

Cherokee Nation Code Annotated

Title 10A: Cherokee Nation Juvenile Code

Article 2

Chapter 5: Treatment of Serious Acts

§ 2-5-210. Rehabilitation plan--Annual review hearing--Transfer to Contracted detention facility--Time-served credits

Cite as: 10A CNCA § 2-5-210

A. Whenever a youthful offender is placed in the custody of or under the supervision of the Department of Juvenile Justice, the Office shall within thirty (30) days prepare and file with the court a written rehabilitation plan for the youthful offender. The rehabilitation plan shall be tailored to the needs and goals of the youthful offender while ensuring protection of the public while the offender is in the custody or supervision of the Department of Juvenile Justice. The rehabilitation plan shall include, but not be limited to:

1. Clearly stated and measurable objectives which the youthful offender is expected to achieve; and
2. Identification of the specific services and programs that will be provided to the youthful offender by the Department of Juvenile Justice to assist the youthful offender in achieving the measurable objectives to be reached, including, but not limited to, diagnostic testing consistent with the current standards of medical practice.

B. The court shall schedule an annual review hearing in open court for every youthful offender in the custody of the Department of Juvenile Justice. Such hearing may be scheduled either upon the court's own motion or upon a motion filed by the Department of Juvenile Justice. Each annual review hearing shall be scheduled and completed within the thirty-day period immediately preceding the date the sentence was imposed upon the youthful offender. Notice shall be given to the youthful offender, the counsel, parent or guardian of the youthful offender, the Attorney General, and the Department of Juvenile Justice at the time the motion for review is made or filed. The court, at its discretion, may schedule other review hearings as the court deems necessary, after notice to the parties. The court shall hold a review hearing for good cause shown, upon any motion filed by the Attorney General, the Department of Juvenile Justice, or the youthful offender for the purpose of making a determination to:

1. Order the youthful offender discharged from the custody of the Department of Juvenile Justice without a court judgment of guilt, and order the verdict or plea of guilty or plea of nolo contendere expunged from the record as provided in paragraphs 1 through 5 of subsection C of Section 991c of Title 22 of the Cherokee Nation Statutes and dismiss the

charge with prejudice to any further action, if the court finds that the youthful offender has reasonably completed the rehabilitation plan and objectives and that such dismissal will not jeopardize public safety.

If a youthful offender has been discharged without a court judgment of guilt and the charge has been dismissed with prejudice as provided in this paragraph, upon the motion of the youthful offender and the passage of three (3) years after the date of such discharge and dismissal, the court may, in addition, order any law enforcement agency over which the court has jurisdiction to expunge all files and records pertaining to the arrest and conviction of the youthful offender, and shall order the clerk of the court to expunge the entire file and record of the case, including docket sheets, index entries, court records, summonses, warrants or records in the office of the clerk or which have been produced by a law enforcement agency in which the name of the youthful offender is mentioned. The court may order probation officers and counselors of the Department of Juvenile Justice to expunge all records, reports, and social and clinical studies relating to the youthful offender that are in the possession of the Department of Juvenile Justice, except when the documents are necessary to maintain state or federal funding.

Members of the judiciary, the Attorney General, the youthful offender, counsel for the youthful offender, and the Department of Juvenile Justice who are assigned juvenile court intake responsibilities, and the contracted detention facility may access records that have been expunged pursuant to this subsection without a court order for the purpose of determining whether to dismiss an action, seek a voluntary probation, file a petition or information, or for purposes of sentencing or placement in a case where the person who is the subject of the sealed record is alleged to have committed a subsequent youthful offender act, a juvenile delinquent act, or any adult criminal offense. Provided, any record sealed pursuant to this section shall be ordered unsealed upon application of the prosecuting agency when said records are requested for use in any subsequent juvenile delinquent, youthful offender, or adult prosecution.

As used in this paragraph, "expunge" shall mean the sealing of criminal records;

2. Revoke an order of probation and place the youthful offender in the custody of the Department of Juvenile Justice if such offender is less than eighteen (18) years of age;
3. Place the youthful offender on probation under the supervision of the age-appropriate agency;
4. Place the youthful offender if less than eighteen (18) years of age in a sanction program operated or contracted for by the Department of Juvenile Justice community placement, if the youthful offender fails to comply with a written plan of rehabilitation or fails

substantially to achieve reasonable treatment objectives while in community or other nonsecure programs; or

5. Transfer the youthful offender to the custody or supervision of the contracted detention facility if the court finds by clear and convincing evidence that the youthful offender has:

- a. after certification as a youthful offender, seriously injured or endangered the life or health of another person by such person's violent behavior,
- b. escaped from the facility from which the youthful offender is being held,
- c. committed a felony crime while in the custody or under the supervision of the Department of Juvenile Justice as shown by a judgment entered following a verdict of guilty, a plea of guilty or nolo contendere, or as shown by clear and convincing evidence,
- d. committed battery or assault and battery on a state employee or contractor of a juvenile facility while in the custody of such facility,
- e. caused disruption in the facility, smuggled contraband into the facility, caused contraband to be smuggled into the facility, or engaged in other types of behavior which have endangered the life or health of other residents or staff of the facility, or
- f. established a pattern of disruptive behavior not conducive to the established policies and procedures of the program.

The court, in its decision to transfer custody of the youthful offender to the custody of the contracted detention facility, shall detail findings of fact and conclusions of law addressing the grounds alleged in the motion of the state.

C. An order transferring custody of a youthful offender to the contracted detention facility shall be deemed an adult conviction and shall be recorded as such in the court records and criminal history records of the offender. Such order shall be a final order, appealable when entered. In addition to a judgment and sentence for an adult conviction, the court shall provide to the contracted detention facility a detailed memorandum or historical statement of the Youthful Offender Act as applied to the offender being transferred to the contracted detention facility, including the date of the offense, the date of the adjudication as a youthful offender, the date of the filing of the motion to transfer custody of the offender to the adult criminal system, and the date of the imposition of the adult sentence.

D. The court shall grant time-served credits against the adult sentence imposed for any youthful offender transferred to the contracted detention facility. For the purpose of calculating time served to be applied toward any sentence imposed upon a youthful offender, in the event a youthful offender has been placed in the custody or under the

supervision of the Department of Juvenile Justice, the offender shall receive day-for-day credit for the time spent in the custody or under the supervision of the Department of Juvenile Justice. Upon commitment to the contracted detention facility, a youthful offender shall also receive other credits as provided by law for an adult inmate.

E. If authorized by the court, review hearings, other than those scheduled for determinations as provided in paragraphs 1 through 5 of subsection B of this section, may be conducted via teleconference communications; provided, the attorney representing the youthful offender shall be present at the hearing. For purposes of this subsection, "teleconference communication" means participation by the youthful offender and facility staff in the hearing by interactive telecommunication devices which permit both visual and auditory communication among the necessary participants, the court, and the youthful offender.

Historical Data

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