

Cherokee Nation Code Annotated

Title 22: Criminal Procedure

Chapter 16: Judgment and Execution

§ 991A. Sentence—Powers of Court—County community service sentencing programs

Cite as: 22 CNCA § 991A

A. Except as otherwise provided in the Elderly and Incapacitated Victims Protection Program, when a defendant is convicted of a crime, the Court shall either:

1. Suspend the execution of sentence in whole or in part, with or without probation. The Court, in addition, may order the convicted defendant at the time of sentencing or at any time during the suspended sentence to do one or more of the following:

a. To provide restitution to the victim according to a schedule of payments established by the sentencing Court, together with interest upon any pecuniary sum at the rate of twelve percent (12%) per annum, if the defendant agrees to pay such restitution or, in the opinion of the Court, if he is able to pay such restitution without imposing manifest hardship on the defendant or his immediate family and if the extent of the damage to the victim is determinable with reasonable certainty;

b. To reimburse any state or Cherokee Nation agency for amounts paid by the state or Cherokee Nation agency for hospital and medical expenses incurred by the victim or victims, as a result of the criminal act for which such person was convicted, which reimbursement shall be made directly to the Nation agency, with interest accruing thereon at the rate of twelve percent (12%) per annum;

c. To engage in a term of community service without compensation, according to a schedule consistent with the employment and family responsibilities of the person convicted;

d. To pay a reasonable sum into any fund, established pursuant to the provisions of 21 C.N.C.A. section 142.18, and which provides restitution payments by convicted defendants to victims of crimes committed within Cherokee Nation wherein such victim has incurred a financial loss;

e. To confinement in a penal institution or county jail as provided by law or to confinement as provided by law together with a term of post-imprisonment community supervision.

f. To reimburse the court fund for amounts paid to court-appointed attorneys for representing the defendant in the case in which he is being sentenced.

g. To require the defendant to participate in rehabilitative programs, treatment, services, education and/or training as determined by the Court. The cost of said participation shall be the responsibility of the defendant.

h. To require the defendant to submit to periodic testing for alcohol, intoxicating substances, and/or controlled dangerous substances by a qualified laboratory as determined by the Court. The cost of said testing shall be the responsibility of the defendant; and

i. Any other provision specifically ordered by the court.

However, any such order for restitution, community service, education, treatment, testing or confinement in a penal institution, or a combination thereof, shall be made in conjunction with probation and shall be made a condition of the suspended sentence.

2. May impose a fine prescribed by law for the offense, with or without probation or commitment and with or without restitution or service as provided for in this section; and

3. May commit such person for confinement provided for by law with or without restitution as provided for in this section; and

4. In the case of nonviolent offenses, may sentence such person to the community service sentencing program created pursuant to 22 CNCA § 991a–4; and

5. In addition to the other sentencing powers of the Court, in the case of a person charged with an offense contained in 47 C.N.C.A. sections 11-902 through 11-904, the Court may require such person:

a. To participate in an alcohol and drug substance abuse course, pursuant to 47 CNCA § 11–902.2 and 47 CNCA § 11–902.3;

b. To attend a victims impact panel program approved by Cherokee Nation, and to pay a fee to the program to offset the cost of participation by the defendant; and/or

c. To install, at the expense of the person, an ignition interlock device upon every motor vehicle operated by such person.

B. When sentencing a person convicted of a crime, the Court shall first consider a program of restitution for the victim, as well as imposition of a fine or incarceration of the offender.

C. Probation, for purposes of subsection (A) of this section, is a procedure by which a defendant found guilty of a crime is released by the Court subject to rules and conditions imposed by the Court and subject to the supervision of the Court, the Attorney General of the Cherokee Nation, a private supervision provider or other Cherokee Nation department.

Such supervision shall be initiated upon an order of probation from the Court, and shall not exceed two (2) years.

D. Cherokee Nation, or such other agency as the Court may designate, shall be responsible for the monitoring and administration of the restitution and service programs provided for by subparagraphs a, c, and d of paragraph 1 of subsection (A) of this section, and shall ensure that restitution payments are forwarded to the victim and that service assignments are properly performed.

E. 1. Cherokee Nation is hereby authorized, subject to funds available through appropriation by the Council, to contract with counties for the administration of county community service sentencing programs.

2. Any offender eligible to participate in the Program pursuant to this act shall be eligible to participate in a county Program; provided, participation in county-funded Programs shall not be limited to offenders who would otherwise be sentenced to confinement by the Cherokee Nation.

3. Cherokee Nation shall establish criteria and specifications for contracts with counties for such programs.

F. In cases where the person is required by law to register pursuant to the Cherokee Nation Sex Offender Registration and Notification Act, 57 CNCA § 1 et seq., where the individual is sentenced after the effective date of this act in addition to the other sentencing powers of the Court, the Court may require the person to comply with sex offender-specific rules and conditions of probation established by the Marshal Service.

G. In cases where the person is required by law to register pursuant to the Cherokee Nation Sex Offender Registration and Notification Act, where the individual is sentenced after the effective date of this act in addition to the other sentencing powers of the Court the Court may prohibit the person from accessing or using any Internet social networking web site that has the potential or likelihood of allowing the sex offender to have contact with any child who is under the age of eighteen (18) years.

H. A person convicted of an offense or receiving any form of probation for an offense for which registration is required pursuant to the Cherokee Nation Sex Offender Registration and Notification Act, shall submit to deoxyribonucleic acid (DNA) testing for law enforcement identification purposes. Except as required by the Cherokee Nation Sex Offender Registration and Notification Act a deferred judgment does not require submission to deoxyribonucleic acid (DNA) testing.

I. When sentencing a person who has been convicted of a crime that would subject that person to the provisions of the Cherokee Nation Sex Offender Registration and Notification Act neither the Court nor the Prosecuting Attorney shall be allowed to waive or exempt such person from the registration requirements of the Cherokee Nation Sex Offender Registration and Notification Act.

J. In addition to other sentencing powers of the Court in the case of a sex offender sentenced after the effective date of this act and required by law to register pursuant to the Sex Offender Registration and Notification Act, the Court may require the person to participate in a treatment program designed for the treatment of sex offenders during the period of time while the offender is subject to supervision. The treatment program may include polygraph examinations specifically designed for use with sex offenders for purposes of supervision and treatment compliance, and may be administered every six (6) months or more frequently during the period of supervision. The examination shall be administered by a certified licensed polygraph examiner. The treatment program must be approved by the Court. Such treatment shall be at the expense of the defendant based on the defendant's ability to pay.

Historical Data

LA 10-90, eff. November 13, 1990. Amended LA 21-08, eff. November 12, 2008. Amended LA 08-21, eff. February 22, 2021.