

Cherokee Nation Code Annotated

Title 21: Crimes and Punishments

Part IV. Crimes Against Public Decency and Morality

Chapter 46: Domestic Abuse

§ 1131. Domestic abuse assault and battery—Punishment

Cite as: 21 CNCA § 1131

A. Domestic abuse assault and battery shall be punishable by imprisonment not exceeding one (1) year, or by a fine of not more than Five Thousand Dollars (\$5,000.00), or both, at the discretion of the Court.

B. Any person convicted of domestic abuse as defined in this provision, that was committed in the presence of a child shall be punished by imprisonment for not less than six (6) months nor more than one (1) year, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

C. Any person who is convicted of a second or subsequent domestic abuse assault and battery offense shall be punished by imprisonment not exceeding three (3) years, or by fine of not more than Fifteen Thousand Dollars (\$15,000.00), or both such fine and imprisonment at the discretion of the Court.

D. For every conviction of domestic abuse, the Court shall:

1. specifically order as a condition of a deferred or suspended sentence or probation that a defendant participate in batterer's treatment; or

2. require the defendant to participate in counseling or undergo treatment for domestic abuse by an individual licensed practitioner or a domestic abuse-counseling program approved by the Court, If the defendant is ordered to participate in a domestic abuse counseling or treatment program, the order shall require the defendant to attend and complete the program and be evaluated before and after attendance of the program by a program counselor or a private counselor.

E. A program for anger management, couples counseling, or family and marital counseling shall not solely qualify for the counseling or treatment requirement for domestic abuse pursuant to this section. The counseling may be ordered in addition to counseling specifically for the treatment of domestic abuse or per evaluation as set forth below. If, after sufficient evaluation and attendance at required counseling sessions, the domestic abuse treatment program or licensed professional determines that the defendant (whether or not defendant evaluates as a perpetrator of domestic abuse) should complete other programs of treatment simultaneously or prior to domestic abuse treatment, including but

not limited to programs related to the mental health, apparent substance or alcohol abuse or inability or refusal to manage anger, the defendant shall be ordered to complete the counseling as per the recommendations of the domestic abuse treatment program or licensed professional.

F. The Court shall set review hearings within one hundred twenty (120) days to ensure that the defendant attends and fully complies with the provisions of this section and the domestic abuse counseling or treatment requirements. The defendant shall be required to be present at the review hearing. Defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the Court. The victim may attend but is not required to do so.

G. The Court shall set a final review hearing after the completion of the counseling or treatment to assure the attendance and compliance of the defendant with the provisions of Cherokee law. The Court shall retain continuing jurisdiction over the defendant during the course of ordered counseling through the final review hearing.

H. The Court may set interim review, follow-up post-completion review, or other review hearings as the Court determines necessary to assure the defendant attends and fully complies with the provisions of this section and the domestic abuse counseling or treatment requirements. After the initial review hearing referenced in subsection (F), the Court may waive Defendant's appearance at reviews or compel Defendant's attendance at reviews. The Court may review progress reports on the defendant from individual counseling, domestic abuse counseling, or the treatment program without appearances.

I. At any review hearing, if the defendant is not satisfactorily attending individual counseling or a domestic abuse counseling or treatment program or is not in compliance with any domestic abuse counseling or treatment requirements, or is not making progress in treatment, the Court may:

1. order the defendant to further or continue counseling, treatment, or other necessary services; and
2. revoke all or any part of a suspended sentence, deferred sentence, or probation; and
3. subject the defendant to any or all remaining portions of the original sentence.

J. Nothing in this provision shall prohibit the Presiding Judge of the District Court from appointing and compensating a Special Master to hear all or designated cases set for review under this section.

K. The defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the Court.

L. Penalty enhancement—For the purposes of this section, any former conviction in any jurisdiction for assault and battery against any current or former spouse, any present spouse of a former spouse, parents, any foster parent, any child, any person otherwise related by blood or marriage, any person with whom the defendant is in a dating relationship, any individual with whom the defendant has had a child, any person who formerly lived in the same household as the defendant, or any person living in the same household as the defendant, shall constitute a sufficient basis for an enhanced penalty under subsection (C) of this section as a second or subsequent offense.

M. In addition to any other civil or criminal penalty that may be sentenced, the court may order the defendant to pay the victim restitution the full amount of the victim's losses as determined by the court to include:

1. Medical services relating to the physical, psychiatric, or psychological care;
2. Physical and occupational therapy or rehabilitation;
3. Necessary transportation, temporary housing, and child care expenses;
4. Lost income;
5. Attorneys' fees, plus any costs incurred in obtaining a civil protection order; and
6. Any other losses suffered by the victim as approximate result of the offense.

Historical Data

LA 29–06, eff. December 20, 2006. Amended LA 10–13, eff. April 13, 2013; LA 12–18, eff. June 13, 2018. Amended LA 28–20, eff. December 14, 2020.