation and attendance at required counseling sessions, the domestic violence treatment program or licensed professional determines that the defendant does not evaluate as a perpetrator of domestic violence or does evaluate as a perpetrator of domestic violence and should complete other programs of treatment simultaneously or prior to domestic violence treatment, including but not limited to programs related to the mental health, apparent substance or alcohol abuse or inability or refusal to manage anger, the defendant shall be ordered to complete the counseling as per the recommendations of the domestic violence treatment program or licensed professional;

The defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the court.

- K. As used in subsection F of this section, “in the presence of a child” means in the physical presence of a child; or having knowledge that a child is present and may see or hear an act of domestic violence. For the purposes of subsections C and F of this section, “child” may be any child whether or not related to the victim or the defendant.
- L. For the purposes of subsections C and F of this section, any conviction for assault and battery against a current or former spouse, a present spouse of a former spouse, a former spouse of a present spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is or was in a dating relationship, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or any person living in the same household as the defendant, shall constitute a sufficient basis for a felony charge if that conviction is rendered in any court of record.
- M. Any plea of guilty or nolo contendere or a finding of guilt for a violation of any subsection of this section shall constitute a conviction of the offense for the purpose of this act or any other criminal statute under which the existence of a prior conviction is relevant for a period of ten (10) years following the completion of any court imposed probationary term; provided, the person has not, in the meantime, been convicted of a misdemeanor involving moral turpitude or a felony.
- N. For purposes of subsection F of this section, “great bodily injury” means bone fracture, protracted and obvious disfigurement, protracted loss or impairment of the function of a body part, organ or mental faculty, or substantial risk of death.

§ 1242. Refusing of any person under the age of twenty-one (21) to disclose place and person from whom obtained

Any person under the age of twenty-one (21) being in possession of cigarettes, cigarette papers, cigars, snuff, chewing tobacco, or any other form of tobacco product, or vapor products and being by any police officer, constable, juvenile court officer, truant officer, or teacher in any school, asked where and from whom such cigarettes, cigarette papers, cigars, snuff, chewing tobacco, or any other form of tobacco product, or vapor products were obtained, who shall refuse to furnish such information, shall be guilty of a misdemeanor and upon conviction thereof before the District Court, or any Judge of the District Court, such person being of the age of eighteen (18) years or upwards shall be

sentenced to pay a fine not exceeding One Hundred Dollars (\$100.00) or to undergo imprisonment for a term not to exceed five (5) days, or by both such fine and imprisonment; if such minor shall be under the age of eighteen (18) years, he or she shall be certified by such judge to the Juvenile Justice Department for such action as the court shall deem proper.

§ 1276. Penalty for 1272

Any person violating the provisions of Section 1272 of this title shall, upon a first conviction, be adjudged guilty of a misdemeanor and the party offending shall be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than Two Hundred Fifty Dollars (\$250.00), or by imprisonment for a period not to exceed thirty (30) days or both such fine and imprisonment. On the second and every subsequent violation, the party offending shall, upon conviction, be punished by a fine of not less than Two Hundred Fifty Dollars (\$250.00) nor more than Five Hundred Dollars (\$500.00), or by imprisonment for a period not less than thirty (30) days nor more than three (3) months, or by both such fine and imprisonment. Any person convicted of violating the provisions of Section 1272 of this title after having been issued a handgun license pursuant to the provisions of the Cherokee Nation Self-Defense Act shall have the license suspended for a period of six (6) months and shall be liable for an administrative fine of Fifty Dollars (\$50.00) upon a hearing and determination by the Oklahoma State Bureau of Investigation that the person is in violation of the provisions of this section.

§ 1283. Convicted felons prohibited from carrying firearms-Exceptions

- A. Except as provided in subsection B of this section, it shall be unlawful for any person convicted of any felony in any court of this Nation, or of another Indian tribe, or state, or of the United States to have in his or her possession or under his or her immediate control, or in any vehicle which the person is operating, or in which the person is riding as a passenger, or at the residence where the convicted person resides, any pistol, imitation or homemade pistol, altered air or toy pistol, machine gun, sawed-off shotgun or rifle, or any other dangerous or deadly firearm.
- B. Any person who has previously been convicted of a nonviolent felony in any court of this Nation, or of another Indian tribe, or state, or of another state or of the United States, and who has received a full and complete pardon from the proper authority and has not been convicted of any other felony offense which has not been pardoned, shall have restored the right to possess any firearm or

other weapon prohibited by subsection A of this section, the right to apply for and carry a handgun, concealed or unconcealed, pursuant to the Cherokee Nation Self-Defense Act or as otherwise permitted by law, and the right to perform the duties of a peace officer, gunsmith, and for firearms repair.

- C. It shall be unlawful for any person serving a term of probation for any felony in any court of this Nation, or of another Indian tribe, or state, or of another state or of the United States or under the jurisdiction of any alternative court program to have in his or her possession or under his or her immediate control, or at his or her residence, or in any passenger vehicle which the person is operating or is riding as a passenger, any pistol, shotgun or rifle, including any imitation or homemade pistol, altered air or toy pistol, shotgun or rifle, while such person is subject to supervision, probation, parole or inmate status.
- D. It shall be unlawful for any person previously adjudicated as a delinquent child or a youthful offender for the commission of an offense, which would have constituted a felony offense if committed by an adult, to have in the possession of the person or under the immediate control of the person, or have in any vehicle which he or she is driving or in which the person is riding as a passenger, or at the residence of the person, any pistol, imitation or homemade pistol, altered air or toy pistol, machine gun, sawed-off shotgun or rifle, or any other dangerous or deadly firearm within ten (10) years after such adjudication; provided, that nothing in this subsection shall be construed to prohibit the placement of the person in a home with a full-time duly appointed peace officer who is certified by the Council on Law Enforcement Education and Training (CLEET) pursuant to the provisions of Section 3311 of Title 70 of the Oklahoma Statutes.
- E. It shall be unlawful for any person who is an alien illegally or unlawfully in the United States to have in the possession of the person or under the immediate control of the person, or in any vehicle the person is operating, or at the residence where the person resides, any pistol, imitation or homemade pistol, altered air or toy pistol, shotgun, rifle or any other dangerous or deadly firearm; provided, that nothing in this subsection applies to prohibit the transport or detention of the person by law enforcement officers or federal immigration authorities. Any person who violates the provisions of this subsection shall, upon conviction, be guilty of a misdemeanor punishable by a fine of Two Hundred Fifty Dollars (\$250.00).
- F. Any person having been issued a handgun license pursuant to the provisions of the Cherokee Nation Self-Defense Act and who thereafter knowingly or intentionally allows a convicted felon or adjudicated delinquent or a youthful offender as prohibited by the provisions of subsection A, C, or D of this section to possess or have control of any pistol authorized by the Cherokee Nation Self-Defense Act shall, upon conviction, be guilty of a felony punishable by a fine not to exceed Five Thousand Dollars (\$5,000.00). In addition, the person shall have the handgun license revoked by the Oklahoma State Bureau of Investigation after a hearing and determination that the person has violated the provisions of

this section.

- G. Any convicted or adjudicated person violating the provisions of this section shall, upon conviction, be guilty of a felony punishable as provided in Section 1284 of this title.
- H. For purposes of this section, "sawed-off shotgun or rifle" shall mean any shotgun or rifle which has been shortened to any length.
- I. For purposes of this section, "altered toy pistol" shall mean any toy weapon which has been altered from its original manufactured state to resemble a real weapon.

For purposes of this section, "altered air pistol" shall mean any air pistol manufactured to propel projectiles by air pressure which has been altered from its original manufactured state. **§ 1289.15. Penalties**

Any person adjudged guilty of violating any provision of Section 1289.9, 1289.10, 1289.11, 1289.12, or 1289.13 of this title shall, upon conviction, be punished by a fine of not less than Fifty Dollars (\$50.00) and not more than Five Hundred Dollars (\$500.00), or imprisonment for a term not to exceed six (6) months, or by both such fine and imprisonment

§ 1541.1. Obtaining property by Trick or deception- Attempt- False Representation or pretense- Confidence Game

Every person who, with intent to cheat and defraud, shall obtain or attempt to obtain from any person, firm or corporation any money, property or valuable thing, of a value less than One Thousand Dollars (\$1,000.00), by means or by use of any trick or deception, or false or fraudulent representation or statement or pretense, or by any other means or instruments or device commonly called the "confidence game", or by means or use of any false or bogus checks, or by any other written or printed or engraved instrument or spurious coin, shall, upon conviction, be guilty of a misdemeanor punishable by a fine not to exceed One Thousand Dollars (\$1,000.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.

§ 2206. Schedule II

The controlled substances listed in this section are included in Schedule II and include any material, compound, mixture or preparation that contains any quantity of the following hallucinogenic substances, their salts, isomers and salts

of isomers, unless specifically excepted, when the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation..

1. Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:
 - a. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;
 - b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph 1, but not including the isoquinoline alkaloids of opium;
 - c. Opium poppy and poppy straw;
 - d. Coca leaves except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers and salts of isomers; or any compound, mixture or preparation which contains any quantity of any of the substances referred to in this paragraph.

2. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, when the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:
 - a. Alphaprodine,
 - b. Anileridine,
 - c. Bezitramide,
 - d. Dihydrocodeine,
 - e. Diphenoxylate,

- f. Fentanyl,
- g. Hydromorphone;
- h. Isomethadone,
- i. Levomethorphan,
- j. Levorphanol,
- k. Metazocine,
- l. Methadone,
- m. Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane,
- n. Moramide-Intermediate, 2-methyl-3-morpholino-1,1-diphenyl-propane-carboxylic acid,
- o. Oxycodone
- p. Oxymorphone
- q. Pethidine (Meperidine);
- r. Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine,
- s. Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate,
- t. Pethidine-Intermediate-C,1-methyl-4-phenylpiperidine-4-carboxylic acid,
- u. Phenazocine,

- v. Piminodine,
- w. Racemethorphan,
- x. Racemorphan,
- y. Etorphine hydrochloride salt only,
- z. Alfentanil hydrochloride.
- aa. Levo-alphaacetylmethadol;
- bb. Codeine;
- cc. Hydrocodone;
- dd. Morphine;
- ee. Remifentanil;
- ff. Sufentanil;
- gg. Tapentadol; or
- hh. Tianeptine.

3. Any substance which contains any quantity of:

- a. Methamphetamine, including its salts, isomers, and salts of isomers,
- b. Amphetamine, its salts, optical isomers, and salts of its optical isomers.
- c. Nabilone; or

- d. Lisdexamfetamine.
4. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having stimulant or depressant effect on the central nervous system:
- a. Phenmetrazine and its salts;
 - b. Methylphenidate, including its salts, isomers and salts of isomers;
 - c. Amobarbital;
 - d. Pentobarbital;
 - e. Secobarbital;
 - f. Ethylphenidate.

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.