



Council of the Cherokee Nation

Cherokee Nation Tribal Council
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Legislation Details (With Text)

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12/14/2020	1	TRIBAL COUNCIL	Approved	Pass
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AN ACT AMENDING TITLE 22 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 22 of the Cherokee Nation Code Annotated and shall be codified at Title 22, Section 151 through Section 155 of the Cherokee Nation Code Annotated.

Section 2. Purpose

The purpose of this Act is to expand the current statutes of limitations applicable to crimes occurring within the Nation to ensure that justice may be sought.

Section 3. Legislative History

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Section 4. Amendments

Title 22 shall be amended as follows:

§ 151. ~~No limitation of prosecution for murder~~Limitations on actions for criminal

violations

- A. A prosecution for the following crimes may be commenced at any time: 1. Murder in the first or second degree;
2. manslaughter
3. rape;
4. forcible sodomy;
5. sexual abuse;
6. sexual abuse of a minor;
7. incest;
8. burglary;
9. robbery;
10. child molestation;
11. kidnapping;
12. arson;
13. conspiracy; and
14. forgery.
- B. Prosecutions for the crimes of bribery, embezzlement of public money, bonds, securities, assets, or property of the Cherokee Nation or other subdivision thereof, or if any misappropriation of public money, bonds, securities, assets, or property of the Cherokee Nation or other subdivision thereof, falsification of public records of the Cherokee Nation or other subdivision thereof, and conspiracy to defraud the Cherokee Nation or other subdivision thereof in any manner or for any purpose shall be commenced within ten (10) years after the discovery of the crime.
- C. Except as otherwise provided in this section, prosecution for a crime or a felony other than those crimes enumerated in this section is barred if not commenced within ten (10) years after the crime is committed.
- D. Prosecutions for sodomy, lewd or indecent proposals or acts against children, and the involvement of minors in pornography shall be commenced within ten (10) years after the discovery of the crime.
- E. Prosecutions for criminal violations of any Cherokee Nation tax laws shall be commenced within five (5) years after the commission of such violation.
- F. Prosecutions for crimes of false or bogus checks, shall be commenced within five (5) years after the commission of such offense.
- G. Except as otherwise provided in this section, any criminal offense

that is classified as a misdemeanor is barred if not commenced within three (3) years after the crime is committed.

H. No statute of limitations shall extend to any person fleeing from justice.

I. As used in this section, "discovery" means the date that a physical or sexually related crime involving a victim under the age of eighteen (18) years of age is reported to a law enforcement agency, up to and including one (1) year from the eighteenth birthday of the child.

~~There is no limitation of the time within which a prosecution for murder must be commenced. It may be commenced at any time after the death of the person killed.~~

§ 152. Limitations in general~~Reserved~~

~~A. Prosecutions for the crimes of bribery, embezzlement of public money, bonds, securities, assets or property of the Cherokee Nation or other subdivision thereof, or of any misappropriation of public money, bonds, securities, assets or property of the Cherokee Nation or other subdivision thereof, falsification of public records of the Cherokee Nation or other subdivision thereof, and conspiracy to defraud the Cherokee Nation or other subdivision thereof~~

~~in any manner or for any purpose shall be commenced within seven (7) years after the discovery of the crime; provided, however, prosecutions for the crimes of embezzlement or misappropriation of public money, bonds, securities, assets or property of any school district, including those relating to student activity funds, or the crime of falsification of public records of any independent school district, the crime of lewd or indecent proposals or acts against children, pursuant to 21 CNCA § 1123, the crimes of involving minors in pornography, pursuant to 21 CNCA § 1021.2 and 21 CNCA § 1021.3, the crime of sodomy, the crime of criminal conspiracy, or the crime of embezzlement, pursuant to 21 CNCA §§ 1451 through 1462, shall be commenced within five (5) years after the discovery of the crime.~~

~~B. Prosecutions for criminal violations of any Cherokee Nation tax laws shall be commenced within five (5) years after the commission of such violation.~~

~~C. Prosecutions for the crime of rape or forcible sodomy, sodomy, lewd or indecent proposals or acts against children, and the involvement of minors in pornography pursuant to 21 CNCA § 886, 21 CNCA § 888, 21 CNCA § 1111, 21 CNCA § 1111.1, 21 CNCA § 1113, 21 CNCA § 1114 or 21 CNCA § 1123, shall be commenced within seven (7) years after the discovery of the crime.~~

~~D. Prosecution for the crime of false or bogus check, 21 CNCA § 1541.1 and 21 CNCA § 1541.2, shall be commenced within five (5) years after the commission of such offense.~~

~~E. In all other cases a prosecution for a public offense must be commenced within three (3) years after its commission.~~

~~F. As used in subsection (C) of this section, "discovery" means the date that a physical or sexually related crime involving a victim under the age of eighteen (18) years of age is reported to a law enforcement agency, up to and including one (1) year from the eighteenth birthday of the child.~~

§ 154. Indictments and information dismissed after period of limitations

Whenever any criminal offense is dismissed by a separate sovereign because that sovereign did not have jurisdiction to prosecute, and the dismissal occurs after the expiration of the period prescribed by the applicable Cherokee Nation statutes of limitations, an information charging the criminal offense may be filed in the Cherokee Nation within 180 days of the later of two events: 1) the date of the dismissal of the felony charge; or 2) if appealed, the date the separate sovereign's appellate court enters a final decision ordering the dismissal. This section does not permit the filing of a new information charging a criminal offense where the reason for the dismissal was the failure of the separate sovereign to file the information within the period prescribed by its own applicable statute of limitations.

§ 155. Judgment and Sentences vacated after period of limitations

Whenever any criminal offense was prosecuted by a separate sovereign, for which a defendant was convicted, sentenced, and punished under the laws of the separate sovereign, and the convictions and sentences were later vacated for lack of jurisdiction after the expiration of the period prescribed by the applicable Cherokee Nation statutes of limitations, an information charging the criminal offense may be filed in the Cherokee Nation within 180 days of the final order vacating the Judgment and Sentence. This section does not permit the filing of a new information charging a criminal offense where the reason for the dismissal was the failure of the separate sovereign to file the information within the period prescribed by its own applicable statute of limitations.

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

A. Only a licensed medical doctor, licensed osteopathic physician, licensed chiropractic physician, registered nurse, licensed practical nurse, physician's assistant, ~~duly~~ certified by ~~any state~~ the State Board of Medical Licensure and Supervision, an employee of a hospital or other health care

facility authorized by the hospital or health care facility to withdraw blood, or other qualified person authorized by the ~~Oklahoma~~ Board of Tests for Alcohol and Drug Influence acting at the request of a law enforcement officer may withdraw blood for the purpose of having a determination made of its concentration of alcohol or the presence or concentration of other intoxicating substance. Only qualified persons authorized by the Board may collect breath, saliva or urine, or administer tests of breath under the provisions of this Title.

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

1. authorizing blood withdrawal signed by the person whose blood is to be withdrawn;
2. signed by a duly authorized peace officer that the person whose blood is to be withdrawn has agreed to the withdrawal of blood;
3. signed by a duly authorized peace officer that the person whose blood is to be withdrawn has been placed under arrest and that the officer has probable cause to believe that the person, while intoxicated, has operated a motor vehicle in such manner as to have caused the death or serious physical injury of another person, or the person has been involved in a traffic accident and has been removed from the scene of the accident that resulted in the death or great bodily injury, as defined ~~1218 in Cherokee Nation Code Annotated,~~ subsection B of Section 646 of Title 21 of the Oklahoma, of any person to a hospital or other health care facility outside Cherokee Nation before the law enforcement officer was able to effect an arrest for such offense; or
4. in the form of an order from a district court that blood be withdrawn, the person authorized to withdraw the blood and the hospital or other health care facility where the withdrawal occurs may rely on such a statement or order as evidence that the person has consented to or has been required to submit to the clinical procedure and shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to perform the procedure, the employer of such person, and the hospital or other health care facility shall not be liable in any action alleging lack of consent or lack of informed consent.

C. No person specified in subsection (A) of this section, no employer of such person, and no hospital or other health care facility where blood is withdrawn shall incur any civil or criminal liability as a result of the proper withdrawal of blood when acting at the request of a law enforcement officer, ~~or when acting in reliance upon a signed statement or court order by the~~ provisions of Section 751 of this title, or when acting in reliance upon a signed statement or court order as provided in this section, if the act is

performed in a reasonable manner according to generally accepted clinical practice. No person specified in subsection

(A) of this section shall incur any civil or criminal liability as a result of the proper collection of breath, saliva or urine when acting at the request of a law enforcement officer ~~or when acting pursuant to a court order. D. under the provisions of Section 751 of this title or when acting pursuant to a court order.~~

D. The blood, breath, saliva or urine specimens obtained shall be tested by the appropriate test as determined by the Board, or tested by a laboratory that is exempt from the Board rules pursuant to Section 759 <of this title, to determine the alcohol concentration thereof, or the presence or concentration of any other intoxicating substance which might have affected the ability of the person tested to operate a motor vehicle safely.

E. When blood is withdrawn or saliva or urine is collected for testing of its alcohol concentration or other intoxicating substance presence or concentration, at the request of a law enforcement officer, a sufficient quantity of the same specimen shall be obtained to enable the tested person, at his or her own option and expense, to have an independent analysis made of such specimen. The excess blood, saliva or urine specimen shall be retained by a laboratory approved by the Board, in accordance with the rules and regulations of the Board, or by a laboratory that is exempt from the Board rules pursuant to Section 759 of this title, for sixty (60) days from the date of collection. At any time within that period, the tested person or his or her attorney may direct that such blood, saliva or urine specimen be sent or delivered to a laboratory of his or her own choosing and approved by the Board for an independent analysis. Neither the tested person, nor any agent of such person, shall have access to the additional blood, saliva or urine specimen prior to the completion of the independent analysis, except the analyst performing the independent analysis and agents of the analyst.

F. When a test of breath is performed for the purpose of determining the alcohol concentration thereof, except when such test is performed by means of an automated analyzer as designated by the Board, a sufficient quantity of breath, or of the alcohol content of a fixed or measured quantity of breath, shall be obtained, in accordance with the rules and regulations of the Board, to enable the tested person, at his or her own option and expense, to have an independent analysis ~~made of such 1219 specimen. The excess specimen of breath, or of its alcohol content, shall be retained by the law enforcement agency employing the arresting officer, in accordance with the rules and regulations of the Board, for sixty (60) days from the date of collection. At any time within that period, the tested person, or his or her attorney, may direct that such specimen be sent or delivered to a laboratory of his or her own choosing and approved by the Board for an independent analysis. Neither the tested person, nor any agent of such person, shall have access to the additional specimen of breath, or of its alcohol content, prior to the completion of the independent analysis~~ thereof, except the

analyst performing the independent analysis and agents of the analyst.

G. The costs of collecting blood, breath, saliva or urine specimens for the purpose of determining the alcohol or other intoxicating substance thereof, by or at the direction of a law enforcement officer, shall be borne by the law enforcement agency employing such officer; provided, if the person is convicted for any offense involving the operation of a motor vehicle while under the influence of or while impaired by alcohol or an intoxicating substance, or both, as a direct result of the incident which caused the collection of blood, saliva or urine specimens, an amount equal to the costs shall become a part of the court costs of the person and shall be collected by the court and remitted to the law enforcement agency bearing the costs. The cost of collecting, retaining and sending or delivering to an independent laboratory the excess specimens of blood, breath, saliva or urine for independent analysis at the option of the tested person shall also be borne by such law enforcement agency. The cost of the independent analysis of such specimen of blood, breath, saliva or urine shall be borne by the tested person at whose option such analysis is performed. The tested person, or his or her agent, shall make all necessary arrangements for the performance of such independent analysis other than the forwarding or delivery of such specimen.

H. Tests of blood or breath for the purpose of determining the alcohol concentration thereof, and tests of blood, saliva or urine for the purpose of determining the presence or concentration of any other intoxicating substance therein, under the provisions of this Title, whether administered by or at the direction of a law enforcement officer or administered independently, at the option of the tested person, on the excess specimen of such person's blood, breath, saliva or urine, to be considered valid and admissible in evidence under the provisions of this ~~T~~

I. Any person who has been arrested for any offense arising out of acts alleged to have been committed while the person was operating or in actual physical control of a motor vehicle while under the influence of alcohol, any other intoxicating substance or the combined influence of alcohol and any other intoxicating substance who is not requested by a law enforcement officer to submit to a test shall be entitled to have an independent test of his or her blood, breath, saliva or urine which is appropriate as determined by the Board for the purpose of determining its alcohol concentration or the presence or concentration of any other intoxicating substance therein, performed by a person of his or her own choosing who is qualified as stipulated in this section. The arrested person shall bear the responsibility for making all necessary arrangements for the administration of such independent test and for the independent analysis of any specimens obtained, and bear all costs thereof. The failure or inability of the arrested person to obtain an independent test shall not preclude the admission of other competent evidence bearing upon the ~~1220~~ question of whether such person was under the influence of alcohol, or any other intoxicating substance or the combined influence of alcohol and any other intoxicating substance.

J. Any agency or laboratory certified by the Board or any agency or laboratory that is exempt from the Board rules pursuant to Section 759 which analyses breath, blood, or urine shall make available a written report of the results

of the test administered by or at the direction of the law enforcement officer to:

1. the tested person, or his or her attorney; ~~and~~
2. the Office of the Attorney General.
3. The Fatality Analysis Reporting System (FARS) analyst of the state, upon request.

The results of the tests provided for in this Title shall be admissible in all civil actions., including administrative hearings regarding driving privileges.

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.