

Cherokee Nation Code Annotated

Title 22: Criminal Procedure

Chapter 4: Proceedings After Commitment

§ 305.2. Agreements to Defer Prosecution- Consideration- Contents- Conditions

Cite as: 22 CNCA § 305.2

A. If an accused qualifies for the deferred prosecution program, the accused and the Cherokee Nation, through the Office of the Attorney General, may execute an agreement whereby the accused agrees to waive any rights to a speedy accusation, a speedy trial, and any statute of limitations, and agrees to fulfill such conditions to which the accused and the Cherokee Nation may agree including, but not limited to, restitution and community services.

B. The accused, as consideration for entering into a deferred prosecution agreement, consents and agrees to a full and complete photographic record of property which was to be used as evidence. The photographic record shall be competent evidence of the property and admissible in any criminal action or proceeding as the best evidence.

C. Property shall be returned to its owner only after the photographic record is made subject to the following conditions:

1. Property, except that which is prohibited by law, shall be returned to its owner after proper verification of title;
2. The return of property to the owner shall be without prejudice to the Nation or to any person who may have a claim against the property; and
3. When property is returned, the recipient shall sign, under penalty of perjury, a declaration of ownership which shall be retained by the appropriate law enforcement agency.

D. As additional consideration for the agreement, the Cherokee Nation shall agree not to file an information if the accused satisfactorily completes the conditions of the agreement.

E. The agreement between the accused and the Cherokee Nation may include provisions whereby the accused agrees to be supervised in the community, either by the Cherokee Nation Office of the Attorney General or other supervising agency. If the accused is required to be supervised pursuant to the terms of the agreement the person shall be required to pay a supervision fee to be established by the supervisory agency. The supervision fee shall be paid to the supervisory agency as required by the rules of the supervisory agency. The supervisory agency shall monitor the person for compliance with the conditions of the agreement. The supervisory agency, if other than the Attorney

General, shall report to the Office of the Attorney General on the progress of the accused, and shall report immediately if the accused fails to report or participate as required by the agreement.

F. The agreement between the parties may require the accused to participate or consult with local service providers, including tribal, federal and state services agencies, colleges, universities, technology center schools, and private or charitable service organizations. When the accused is required to participate or consult with any service provider, a program fee may be required and said fee shall be the responsibility of the accused. Any supervision fee or program fee authorized by this section may be waived, in the discretion of the provider, in whole or in part when the accused is indigent. No person who is otherwise qualified for a deferred prosecution program shall be denied services or supervision based solely on the person's inability to pay a fee or fees.

G. The agreement between the parties may require the accused to pay a victim compensation assessment pursuant to the provisions of Section 142.18 of Title 21 of the Cherokee Nation Code. The amount of the assessment shall be agreed to by the parties and shall be within the amounts specified in Section 142.18 of Title 21 of the Cherokee Nation Code for the offense charged.

H. Any deferred prosecution agreement including, but not limited to, any fee, sliding scale fee, compensation, contract, assessment, or other financial agreement charged or waived by the accused or Cherokee Nation shall be a record open to the public.

Historical Data

LA 18-21, eff. February 22, 2021.