

Title 22 Amendments

§ 19. Rules of evidence

The Federal Rules of Evidence shall be used in Cherokee Nation courts in all matters of a criminal nature, unless superseded by a Cherokee Nation Rule of Evidence.

§ 40. Definitions

1. "Domestic violence" means the occurrence of one or more of the following acts between family or household members or persons involved in a dating relationship:

- a. causing or attempting to cause physical harm;
- b. threatening another with physical harm.; or
- c. violation of any other domestic violence laws of the Cherokee Nation.

2. "Family or household members" means spouses, ex-spouses, parents, children, persons otherwise related by blood, or marriage, or adoption, or persons living in the same household or who formerly shared the same residence. This shall include the elderly and handicapped disabled;

3. "Dating relationship" means a person who is or has been in a social relationship of a romantic or intimate nature with another as determined by:

- a. the length of the relationship;
- b. the type of relationship; and
- c. the frequency of interaction between the persons involved in the relationship.

4. "Protection Order" means:

- a. any injunction, restraining order or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and
- b. any temporary or final order issued by a civil or criminal court, whether obtained by a filing and independent action or as a pendent lite order in another proceeding, if the civil or criminal court order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

§ 40.2. Victim of domestic violence-Notice of rights

Upon the preliminary investigation of any crime involving domestic violence, it shall be the duty of the first peace officer who interviews the victim of the domestic violence, to inform the victim of the twenty-four-hour statewide telephone communication service established by the State of Oklahoma and to give notice to the victim of certain rights. The notice shall consist of handing

such victim the following statement:

"As a victim of domestic violence, you have certain rights. These rights are as follows:

"1. The right to request that charges be pressed against your assailant;

"2. The right to request protection from any harm or threat of harm arising out of your cooperation with law enforcement and prosecution efforts as far as facilities are available and to be provided with information on the level of protection available; and

"3. The right to be informed of financial assistance and other social services available as a result of being a victim, including information on how to apply for the assistance and services."

§ 40.3. Victims not to be discouraged from pressing charges-Warrantless arrest of certain persons

A. A peace officer shall not discourage a victim of rape, forcible sodomy or domestic violence from pressing charges against the assailant of the victim.

B. A peace officer may arrest without a warrant a person anywhere, including his place of residence, if the peace officer has probable cause to believe the person within the preceding seventy-two (72) hours has committed an act of domestic abuse violence as defined in Chapter 46 of Title 21, although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this section without first observing a recent physical injury to, or an impairment of the physical condition of, the alleged victim.

§ 60.1. Definitions

As used in this act and in the Domestic Abuse Reporting Act:

1. "Domestic violence" means the occurrence of one or more of the following acts between family or household members or persons involved in a dating relationship:

a. causing or attempting to cause serious physical harm; or

b. threatening another with imminent serious physical harm; and

c. includes but is not limited to: Assault, as defined by 21 CNCA § 641; battery, as defined by 21 CNCA § 642; rape, as defined by 21 CNCA § 1111; and aggravated assault and battery, pursuant to 21 CNCA § 646.

2. "Family or household members" means spouses, former spouses, parents, children, persons otherwise related by blood, marriage, or adoption, or persons living in the same household or who formerly lived in the same household. This shall include the elderly and handicapped.

3. "Dating relationship" means a person who is or has been in a social relationship of a romantic or intimate nature with another as determined by the length of the relationship,

the type of relationship, and the frequency of interaction between the persons involved in the relationship.

§ 60.2. Protective order-Petition: form; filing fee; preparation

A. A victim of domestic abuse, or any adult household member on behalf of any other family or household member who is a minor or incompetent, may seek relief under the provisions of this act by filing a petition for protective order with the District Court.

B. The petition forms shall be provided by the Clerk of the Court and shall be in substantially the following form:

IN THE DISTRICT COURT IN AND FOR THE CHEROKEE NATION

_____)	
Plaintiff)	
)	
vs.)	Case No. _____
)	
_____)	
Defendant)	

PETITION FOR PROTECTIVE ORDER

Plaintiff, being sworn, states: (Check one or more)

___ The defendant caused or attempted to cause serious physical harm to ____.

___ The defendant threatened ____ with imminent serious physical harm.

2. The incident causing the filing of this petition occurred on or about ____.

(date)

(Describe what happened:)

3. The victim and the defendant are related as follows:

(check one)

NOTICE: This document is provided as a courtesy. Recent amendments to the Cherokee Nation Code have not been officially codified. To ensure accuracy, anyone using this document should compare it to the official amendments available at: <https://cherokee.legistar.com/Legislation.aspx>

- married
- divorced
- parent and child
- persons related by blood
- persons related by marriage
- persons living in the same household
- persons formerly living in the same household
- persons in a dating relationship or formerly in a dating relationship

4. (Answer this question only if the plaintiff is filing on behalf of someone else, minor or incompetent)

The plaintiff and the victim are related as follows:

- married
- divorced
- parent and child
- persons related by blood
- persons related by marriage
- persons living in the same household
- persons formerly living in the same household
- persons in a dating relationship or formerly in a dating relationship

5. (Check A or B)

(A) The victim is in immediate and present danger of abuse from the defendant and an emergency ex parte order is necessary to protect the victim from serious harm. The plaintiff requests the following relief in the emergency ex parte order: (check one or more)

- order the defendant not to abuse or injure the victim.
- order the defendant not to visit, assault, molest, harass or otherwise interfere with the victim.
- order the defendant not to threaten the victim.
- order the defendant to leave the residence located at _____ on or before _____.
- (describe other relief that plaintiff requests)

(B) The plaintiff does not request an emergency ex parte order.

6. Plaintiff requests the following order to be made by the court following notice to the defendant and a hearing: (check one or more)

- order the defendant not to abuse or injure the victim.
- order the defendant not to visit, assault, molest, harass or otherwise interfere with the victim.
- order the defendant not to threaten the victim.
- order the defendant to leave the residence located at _____ on or before _____
- (describe other relief that plaintiff requests)
- order the defendant to pay attorney fees of the plaintiff in the sum of _____ on or before

_____.
____ order the defendant to pay the court costs of this action in the sum of ____ on or before
_____.

7. Victim is a resident of the county wherein this petition is filed.

8. Plaintiff has stated the truth, the whole truth and nothing but the truth in this petition.

This court has jurisdiction over the parties and subject matter and meets all full faith and credit requirements of the Violence Against Women Act, 18 U.S.C. 2265. The defendant was afforded notice or this order has been issued ex parte due to immediate danger and the defendant has been given a timely opportunity to be heard or will be given an opportunity to be heard in a timely manner as provided by the law of this jurisdiction. The filing or non-filing of criminal charges and the prosecution of the case shall not be determined by a person who is protected by this order, but shall be determined by the Prosecutor. No person, including a person who is protected by this order, may give permission to anyone to ignore or violate any provision of this order. During the time in which this order is valid, every provision of this order is in full force and effect unless a Court changes the order. This order shall be in effect for three (3) years unless extended, modified, vacated or rescinded by the Court. A violation of this order is punishable by a fine of up to Five Thousand Dollars (\$5,000.00) or imprisonment of not more than one (1) year, or both such fine and imprisonment. Possession of a firearm or ammunition by a defendant while this order is in effect may subject the defendant to further prosecution for violation of Cherokee Nation law even if this order does not elsewhere specifically prohibit the defendant from possessing a firearm or ammunition.

Plaintiff

Witness my hand and seal,

affixed on the ____ day of _____, 20 ____.

Court Clerk, Deputy Court Clerk, or Notary Public

C. No filing fee shall be charged the plaintiff at the time the petition is filed. The Court may assess court costs and filing fees to either party at the hearing on the petition.

D. The plaintiff shall prepare the petition as set forth above or, at the request of the plaintiff, the Clerk of the Court or the victim-witness coordinator shall prepare or assist the plaintiff in preparing the same.

§ 60.3. Emergency ex parte order-Hearing

If a plaintiff requests an emergency ex parte order pursuant to 22 CNCA § 60.2, the Court shall

hold an ex parte hearing on the same day the petition is filed. The Court may, for good cause shown at the hearing, issue any emergency ex parte order that it finds necessary to protect the victim from immediate and present danger of domestic abuse. The emergency ex parte order shall be in effect until after the full hearing is conducted. An emergency ex parte order authorized by this section may include the following:

1. An order to the defendant not to abuse or injure the victim;
2. An order to the defendant not to visit, assault, molest, harass or otherwise interfere with the victim;
3. An order to the defendant not to threaten the victim; or
4. An order to the defendant to leave the residence.

§ 60.4. Service of process-Ex parte orders-Hearing-Protective orders-Period of relief

A. A copy of the petition, notice of hearing and a copy of any ex parte order issued by the Court shall be served upon the defendant in the same manner as a summons. Ex parte orders shall be given priority for service by the sheriff's office and can be served twenty-four (24) hours a day.

B. Within ten (10) days of the filing of the petition the Court shall schedule a full hearing on the petition, regardless of whether an emergency ex parte order has been previously issued, requested or denied.

C. At the hearing, the Court may grant any protective order to bring about the cessation of domestic abuse against the victim.

D. Protective orders authorized by this section may include the following:

1. An order to the defendant not to abuse or injure the victim;
2. An order to the defendant not to visit, assault, molest, harass or otherwise interfere with the victim;
3. An order to the defendant not to threaten the victim;
4. An order to the defendant to leave the residence;
5. An order awarding attorney fees; and
6. An order awarding court costs.

E. When necessary to protect the victim and when authorized by the Court, protective orders granted pursuant to the provisions of this section may be served upon the defendant by a peace officer, marshal, sheriff, constable, or policeman or other officer whose duty it is to preserve the peace, as defined by 21 CNCA § 99.

F. Any protective order issued pursuant to subsection (C) of this section shall not be for a fixed

period but shall be continuous until modified or rescinded upon motion by either party or if the Court approves any consent agreement entered into by the plaintiff and defendant. No order issued under the Protection from Domestic Abuse Act shall in any manner affect title to real property.

§ 60.5. Copies of ex parte or final protective orders to be sent to appropriate law enforcement agencies

Within twenty-four (24) hours of the return of service of any ex parte or final protective order, the Clerk of the issuing court shall send certified copies thereof to all appropriate law enforcement agencies designated by the plaintiff.

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

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. 1. 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).

2. 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.

3. 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.

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.

§ 60.7. Statewide validity of orders

All orders issued pursuant to the provisions of the Domestic Abuse Act shall have statewide validity, unless specifically modified or terminated by a Judge of the District Court.

§ 70. Special Domestic Violence Criminal Jurisdiction

A. The Cherokee Nation hereby exercises “Special Domestic Violence Criminal Jurisdiction” as defined within 25 U.S.C. 1304, subject to applicable exceptions defined below.

B. Special domestic violence criminal jurisdiction shall apply to a non-Indian offender for criminal conduct in violation of the laws of the Cherokee Nation in one or more of the following categories:

1. Domestic violence when violence is committed by:

- a. A current or former spouse or intimate partner of the victim;
- b. A person with whom the victim shares a child in common;
- c. A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; or
- d. A person similarly situated to a spouse of the victim under laws of the Cherokee Nation

2. Dating violence;

3. Violation of a protection order which:

- a. Prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person;
- b. Is enforceable by the Cherokee Nation;
- c. Was issued against the defendant; and
- d. Is consistent with full faith and credit requirements set out in 18 U.S.C. 2264(b).

C. The Cherokee Nation hereby declares its special domestic violence criminal jurisdiction over a non-Indian if the offender:

- 1. Resides within the jurisdiction of the Cherokee Nation; or
- 2. Is employed within the jurisdiction of the Cherokee Nation; or

3. Is a spouse, intimate partner, or dating partner of:
 - a. A citizen of the Cherokee Nation; or
 - b. An Indian who resides within the jurisdiction of the Cherokee Nation
- D. The Cherokee Nation may not exercise special domestic violence criminal jurisdiction over an alleged offence when the victim is non-Indian or the crime takes place outside the jurisdictional boundaries of the tribe.

§ 70.1 Special Domestic Violence Court

There is hereby created within the Cherokee Nation District Court a Special Domestic Violence Court for the prosecution of defendants, non-Indian and Indian, accused of crimes of domestic violence, dating violation and/or violation of a protection order within the jurisdiction boundaries of the Cherokee Nation. This Court shall be subject to all criminal procedures of the Cherokee Nation to the extent they do not conflict with the provisions contained within this chapter. All proceedings under this chapter shall be recorded.

§70.2 Rights Applicable to Defendants

- A. In all proceedings in which the Tribal Court is exercising Special Domestic Violence Criminal Jurisdiction, the rights enumerated in the Cherokee Nation Code Annotated shall be provided to all defendants.
- B. In proceedings in which the Special Domestic Violence Criminal Jurisdiction is being exercised, a defendant charged under Special Domestic Violence Jurisdiction has a right to a trial by jury of six fair and impartial jurors drawn from the community.
 1. Jury Pool. A list of eligible jurors shall be prepared by the Court. The eligible juror list shall be updated to reflect a fair cross-section of the community, and not systematically exclude any distinctive group in the community, including non-Indians. Jurors shall be 18 years of age or older and, notwithstanding any other law of the Cherokee Nation or any of its agencies, shall be chosen from the following persons:
 - a. Tribal members living within the jurisdiction of the Cherokee Nation;
 - b. Residents living within the jurisdiction of the Cherokee Nation;
 - c. Employees of the Cherokee Nation or any of its entities, corporations, or agencies who have been employed by the Cherokee Nation for at least one continuous year prior to being called as a juror.
- C. Notice - Any defendant detained under the provisions of this subsection, shall be notified of their right to file a petition for a writ of habeas corpus in a court of the United States.

§ 151. Limitations on actions for criminal violations

- A. A prosecution for the following crimes may be commenced at any time:
 - 1. Murder in the first or second degree;
 - 2. manslaughter
 - 3. rape;
 - 4. forcible sodomy;
 - 5. sexual abuse;
 - 6. sexual abuse of a minor;
 - 7. incest;
 - 8. burglary;
 - 9. robbery;
 - 10. child molestation;
 - 11. kidnapping;
 - 12. arson;
 - 13. conspiracy; and
 - 14. forgery.

- B. Prosecutions for the crimes of bribery, embezzlement of public money, bonds, securities, assets, or property of the Cherokee Nation or other subdivision thereof, or if any misappropriation of public money, bonds, securities, assets, or property of the Cherokee Nation or other subdivision thereof, falsification of public records of the Cherokee Nation or other subdivision thereof, and conspiracy to defraud the Cherokee Nation or other subdivision thereof in any manner or for any purpose shall be commenced within ten (10) years after the discovery of the crime.

- C. Except as otherwise provided in this section, prosecution for a crime or a felony other than those crimes enumerated in this section is barred if not commenced within ten (10) years after the crime is committed.

- D. Prosecutions for sodomy, lewd or indecent proposals or acts against children, and the involvement of minors in pornography shall be commenced within ten (10) years after the discovery of the crime.

- E. Prosecutions for criminal violations of any Cherokee Nation tax laws shall be commenced within five (5) years after the commission of such violation.

- F. Prosecutions for crimes of false or bogus checks, shall be commenced within five (5) years after the commission of such offense.

- G. Except as otherwise provided in this section, any criminal offense that is classified as a misdemeanor is barred if not commenced within three (3) years after the crime is committed.

- H. No statute of limitations shall extend to any person fleeing from justice.

- I. As used in this section, "discovery" means the date that a physical or sexually related crime involving a victim under the age of eighteen (18) years of age is reported to a law enforcement agency, up to and including one (1) year from the eighteenth birthday of the child.

§ 154. Indictments and information dismissed after period of limitations

Whenever any criminal offense is dismissed by a separate sovereign because that sovereign did not have jurisdiction to prosecute, and the dismissal occurs after the expiration of the period prescribed by the applicable Cherokee Nation statutes of limitations, an information charging the criminal offense may be filed in the Cherokee Nation within 180 days of the later of two events: 1) the date of the dismissal of the felony charge; or 2) if appealed, the date the separate sovereign's appellate court enters a final decision ordering the dismissal. This section does not permit the filing of a new information charging a criminal offense where the reason for the dismissal was the failure of the separate sovereign to file the information within the period prescribed by its own applicable statute of limitations.

§ 155. Judgment and Sentences vacated after period of limitations

Whenever any criminal offense was prosecuted by a separate sovereign, for which a defendant was convicted, sentenced, and punished under the laws of the separate sovereign, and the convictions and sentences were later vacated for lack of jurisdiction after the expiration of the period prescribed by the applicable Cherokee Nation statutes of limitations, an information charging the criminal offense may be filed in the Cherokee Nation within 180 days of the final order vacating the Judgment and Sentence. This section does not permit the filing of a new information charging a criminal offense where the reason for the dismissal was the failure of the separate sovereign to file the information within the period prescribed by its own applicable statute of limitations.

§ 305.1. Deferred Prosecution for Felonies and Misdemeanors

A. Before the filing of an information against a person accused of committing a crime, the Cherokee Nation, through the Office of the Attorney General, may agree with an accused to defer the filing of a criminal information for a period not to exceed three (3) years.

B. The Cherokee Nation may include any person in a deferred prosecution program if it is in the best interests of the accused and not contrary to the public interest. The Office of the Attorney General may consider the following factors when considering whether to include an accused in the deferred prosecution program. The factors are:

1. Whether the Cherokee Nation has sufficient evidence to achieve conviction;
2. The nature of the offense with priority given to first offenders and nonviolent crimes;
3. Any special characteristics of the accused;
4. Whether the accused will cooperate and benefit from a deferred prosecution program;
5. Whether available programs are appropriate to the accused person's needs;
6. Whether the services for the accused are more readily available from the community or from the corrections system;
7. Whether the accused constitutes a substantial danger to others;

8. The impact of the deferred prosecution on the community;
9. The recommendations of the law enforcement agency involved in the case;
10. The opinions of the victim; and
11. Any mitigating or aggravating circumstances.

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

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.

§305.3. Termination of Deferred Prosecution Agreement

A. Both the Cherokee Nation and the accused may mutually terminate the deferred prosecution at any time, and the case shall proceed as if there had been no agreement. If the Cherokee Nation makes the termination decision unilaterally, it shall only do so in light of all the relevant circumstances of the case. Arrest of the accused for a subsequent offense shall not automatically terminate the agreement. If the Cherokee Nation should decide to terminate the agreement, it shall:

1. Send a written notice of termination to the accused and the attorney for the accused, if any, explaining the reasons for the termination; and
2. Disclose to the accused or the attorney for the accused the evidence supporting the decision to terminate;

B. If an agreement is terminated by the Cherokee Nation and the accused is subsequently tried before a jury, the court shall instruct the jury not to consider any delay in prosecution while the accused was participating in the deferred prosecution program.

§305.4. Completion of Programs- Records

If the accused completes the program agreed upon, the Cherokee Nation shall not file the charges against the accused. The records of the accused shall be sealed and not be released or viewed except on a limited basis by law enforcement or prosecution personnel for the purposes of determining if the accused has been diverted. The Office of the Attorney General shall take all necessary measures to ensure that all of the records of the person remain confidential.

§305.5. Information - Release or Disclosure - Confidentiality - Admissibility as Evidence - Violations – Penalties

A. Information received and collected by any service agency while the accused participates in a deferred prosecution program shall not be released to any agency or individual that will use the information for dissemination to the general public or be used by a law enforcement agency for the purposes of surveillance and investigation.

B. If the deferred prosecution program is terminated before successful completion of the

agreement, no information obtained during the participation of the accused in the deferred prosecution program shall be admissible in any subsequent proceeding to the disadvantage of the accused, except if the information could have been routinely gathered in the police investigation of the crime of the accused.

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

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.

§ 991B. Revocation in whole or in part of suspended sentence—Hearing—Review

A. Whenever a sentence has been suspended by the Court after conviction of a person for any crime, the suspended sentence of said person may not be revoked, in whole or in part, for any cause unless a petition setting forth the grounds for such revocation is filed by the Prosecuting Attorney with the Clerk of the sentencing Court and competent evidence justifying the revocation of said suspended sentence is presented to the Court at a hearing to be held for that purpose within

twenty (20) days after the entry of the plea of not guilty to the petition, unless waived by both the Cherokee Nation and the defendant.

B. 1. Where one of the grounds for revocation is the failure of the defendant to make restitution as ordered, Cherokee Nation or the Court Clerk shall forward to the Prosecuting Attorney all information pertaining to the defendant's failure to make timely restitution as ordered by the Court, and said Prosecuting Attorney shall file a petition setting forth the grounds for revocation.

2. The defendant ordered to make restitution can petition the Court at any time for remission or a change in the terms of the order of restitution if he undergoes a change of condition which materially affects his ability to comply with the Court's order.

3. At the hearing, if one of the grounds for the petition for revocation is the defendant's failure to make timely restitution as ordered by the Court, the Court will hear evidence and if it appears to the satisfaction of the Court from such evidence that the terms of the order of restitution create a manifest hardship on the defendant or his immediate family, cancel all or any part of the amount still due, or modify the terms or method of payment.

C. The Court may revoke a portion of the sentence and leave the remaining part not revoked, but suspended for the remainder of the term of the sentence, and under the provisions applying to it. The person whose suspended sentence is being considered for revocation at said hearing shall have the right to be represented by counsel, to present evidence in his own behalf and to be confronted by the witnesses against him. Any order of the Court revoking such suspended sentence, in whole or in part, shall be subject to review on appeal, as in other appeals of criminal cases.

§ 991C. Deferred judgment procedure

A. Upon a verdict or plea of guilty or upon a plea of nolo contendere, but before a judgment of guilt, the Court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place the defendant on probation under the supervision of the Court, the Attorney General of the Cherokee Nation, a private supervision provider or other Cherokee Nation department under such conditions of probation as may be prescribed by the Court. The Court shall first consider restitution, administered in accordance with the provisions pertaining thereto, among the various conditions of probation it may prescribe. The Court may also consider ordering the defendant to

1. Pay court costs;
2. Pay an assessment in lieu of any fine authorized by law for the offense;
3. Pay any other assessment or cost authorized by law;
4. Engage in a term of community service without compensation, according to a schedule consistent with the employment and family responsibilities of the defendant;
5. County jail confinement for a period not to exceed ninety (90) days or the maximum amount of jail time provided for the offense, if it is less than ninety (90) days;
6. Pay an amount as reimbursement for reasonable attorney fees, to be paid into the court fund, if a court-appointed attorney has been provided to the defendant;
7. Be supervised in the community for a period not to exceed eighteen (18) months, unless

a petition alleging violation of any condition of deferred judgment is filed during the period of supervision. As a condition of any supervision, the defendant shall be required to pay a supervision fee of Forty Dollars (\$40.00) per month. The supervision fee shall be waived in whole or part by the supervisory agency when the accused is indigent. No person shall be denied supervision based solely on the inability of the person to pay a fee;

8. Pay into the court fund a monthly amount not exceeding Forty Dollars (\$40.00) per month during any period during which the proceedings are deferred when the defendant is not to be supervised in the community. The total amount to be paid into the court fund shall be established by the court and shall not exceed the amount of the maximum fine authorized by law for the offense;

9. Make other reparations to the community or victim as required and deemed appropriate by the court;

10. Order any conditions which can be imposed for a suspended sentence pursuant to paragraph 1 of subsection A of Section 991A of this title; or

11. Any combination of the above provisions.

Further, the Court may, in the case of a person before the Court for an offense contained in 47 C.N.C.A. sections 11-902 through 11-904 require such person to participate in one or all of the following:

1. An alcohol and drug substance abuse course, pursuant to 47 CNCA § 11–902.2 and 47 CNCA §11–902.3;

2. A victims' impact panel program approved by the Cherokee Nation and to pay a fee to the victims' impact panel program to offset the cost of participation by the defendant; and/or

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

B. Upon completion of the probation term, which probation term under this procedure shall not exceed five (5) years, the defendant shall be discharged without a court judgment of guilt, and the verdict or plea of guilty or plea of nolo contendere shall be expunged from the record and said charge shall be dismissed with prejudice to any further action.

C. Upon violation of the conditions of probation, the Court may enter a judgment of guilt and proceed as provided in 22 CNCA § 991A.

D. The deferred judgment procedure described in this section shall only apply to defendants not having been previously convicted of a crime under the laws of Cherokee Nation which if committed under the laws of the State of Oklahoma would be a felony.

E. The deferred judgment procedure described in this section shall not apply to defendants found guilty or who plead guilty or nolo contendere to a sex offense requiring the defendant to register pursuant to the Sex Offenders Registration and Notification Act, 57 CNCA § 1 et seq.

§ 991D. Probation fee—Restitution administration fee Fees—Revolving Fund Established

A. A Court granting probation shall fix a fee of Forty Dollars (\$40.00) per month to be paid by the probationer to Cherokee Nation during the probationary period, unless in the judgment of the Court, such a fee would impose an unnecessary hardship on the probationer. In such hardship cases, the Court may expressly waive the fee. The Court shall make payment of the fee a condition of granting or continuing the probation, and such condition shall be imposed whether the probation is incident to the suspending of execution of a sentence or incident to the suspending of imposition of a sentence or the deferring of proceedings after a verdict or plea of guilty, but such condition shall not be imposed unless probationary services are made available to the defendant.

1. If the defendant is to be supervised by a private supervision provider, the defendant shall pay the probation fee to the provider in lieu of payment to Cherokee Nation for supervision services.
2. The private supervision provider shall be responsible for advising the Court if the defendant fails to pay such supervision fee.
3. The private supervision provider shall be responsible for reporting to the Court the compliance or non-compliance of the defendant with the rules and conditions of probation.

B. If restitution is ordered by the Court, the probation fee will be paid in addition to the restitution so ordered. In addition to the restitution payment and probation fee, a reasonable fee per payment is to be paid to Cherokee Nation to cover the expenses of administration of such restitution. If, in the judgment of the Court, such a fee would impose an unnecessary hardship on the offender, the fee may be waived.

C. The defendant is also responsible for the cost of any court imposed treatment, services, education and/or alcohol and drug testing.

D. There is hereby established a revolving fund to be designated the "Criminal Supervision Revolving Fund" ("Fund") which shall be held and administered by the Treasurer in accordance with the stated purposes of this section. The Fund shall be authorized by the Tribal Council as a continuing fund, which shall initially receive a direct appropriation to begin the Fund and thereafter, shall receive a direct continuing appropriation from all monies accruing to the credit of said Fund. Such monies are hereby appropriated and may be budgeted and expended by the Treasurer for the purposes listed herein. Such purposes include payment of costs and fees associated with necessary testing of offenders, incentives for program compliance, restitution, and any other lawful expenses associated with supervision of offenders within the Cherokee Nation. Expenditures from said fund shall be made by the Treasurer against claims filed as prescribed by policies created by the Attorney General for approval and payment. Such policies shall be subject to approval by the Principal Chief. The fund shall be maintained as authorized by law for investments by the Treasurer. The interest earned by any investment of monies from the fund shall be credited to the fund for expenditure as provided by herein.

§ 991F. Definitions

A. For the purposes of any provision of Title 22 of the Cherokee Nation Code relating to criminal sentencing and restitution orders:

1. "Restitution" means the sum to be paid by the defendant to the victim of the criminal act to compensate that victim for up to three times the amount of the economic loss suffered as a direct result of the criminal act of the defendant;
2. "Victim" means any person, partnership, corporation or legal entity that suffers an

economic loss as a direct result of the criminal act of another person;

3. "Economic loss" means actual financial detriment suffered by the victim consisting of medical expenses actually incurred, damage to or loss of real and personal property and any other out-of-pocket expenses, including loss of earnings, reasonably incurred as the direct result of the criminal act of the defendant. No other elements of damage shall be included as an economic loss for purposes of this section.

B. In all criminal prosecutions and juvenile proceedings in the Cherokee Nation, when the court enters an order directing the offender to pay restitution to any victim for economic loss or to pay to the Nation any fines, fees or assessments, the order, for purposes of validity and collection, shall not be limited to the maximum term of imprisonment for which the offender could have been sentenced, nor limited to any term of probation, parole, or extension thereof, nor expire until fully satisfied. The court order for restitution, fines, fees or assessments shall remain a continuing obligation of the offender until fully satisfied, and the obligation shall not be considered a debt, nor shall the obligation be dischargeable in any bankruptcy proceeding. The court order shall continue in full force and effect with the supervision of the Cherokee Nation until fully satisfied, and the Nation shall use all methods of collection authorized by law.

C. 1. Upon conviction for any crime wherein property has been stolen, converted or otherwise unlawfully obtained, or its value substantially decreased as a direct result of the crime, or wherein the crime victim suffered injury, loss of income, or out-of-pocket loss, the individuals criminally responsible shall be sentenced to make restitution. Restitution may be ordered in addition to the punishments prescribed by law.

2. The court shall order full restitution based upon the following considerations:

a. the nature and amount of restitution shall be sufficient to restore the crime victim to the equivalent economic status existing prior to the losses sustained as a direct result of the crime, and may allow the crime victim to receive payment in excess of the losses sustained; provided, the excess amount of restitution shall not be more than treble the actual economic loss incurred, and

b. the amount of restitution shall be established regardless of the financial resources of the offender.

3. The court:

a. may direct the return of property to be made as soon as practicable and make an award of restitution in the amount of the loss of value to the property itself as a direct result of the crime, including out-of-pocket expenses and loss of earnings incurred as a result of damage to or loss of use of the property, the cost to return the property to the victim or to restore the property to its pre-crime condition whichever may be appropriate under the circumstances,

b. may order restitution in a lump sum or by such schedules as may be established and thereafter adjusted by agreement consistent with the order of the court,

c. shall have the authority to amend or alter any order of fines, costs and/or restitution made pursuant to this section providing that the court shall state its reasons and conclusions as a matter of record for any change or amendment to any previous order,

d. may order interest upon any ordered restitution sum to accrue at the rate of

twelve percent (12%) per annum until the restitution is paid in full. The court may further order such interest to be paid to the victims of the crime or proportion the interest payment between the victims and the court fund, in the discretion of the court, and

e. shall consider any pre-existing orders imposed on the defendant, including, but not limited to, orders imposed under civil and criminal proceedings.

D. If restitution to more than one person, agency or entity is set at the same time, the court shall establish the following priorities of payment:

1. The crime victim or victims; and
2. Cherokee Nation and any other government agency which has provided reimbursement to the victim as a result of the offender's criminal conduct.

E. The Attorney General's Office shall present the crime victim's restitution claim to the court at the time of the sentencing of the offender or the restitution provisions shall be included in the written plea agreement presented to the court, in which case, the restitution claim shall be reviewed by the judge prior to acceptance of the plea agreement.

F. The court shall conduct such hearings or proceedings as it deems necessary to set restitution and payment schedules at the time of sentencing or may bifurcate the sentencing and defer the hearing or proceedings relating to the imposition of restitution as justice may require. Amendments or alterations to the restitution order may be made upon the court's own motion, petition by the victim or petition by the offender.

G. An offender who files a meritless or frivolous petition for amendment or alteration to the restitution order shall pay the costs of the proceeding on the petition and shall have added to the existing restitution order the additional loss of earnings and out-of-pocket loss incurred by the crime victim in responding to the petition.

H. If a defendant who is financially able refuses or neglects to pay restitution as ordered by this section, payment may be enforced:

1. By contempt of court as provided in subsection A of Section 566 of Title 21 of the Cherokee Nation Code with imprisonment or fine or both;
2. In the same manner as prescribed in subsection N of this section for a defendant who is without means to make such restitution payment; or
3. Revocation of the criminal sentence if the sentence imposed was a suspended or deferred sentence or a community sentence.

I. If the defendant is without means to pay the restitution, the judge may direct the total amount due, or any portion thereof, to be entered upon the court minutes and to be certified in the district court where it shall then be entered upon the district court judgment docket and shall have the full force and effect of a district court judgment in a civil case. Thereupon the same remedies shall be available for the enforcement of the judgment as are available to enforce other judgments; provided, however, the judgment herein prescribed shall not be considered a debt nor dischargeable in any bankruptcy proceeding.

J. Whenever a person has been ordered to pay restitution as provided in this section or any section of the Cherokee Nation Code for a criminal penalty, the judge may order the defendant to a term of community service, with or without compensation, to be credited at a rate of Ten Dollars

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(\$10.00) per day against the total amount due for restitution. If the defendant fails to perform the required community service authorized by this subsection or if the conditions of community service are violated, the judge may impose a term of imprisonment not to exceed five (5) days in the county jail for each failure to comply.

K. Nothing in subsections H through J of this section shall be construed to be additions to the original criminal penalty, but shall be used by the court as sanctions and means of collection for criminal restitution orders and restitution orders that have been reduced to judgment.