

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

Chapter 8: Miscellaneous Offenses

§ 2-8-221. Transmission of obscenity and child pornography

Cite as: 10A CNCA § 2-8-221

A. Whenever the Attorney General has reasonable cause to believe that an individual, with knowledge of its content, is engaged in sending a transmission or causing a transmission to originate within this state containing obscene material or child pornography, as such terms are defined in 21 CNCA § 1024.1, the district attorney for the district into which the transmission is sent or caused to be sent, may institute an action in the district court for an adjudication of the obscenity or child pornographic content of the transmission. Provided that if the conditions of subsection B of this section are present, then it shall be at the discretion of the district attorney whether the action instituted is a juvenile offense as defined in subsection B of this section or whether the action instituted is a felony for a violation of 21 CNCA § 1040.13a.

The individual sending the transmission specified in this section may be charged and tried in any district wherein the transmission is sent or in which it is received by the person to whom it was transmitted.

For purposes of any criminal prosecution pursuant to a violation of this section, the person violating the provisions of this section shall be deemed to be within the jurisdiction of this state by the fact of accessing any computer, cellular phone, or other computer-related or satellite-operated device in this state, regardless of the actual jurisdiction where the violator resides.

B. Any individual under eighteen (18) years of age who engages in the original or relayed transmission of obscene material or child pornography via electronic media in the form of digital images, videos, or other depictions of real persons under the age of eighteen (18) years, and:

1. The original or relayed transmission is of another minor over thirteen (13) years of age and is made with the consent of the pictured individual and is transmitted to five or fewer individual destinations, known or unknown, shall be guilty of a misdemeanor violation of this section punishable by:

a. a fine not to exceed Five Hundred Dollars (\$500.00) for the first offense,

- b. a fine not to exceed One Thousand Dollars (\$1,000.00) for a second and subsequent offense,
- c. up to forty (40) hours of community service,
- d. a referral for a proposed probation plan which shall be adopted through disposition, or
- e. attendance and successful completion of an educational program or a delinquency prevention and diversion program. The court shall have the discretion to order the parent or legal guardian of the juvenile to attend and successfully complete the educational program.

2. The original or relayed transmission is of another minor over thirteen (13) years of age and is made without the consent of the pictured individual, or is sent to six or more individual destinations, known or unknown, shall be guilty of a misdemeanor violation of this section punishable by:

- a. a fine not to exceed Seven Hundred Dollars (\$700.00) for the first offense,
- b. a fine not to exceed One Thousand Four Hundred Dollars (\$1,400.00) for a second or subsequent offense,
- c. up to sixty (60) hours of community service,
- d. a referral for a proposed probation plan which shall be adopted through disposition, and
- e. attendance and successful completion of an educational program or a delinquency prevention and diversion program. The court shall have the discretion to order the parent or legal guardian of the juvenile to attend and successfully complete the educational program.

3. The original or relayed transmission is of another minor thirteen (13) years of age or younger, with or without the pictured individual's consent, and is transmitted to any number of destinations, known or unknown, shall be guilty of a misdemeanor violation of this section punishable by:

- a. a fine not to exceed Nine Hundred Dollars (\$900.00) for the first offense,
- b. a fine not to exceed One Thousand Eight Hundred Dollars (\$1,800.00) for a second or subsequent offense.
- c. up to eighty (80) hours of community service,
- d. a referral for a proposed probation plan which shall be adopted through disposition, and

e. attendance and successful completion of an educational program or a delinquency prevention and diversion program. The court shall have the discretion to order the parent or legal guardian of the juvenile to attend and successfully complete the educational program.

C. The fact that the individual making the transmission and the individual pictured are the same does not alter the criminality provided in this section.

D. It is an affirmative defense to the relayed transmission of obscene material or child pornography, as these terms are defined in 21 CNCA § 1024.1, if a juvenile:

1. Has not solicited the visual depiction; and

2. Does not subsequently distribute, present transmit, post, print, disseminate or exchange the visual depiction except for the purpose of reporting the original transmission or relayed transmission to appropriate school or law enforcement authorities.

Historical Data

LA 17-21, eff. May 17, 2021.