

Cherokee Nation Code Annotated
Title 22: Criminal Procedure
Chapter 16: Judgment and Execution
§ 996. The Powers of the Court
Cite as: 22 CNCA § 996

- A. Probation is provided at the discretion of the Court.
- B. No defendant shall be put on probation without a presentence investigation.
- C. The Court may first consider a program of restitution for the victim as well as imposition of a fine and incarceration of the offender.
- D. Probation, for the purposes of this section, is a procedure by which a defendant found guilty of a crime, or before a judgment of guilty pursuant to 22 CNCA § 991C, whether upon a verdict of plea of guilty or upon a plea of nolo contendere, is released by the Court subject to conditions imposed by the Court and subject to the supervision of Cherokee Nation District Court. Such supervision shall be initiated upon an order of probation from the Court, and shall not exceed two (2) years. In the case of a person convicted of a sex offense, supervision shall not be limited to two (2) years.
- E. If the Court has imposed and entered exception of a fine and placed the defendant on probation, payment of the fine or adherence to the court-established installment schedule shall be a condition of the probation.
- F. If the offender is charged with a criminal offense and the Court has reason to believe that drug or alcohol usage by the offender was a factor leading to the offender's criminal behavior or if the crime is committed by a first time offender, the Court upon the recommendation of the Attorney General and the Cherokee Nation Probation Office and after a presentence investigation may offer the defendant a deferred sentence. The deferred sentence shall be on the condition that the defendant spends the court-ordered amount of time on probation. The Court shall order the probation be supervised or unsupervised.
- G. The person on probation is responsible for payment of any fees and cost to the probation officer. The rules and conditions of probation shall be in writing and signed before a Judge of a Cherokee Nation Court.
- H. The Court may modify, reduce, or enlarge the conditions of a sentence of probation in any time prior to the expiration or termination of the term of probation.

I. The Court shall direct the probation officer provide the defendant with a copy of the rules and conditions of probation that sets forth all the conditions to which the sentence is subject, and that is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

J. Once the Judge has ordered probation the defendant has forty-eight (48) hours to report to the probation officer.

K. If the defendant violates a condition of probation at any time prior to the expiration or termination of the term of probation, the Court shall have a revocation hearing pursuant to 22 CNCA §§ 991A to 991C and upon recommendation of the probation officer. And after such hearing the Court may continue the defendant on probation, with or without extending the term or modifying or enlarging the conditions, or revoke the sentence of probation and re-sentence the defendant.

L. Mandatory revocation for possession of controlled substance or firearm or refusal to comply with drug testing. If the defendant possesses a controlled substance, possesses a firearm and/or refuses to comply with drug testing, thereby violating the conditions of his probation a mandatory revocation hearing pursuant to 22 CNCA § 991C and upon recommendation of the probation officer shall be conducted. The Court may modify or enlarge the conditions of probation or revoke the sentence of probation and resentence the defendant.

Historical Data

LA 28-06, eff. December 20, 2006.