

Cherokee Nation Code Annotated

Title 22: Criminal Procedure

Chapter 16: Judgment and Execution

§ 991A-10. Restitution to victim—Determinations by Court

Cite as: 22 CNCA § 991A-10

A. The Court shall at the time of sentencing:

1. Determine whether the property may be restored in kind to the owner or the person entitled to possession thereof;
2. Determine whether defendant is possessed of sufficient skill to repair and restore property damaged;
3. 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, he is able to pay such restitution without imposing manifest hardship on the defendant or his immediate family; and
4. Determine the extent of the out-of-pocket expenses, loss or damage to property and injury to the victim proximately caused by the conduct of the defendant.

B. The Court shall allow credit for property returned in kind, for property damages ordered to be repaired by the defendant, and for property ordered to be restored by the defendant and after granting such credit, the court shall assess the actual out-of-pocket expenses, losses, damages and injuries suffered by the victim.

C. In no event shall a victim be entitled to recover restitution in excess of the actual out-of-pocket expenses, losses, damages and injuries, proximately caused by the conduct of the defendant and restitution shall not be ordered to be paid on account of pain or suffering; provided however, that nothing in this section shall abridge or preclude any victim from the civil right to recover damages by separate civil cause of action brought against the defendant.

D. If the defendant fails to pay restitution in the manner or within the time period specified by the Court, the Court may enter an order directing the sheriff to seize any real or personal property of the defendant to the extent necessary to satisfy the order of restitution and dispose of such property by public sale. All property seized for the purposes of satisfying restitution shall be seized under the procedures established in 22 CNCA § 991A-11.

E. A sentence including provisions of restitution may be modified or revoked by the Court if the offender commits another offense, or the offender fails to make restitution as ordered by the Court, but no sentencing provision to make restitution shall be modified if the Court finds that the offender has had the financial ability to make restitution, and he has willfully refused to do so. If the Court shall find that the defendant has failed to make restitution and that the failure is not willful, the Court may impose an additional period of time within which to make restitution. The length of said additional period shall not be more than two (2) years. The court shall retain all of the incidents of the original sentence, including the authority to revoke or further modify the sentence if the conditions of payment are violated during such additional period.

Historical Data

LA 10–90, eff. November 13, 1990.