

Cherokee Nation Code Annotated

Title 22: Criminal Procedure

Chapter 2: Prevention of Public Offenses

§ 60.6. Violation of ex parte or final protective order—Penalty

Cite as: 22 CNCA § 60.6

A. Except as otherwise provided by this section any person who has been served with an ex parte or final protective order and is in violation of such protective order, upon conviction, shall be guilty of a crime and shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by a term of imprisonment in the penal institution of not more than one (1) year, or both.

B. Any person who after a previous conviction of a violation of a protective order is convicted of a second or subsequent offense pursuant to the provisions of this section shall be deemed guilty of a crime and shall be punished by a term of imprisonment in the penal institution of not more than three (3) years. In addition to the term of imprisonment, the person may be punished by a fine of not more than Fifteen Thousand Dollars (\$15,000).

C. Any person who has been served with an ex parte or final protective order who violates said protective order and without justifiable excuse causes physical injury or physical impairment to the plaintiff or to any other person named in said protective order shall upon conviction be guilty of a crime and shall be punished by a term of imprisonment in the county jail for not less than ten (10) days nor more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00).

1. In determining the term of imprisonment required by this section, the jury or Sentencing Judge shall consider the degree of physical injury or physical impairment to the victim.

2. The provisions of this subsection shall not affect the applicability of 21 CNCA § 644, 21 CNCA § 645, 21 CNCA § 647 and 21 CNCA § 652.

D. The minimum sentence of imprisonment issued pursuant to the provisions of subsections (B) and (C) of this section shall not be subject to statutory provisions for suspended sentences, deferred sentences or probation, provided the Court may subject any remaining penalty under the jurisdiction of the Court to the statutory provisions for suspended sentences, deferred sentences or probation.

In addition to any other penalty specified by this section, the court shall require a defendant to undergo the treatment or participate in the counseling services necessary to bring about the cessation of domestic abuse against the victim or to bring about the

cessation of stalking or harassment of the victim. For every conviction of violation of a protective order:

1. The court shall specifically order as a condition of a suspended sentence or probation that a defendant participate in counseling or undergo treatment to bring about the cessation of domestic abuse as specified in paragraph 2 of this subsection;

2. a. The court shall require the defendant to participate in counseling or undergo treatment for domestic abuse by an individual licensed practitioner or a domestic abuse treatment program approved by the District Court. If the defendant is ordered to participate in a domestic abuse counseling or treatment program, the order shall require the defendant to attend the program for a minimum of fifty-two (52) weeks, complete the program, and be evaluated before and after attendance of the program by a program counselor or a private counselor.

b. 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 subsection. 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 violence treatment program or licensed professional determines that the defendant does not evaluate as a perpetrator of domestic violence or does evaluate as a perpetrator of domestic violence and should complete other programs of treatment simultaneously or prior to domestic violence 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 violence treatment program or licensed professional:

3. a. The court shall set a review hearing no more than one hundred twenty (120) days after the defendant is ordered to participate in a domestic abuse counseling program or undergo treatment for domestic abuse to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements.

b. The court shall set a second review hearing after the completion of the counseling or treatment to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements. The court may suspend sentencing of the defendant until the defendant has presented proof to the court of enrollment in a program of treatment for domestic abuse by an individual licensed practitioner or a domestic abuse treatment program approved by the District Court and attendance at weekly sessions of such program. Such proof shall be presented to the court

by the defendant no later than one hundred twenty (120) days after the defendant is ordered to such counseling or treatment. At such time, the court may complete sentencing, beginning the period of the sentence from the date that proof of enrollment is presented to the court, and schedule reviews as required by subparagraphs a and b of this paragraph and paragraphs 4 and 5 of this subsection. The court shall retain continuing jurisdiction over the defendant during the course of ordered counseling through the final review hearing;

4. The court may set subsequent or other review hearings as the court determines necessary to assure the defendant attends and fully complies with the provisions of this subsection and the domestic abuse counseling or treatment requirements;

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

6. At the first review hearing, the court shall require the defendant to appear in court. Thereafter, for any subsequent review hearings, the court may accept a report on the progress of the defendant from individual counseling, domestic abuse counseling, or the treatment program. There shall be no requirement for the victim to attend review hearings.

E. In addition to any other penalty specified by this section, the Court may require a defendant to undergo the treatment or participate in the counseling services necessary to bring about the cessation of domestic abuse against the victim.

F. Ex parte and final protective orders shall include notice of these penalties.

G. The district court and any judge thereof shall be immune from any liability or prosecution for issuing an order that requires a defendant to:

1. Attend a treatment program for domestic abusers approved by the District Court;
2. Attend counseling or treatment services ordered as part of any final protective order or for any violation of a protective order: and
3. Attend, complete, and be evaluated before and after attendance by a treatment program for domestic abusers certified by the Attorney General.

H. At no time, under any proceeding, may a person protected by a protective order be held to be in violation of that protective order. Only a defendant against whom a protective order has been issued may be held to have violated the order.

I. In addition to any other penalty specified by this section, the court may order a defendant to use an active, real-time, twenty-four-hour Global Positioning System (GPS) monitoring device as a condition of a sentence. The court may further order the defendant to pay costs and expenses related to the GPS device and monitoring.

Historical Data

LA 10–90, eff. November 13, 1990. Amended LA 12–18, eff. June 13, 2018. Amended LA 31–22, eff. September 22, 2022.