

Cherokee Nation Code Annotated

Title 10A: Cherokee Nation Juvenile Code

Article 2

Chapter 2: Custody and Court Proceedings

§ 2-2-503. Disposition orders--Revocation, modification and redispotion

Cite as: 10A CNCA § 2-2-503

A. The following kinds of orders of disposition may be made in respect to children adjudicated in need of supervision or delinquent:

1. The court may place the child on probation with or without supervision in the home of the child, or in the custody of a suitable person, upon such conditions as the court shall determine. If the child is placed on probation, the court may impose a probation fee of not more than Twenty-five Dollars (\$25.00) per month, if the court finds that the child or parent or legal guardian of the child has the ability to pay the fee. In counties having a juvenile bureau, the fee shall be paid to the juvenile bureau; in all other counties, the fee shall be paid to the Department of Juvenile Justice;

2. If it is consistent with the welfare of the child, the child shall be placed with the parent or legal guardian of the child, but if it appears to the court that the conduct of such parent, guardian, legal guardian, stepparent or other adult person living in the home has contributed to the child becoming delinquent or in need of supervision, the court may issue a written order specifying conduct to be followed by such parent, guardian, legal custodian, stepparent or other adult person living in the home with respect to such child. The conduct specified shall be such as would reasonably prevent the child from continuing to be delinquent or in need of supervision.

a. If it is consistent with the welfare of the child, in cases where the child has been adjudicated to be in need of supervision due to repeated absence from school, the court may order counseling and treatment for the child and the parents of the child to be provided by the local school district, the county, the Office or a private individual or entity. Prior to final disposition, the court shall require that it be shown by the appropriate school district that a child found to be truant has been evaluated for learning disabilities, hearing and visual impairments and other impediments which could constitute an educational handicap or has been evaluated to determine whether the child has a disability if it is suspected that the child may require special education services in accordance with the Individuals with Disabilities Education Act (IDEA). The results of such tests shall be made available to the court for use by the court in determining the disposition of the case.

b. In issuing orders to a parent, guardian, legal guardian, stepparent or other adult person living in the home of a child adjudicated to be a delinquent child or in making other disposition of said delinquent child, the court may consider the testimony of said parent, guardian, legal guardian, stepparent or other adult person concerning the behavior of the juvenile and the ability of such person to exercise parental control over the behavior of the juvenile.

c. In any dispositional order involving a child age sixteen (16) or older, the court shall make a determination, where appropriate, of the services needed to assist the child to make the transition to independent living.

d. No child who has been adjudicated in need of supervision only upon the basis of truancy or noncompliance with the mandatory school attendance law shall be placed in a public or private institutional facility or be removed from the custody of the lawful parent, guardian or custodian of the child.

e. Nothing in the Cherokee Nation Juvenile Code or the Cherokee Nation Children's Code may be construed to prevent a child from being adjudicated both deprived and delinquent if there exists a factual basis for such a finding;

3. The court may commit the child to the custody of a private institution or agency, including any institution established and operated by the county, authorized to care for children or to place them in family homes. In committing a child to a private institution or agency, the court shall select one that is licensed by any state department supervising or licensing private institutions and agencies; or, if such institution or agency is in another state, by the analogous department of that state. Whenever the court shall commit a child to any institution or agency, it shall transmit with the order of commitment a summary of its information concerning the child, and such institution or agency shall give to the court such information concerning the child as the court may at any time require;

4. The court may order the child to receive counseling or other community-based services as necessary;

5. The court may commit the child to the custody of the Department of Juvenile Justice. Any order adjudicating the child to be delinquent and committing the child to the Department of Juvenile Justice shall be for an indeterminate period of time;

6. If the child has been placed outside the home, and it appears to the court that the parent, guardian, legal custodian, or stepparent, or other adult person living in the home has contributed to the child becoming delinquent or in need of supervision, the court may order that the parent, guardian, legal custodian, stepparent, or other adult living in the

home be made subject to any treatment or placement plan prescribed by the Office or other person or agency receiving custody of the child;

7. With respect to a child adjudicated a delinquent child, the court may:

- a. require assessments or contributions from the juvenile in the discretion of the court,
- b. order the child to engage in a term of community service without compensation. The state or any political subdivision shall not be liable if a loss or claim results from any acts or omission of a child ordered to engage in a term of community service pursuant to the provisions of this paragraph,
- c. order the child, the parent or parents of the child, legal guardian of the child, or both the child and the parent or parents of the child or legal guardian at the time of the delinquent act of the child to make full or partial restitution to the victim of the offense which resulted in property damage or personal injury.

(1) The court shall notify the victim of the dispositional hearing. The court may consider a verified statement from the victim concerning damages for injury or loss of property and actual expenses of medical treatment for personal injury, excluding pain and suffering. If contested, a restitution hearing to determine the liability of the child, the parent or parents of the child, or legal guardian shall be held not later than thirty (30) days after the disposition hearing and may be extended by the court for good cause. The parent or parents of the child or legal guardian may be represented by an attorney in the matter of the order for remittance of the restitution by the parent or parents of the child or legal guardian. The burden of proving that the amount indicated on the verified statement is not fair and reasonable shall be on the person challenging the fairness and reasonableness of the amount.

(2) Restitution may consist of monetary reimbursement for the damage or injury in the form of a lump sum or installment payments after the consideration of the court of the nature of the offense, the age, physical and mental condition of the child, the earning capacity of the child, the parent or parents of the child, or legal guardian, or the ability to pay, as the case may be. The payments shall be made to such official designated by the court for distribution to the victim. The court may also consider any other hardship on the child, the parent or parents of the child, or legal guardian and, if consistent with the welfare of the child, require community service in lieu of restitution or require both community service and full or partial restitution for the acts of delinquency by the child.

(3) A child who is required to pay restitution and who is not in willful default of the payment of restitution may at any time request the court to modify the method of payment. If the court determines that payment under the order will impose a manifest hardship on the

child, the parent or parents of the child, or legal guardian, the court may modify the method of payment.

(4) If the restitution is not being paid as ordered, the official designated by the court to collect and disburse the restitution ordered shall file a written report of the violation with the court. The report shall include a statement of the amount of the arrearage and any reasons for the arrearage that are known by the official. A copy of the report shall be provided to all parties and the court shall promptly take any action necessary to compel compliance.

(5) Upon the juvenile attaining eighteen (18) years of age, the court shall determine whether the restitution order has been satisfied. If the restitution order has not been satisfied, the court shall enter a judgment of restitution in favor of each person entitled to restitution for the unpaid balance of any restitution ordered pursuant to this subparagraph. The clerk of the court shall send a copy of the judgment of restitution to each person who is entitled to restitution. The judgment shall be a lien against all property of the individual or individuals ordered to pay restitution and may be enforced by the victim or any other person or entity named in the judgment to receive restitution in the same manner as enforcing monetary judgments. The restitution judgment does not expire until paid in full and is deemed to be a criminal penalty for the purposes of a federal bankruptcy involving the child,

d. order the cancellation or denial of driving privileges,

e. sanction detention in the residence of the child or facility designated by the Department of Juvenile Justice or the juvenile bureau for such purpose for up to five (5) days, order weekend detention in a place other than a juvenile detention facility or shelter, tracking, or house arrest with electronic monitoring, and

f. impose consequences, including detention as provided for in subparagraph f of this paragraph, for post-adjudicatory violations of probation;

8. The court may order the child to participate in specialty court programs;

9. The court may dismiss the petition or otherwise terminate its jurisdiction at any time for good cause shown; and

10. In any dispositional order removing a child from the home of the child, the court shall, in addition to the findings required by Section 2-2-105 of this title, make a determination that, in accordance with the best interests of the child and the protection of the public, reasonable efforts have been made to provide for the return of the child to the home of the child, or that efforts to reunite the family are not required as provided in Section 2-2-105 of

this title, and reasonable efforts are being made to finalize an alternate permanent placement for the child.

B. Prior to adjudication or as directed by a law enforcement subpoena or court order, a school district may disclose educational records to the court or juvenile justice system for purposes of determining the ability of the juvenile justice system to effectively serve a child. Any disclosure of educational records shall be in accordance with the requirements of the Family Educational Rights and Privacy Act of 1974 (FERPA). If the parent, guardian, or custodian of a child adjudicated a delinquent child asserts that the child has approval not to attend school pursuant to Section 10-105 of Title 70 of the Cherokee Nation Statutes, the court or the Department of Juvenile Justice may require the parent to provide a copy of the written, joint agreement to that effect between the school administrator of the school district where the child attends school and the parent, guardian, or custodian of the child.

C. With respect to a child adjudicated a delinquent child for a violent offense, within thirty (30) days of the date of the adjudication the Department of Juvenile Justice shall notify the superintendent of the school district in which the child is enrolled or intends to enroll of the delinquency adjudication and the offense for which the child was adjudicated.

D. No child who has been adjudicated in need of supervision may be placed in a secure facility.

E. No child charged in a state or municipal court with a violation of state or municipal traffic laws or ordinances, or convicted therefor, may be incarcerated in jail for the violation unless the charge for which the arrest was made would constitute a felony if the child were an adult. Nothing contained in this subsection shall prohibit the detention of a juvenile for traffic-related offenses prior to the filing of a petition in the district court alleging delinquency as a result of the acts and nothing contained in this section shall prohibit detaining a juvenile pursuant to Section 2-2-102 of this title.

F. The court may revoke or modify a disposition order and may order redispotion. The child whose disposition is being considered for revocation or modification at said hearing shall be afforded the following rights:

1. Notice by the filing of a motion for redispotion by the Attorney General. The motion shall be served on the child and the parent or legal guardian of the child at least five (5) business days prior to the hearing;
2. The proceedings shall be heard without a jury and shall require establishment of the facts alleged by a preponderance of the evidence;

3. During the proceeding, the child shall have the right to be represented by counsel, to present evidence, and to confront any witness testifying against the child;
4. Any modification, revocation or redispotion removing the child from the physical custody of a parent or guardian shall be subject to review on appeal, as in other appeals of delinquent cases;
5. If the child is placed in secure detention, bail may be allowed pending appeal; and
6. The court shall not enter an order removing the child from the custody of a parent or legal guardian pursuant to this section unless the court first finds that reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the home of the child or that an emergency exists which threatens the safety of the child and that:
 - a. such removal is necessary to protect the public,
 - b. the child is likely to sustain harm if not immediately removed from the home,
 - c. allowing the child to remain in the home is contrary to the welfare of the child, or
 - d. immediate placement of the child is in the best interests of the child.

The court shall state in the record that such considerations have been made. Nothing in this section shall be interpreted to limit the authority or discretion of the agency providing probation supervision services to modify the terms of probation including, but not limited to, curfews, imposing community service, or any nondetention consequences.

G. A willful violation of any provision of an order of the court issued under the provisions of the Cherokee Nation Juvenile Code shall constitute indirect contempt of court and shall be punishable by a fine not to exceed Three Hundred Dollars (\$300.00) or, as to a delinquent child, placement in a juvenile detention center for not more than ten (10) days, or by both such fine and detention.

Historical Data

LA 11-21, eff. March 15, 2021.