

Cherokee Nation Code Annotated
Title 10A: Cherokee Nation Juvenile Code
Article 2

Chapter 5: Treatment of Serious Acts

**§ 2-5-209. Presentence investigation—Hearing—Factors and considerations—
Imposition of sentence—Confinement**

Cite as: 10A CNCA § 2-5-209

A. Upon a verdict of guilty or a plea of guilty or nolo contendere of a youthful offender and prior to the imposition of a youthful offender sentence by the court:

1. A youthful offender presentence investigation shall be conducted unless waived by the youthful offender with approval of the court or unless an investigation is conducted pursuant to subsection C of Section 2-5-208 of this title. All reports, evaluations, motions, records, exhibits or documents regarding the educational history, mental health or medical treatment or condition of the offender that are submitted to the court or admitted into evidence during the hearing on the motion for certification of the accused youthful offender to the juvenile system or motion for imposition of an adult sentence are confidential and shall be filed or admitted under seal, except that such records shall be provided to the Department of Juvenile Justice. Any testimony regarding the reports, evaluations, motions, records, exhibits or documents shall be given in camera and shall not be open to the general public; provided, all persons having a direct interest in the case as provided in paragraph 1 of subsection A of Section 2-2-402 of this title shall be allowed to be present during the testimony but shall be admonished not to discuss the testimony following the hearing. All reports, evaluations, motions, records, exhibits or documents shall be released from under seal by order of the court if the youthful offender is sentenced to the custody or supervision of the contracted detention facility by the court pursuant to paragraph 1 of subsection B of Section 2-5-209 or paragraph 5 of subsection B of Section 2-5-210 of this title or if the juvenile or youthful offender is later charged as an adult with a felony crime. Any presentence investigation required by this section shall be conducted by the Department of Juvenile Justice; and

2. The court shall conduct a hearing and shall consider, with the greatest weight given to subparagraphs a, b and c:

a. whether the offense was committed in an aggressive, violent, premeditated or willful manner,

b. whether the offense was against persons and, if personal injury resulted, the degree of personal injury,

- c. the record and past history of the person, including previous contacts with law enforcement agencies and juvenile or criminal courts, prior periods of probation and commitments to juvenile institutions,
- d. the sophistication and maturity of the person and the capability of distinguishing right from wrong as determined by consideration of the psychological evaluation, home, environmental situation, emotional attitude and pattern of living of the person,
- e. the prospects for adequate protection of the public if the person is processed through the youthful offender system or the juvenile system,
- f. the reasonable likelihood of rehabilitation of the person if found to have committed the offense, by the use of procedures and facilities currently available to the juvenile, and
- g. whether the offense occurred while the person was escaping or on escape status from an institution for youthful offenders or delinquent children.

B. 1. After the hearing and consideration of the report of the presentence investigation, the court shall impose sentence as a youthful offender, and such youthful offender shall be subject to the same type of sentencing procedures and duration of sentence, except for capital offenses, including suspension or deferment, as an adult convicted of a felony offense, except that any sentence imposed upon the youthful offender shall be served in the custody or under the supervision of the Department of Juvenile Justice until the expiration of the sentence, the youthful offender is discharged, or the youthful offender reaches eighteen (18) years of age, whichever first occurs. If an individual sentenced as a youthful offender attains eighteen (18) years of age prior to the expiration of the sentence, such individual shall be returned to the sentencing court. At that time, the sentencing court shall make one of the following determinations:

- a. whether the youthful offender shall be returned to the Department of Juvenile Justice to complete a treatment program, provided that the treatment program shall not exceed the youthful offender's attainment of eighteen (18) years and six (6) months of age. At the conclusion of the treatment program, the individual shall be returned to the sentencing court for a determination under subparagraph b, c or d of this paragraph,
- b. whether the youthful offender shall be placed in the custody of the contracted detention facility,
- c. whether the youthful offender shall be placed on probation with the contracted detention facility, or
- d. whether the youthful offender shall be discharged from custody.

2. The sentence imposed shall not exceed the maximum sentence already imposed in the originating sentence.

3. Upon the youthful offender attaining the age of eighteen (18) years and six (6) months, the Department of Juvenile Justice may recommend that the youthful offender be returned to the custody or supervision of the Department of Juvenile Justice until the age of nineteen (19) years to complete the reintegration phase of the treatment program or community supervision as determined by the Department of Juvenile Justice. During any period of extension, a youthful offender may be transferred to the contracted detention facility as provided in paragraph 5 of subsection B of Section 2-5-210 of this title, whether the youthful offender is placed in an out-of-home placement or in the community.

4. If the court has extended jurisdiction of the youthful offender until nineteen (19) years of age, the youthful offender shall remain in custody or under the supervision of the Department of Juvenile Justice until the youthful offender has been discharged or sentenced by the court or until the youthful offender's nineteenth birthday, at which time the youthful offender shall be returned to the court for final disposition of the youthful offender's case. The court shall have the same dispositional options as provided in subparagraphs b, c and d of paragraph 1 of this subsection.

5. Any period of probation required by the sentencing court to be served shall be supervised by:

a. the Department of Juvenile Justice or designated representative, if the youthful offender is under eighteen (18) years of age, or

b. the contracted detention facility or designated representative, upon the youthful offender attaining eighteen (18) years of age.

6. In addition to or in lieu of the placement of the youthful offender in the custody of or under the supervision of the Department of Juvenile Justice, the court may issue orders with regard to the youthful offender as provided by law for the disposition of an adjudicated juvenile delinquent as long as the age of the youthful offender does not exceed nineteen (19) years.

7. It is the intent of the Cherokee Nation Legislature that youthful offenders be held insofar as is practical separate from the juvenile delinquent population.

8. The Department of Juvenile Justice may make recommendations to the court concerning the disposition of the youthful offender.

9. Any order issued by the sentencing court under this subsection shall be a final order, appealable when entered.

C. A youthful offender who is seventeen (17) or eighteen (18) years of age or older and who has been sentenced to the custody of the Department of Juvenile Justice may be detained in a county jail pending placement in an Department of Juvenile Justice facility, provided the county jail meets the jail standards promulgated by the State Department of Health for juvenile offenders. The youthful offender who is eighteen (18) years of age or older may be held in the general population of the county jail.

Historical Data

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