Council of the Cherokee Nation

Cherokee Nation Tribal Council
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TITLE 22 CRIMINAL PROCEDURE (INCLUDED 2019 POCKET PART + AMENDMENTS: SEE HEADER)

*NOTICE: This document is provided as a courtesy. This document includes amendments to the Title 22 2019 Pocket Part as listed below and have not yet 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>

Includes: LA 29-20, LA 08-21, LA 20-21, LA 30-21, LA 52-21, and LA 31-22

TITLE 22

CRIMINAL PROCEDURE

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CHAPTER 1

GENERAL PROVISIONS

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§ 1. Title of code

This title shall be known as the Code of Criminal Procedure of Cherokee Nation.

LA 10-90, eff. November 13, 1990.

§ 2. Information necessary, except when

Every public offense must be prosecuted by information except where proceedings are had for the removal of civil officers of this Nation.

LA 10-90, eff. November 13, 1990.

§ 3. Code not retroactive

No part of this code is retroactive unless expressly so declared.

LA 10-90, eff. November 13, 1990.

§ 4. Construction of words

Unless when otherwise provided, words used in this code in the present tense include the future as well as the present. Words used in the masculine comprehend as well the feminine and neuter. The singular number includes the plural, and the plural the singular. And the word person includes a corporation as well as a natural person.

LA 10-90, eff. November 13, 1990.

§ 5. Writing includes printing

The term writing includes printing.

LA 10-90, eff. November 13, 1990.

§ 6. Oath includes affirmation

The term oath includes an affirmation.

LA 10-90, eff. November 13, 1990.

§ 7. Signature includes what

The term signature includes a mark when the person cannot write, his name being written near it, and the mark being witnessed by a person who writes his own name as a witness, except to an affidavit or deposition, or a paper executed before a judicial officer, in which case the attestation of the officer is sufficient.

LA 10-90, eff. November 13, 1990.

§ 8. Application of statutes

This title applies to criminal actions and to all other proceedings in criminal cases which are herein provided for.

LA 10-90, eff. November 13, 1990.

§ 9. Common law prevails, when

The procedure, practice and pleadings in the Courts of record of this Nation, in criminal actions or in matters of criminal nature, not specifically provided for in this code, shall be in accordance with the procedure, practice and pleadings of the common law.

LA 10-90, eff. November 13, 1990.

§ 10. Criminal action defined

The proceeding by which a party charged with a public offense is accused and brought to trial and punishment, is known as a criminal action.

LA 10-90, eff. November 13, 1990.

§ 11. Prosecution by Nation against person charged

A criminal action is prosecuted in the name of Cherokee Nation as a party, against the person charged with the offense.

LA 10-90, eff. November 13, 1990.

§ 12. Party defendant

The party prosecuted in a criminal action is designated in this title as the defendant.

LA 10-90, eff. November 13, 1990.

§ 13. Right to speedy trial, counsel and witnesses

In a criminal action the defendant is entitled:

1. To a speedy and public trial.

2. To be allowed counsel, as in civil actions, or to appear and defend in person and with counsel; and

3. To produce witnesses on his behalf, and to be confronted with the witnesses against him in the presence of the Court.

LA 10-90, eff. November 13, 1990.

§ 14. Former jeopardy

No person can be subjected to a second prosecution for a public offense for which he has once been prosecuted and duly convicted or acquitted, except as hereinafter provided for new trials.

LA 10-90, eff. November 13, 1990.

§ 15. Testimony against one's self-Restraint during trial and prior to conviction

No person can be compelled in a criminal action to be witness against himself; nor can a person charged with a public offense be subjected before conviction to any more restraint than is necessary for his detention to answer the charge, and in no event shall he be tried before a jury while in chains or shackles.

LA 10-90, eff. November 13, 1990.

§ 16. Jury trial-Exceptions

No person can be convicted of a public offense, unless by the verdict of a jury, accepted and recorded by the court, or upon a plea of guilty, or upon final judgment for or against him upon a demurrer to the information.

LA 10-90, eff. November 13, 1990.

§ 17. Custody and distribution of proceeds from sale of rights arising from criminal act

A. Every person who has been charged, convicted, has pled guilty or has pled nolo contendere to any crime hereinafter referred to as defendant who contracts to reenact such crime by the use of any movie, book, newspaper, magazine article, radio or television presentation, live entertainment of any kind, or from the expression of his thoughts, opinions or emotions regarding such crime, shall pay to the district court wherein the charges were filed any money or thing of value contracted to be paid to the defendant. The District Court shall deposit such monies in an escrow account for the benefit of and payable to any victim or his legal representative of crimes committed by the defendant.

B. Payments from the account shall be made to the defendant upon an order of the Judge of the District Court wherein the charges were filed upon showing that the money or thing of value shall be used for the exclusive purpose of retaining legal representation for the defendant at any stage of the proceedings arising out of a criminal charge, and that the defendant would otherwise be unable to afford adequate representation.

C. Payments from the account shall be used to satisfy any judgment rendered in favor of a victim or his legal representative, provided said victim brings a civil action, in a court of competent jurisdiction, to recover money against the defendant or his legal representatives within five (5) years of the filing of the charges against the defendant. If no victim or legal representative of a victim has filed suit within five (5) years from the filing of the charges, any money remaining in the account shall be paid over to the Victims' Compensation Revolving Fund. Upon disposition of charges favorable to the defendant, money in the account shall be paid over to the defendant.

D. The District Court wherein the charges were filed shall, once every six (6) months for five (5) years from the date the money is deposited with the Court, publish a notice in at least one newspaper of general circulation in each county of the Nation in accordance with the provisions on publication of notices found in 25 O.S. § 101 et seq., notifying any eligible victim or legal representative of an eligible victim that monies are available to satisfy judgments pursuant to this section.

LA 10-90, eff. November 13, 1990.

§ 18. Expungement of records-Persons authorized

Persons authorized to file a motion for expungement, as provided herein, must be within one of the following categories:

1. The person has been acquitted;

2. The person was arrested and no charges are filed or charges are dismissed within one (1) year of the arrest; or

3. The statute of limitations on the offense had expired and no charges were filed.

For purposes of this act, "expungement" shall mean the sealing of criminal records.

LA 10-90, eff. November 13, 1990.

§ 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.

LA 08-21, eff. March 1, 2021

CHAPTER 2

PREVENTION OF PUBLIC OFFENSES

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Historical and Statutory Notes

2018 Legislation

LA 12-18, Section 2, provides:

"Section 2. Purpose. The purpose of this Act is to recognize domestic violence as serious crime against society and the Cherokee Nation and to provide victims of domestic violence the maximum protection from further violence. It is the intent of the Council of the Cherokee Nation that the official response to domestic violence shall be that the Nation will not tolerate or excuse violent behavior under any circumstances. All people, whether they are elders, male, female, or children of our Nation and communities are to be cherished and treated with respect. Domestic violence is not acceptable and is contrary to traditional Cherokee culture and values honoring the family and is contrary to the interest of our Nation and sense of well-being. Domestic violence will not be tolerated.

The Tribal Council recognizes that according to a recent United States Department of Justice study, that more than half (55%) of Native women have experienced physical violence by an intimate partner in their lifetimes and 90% of these victims report being victimized by a non-Indian perpetrator. Overall, Native women are five times as likely as non-Hispanic white women to have experienced physical violence by an inter-racial intimate partner. In Oklahoma, according to statistics from the U.S. Census Bureau, the average percentage of non-Indians living within the jurisdiction of the Cherokee Nation is approximately 82%.

A community response to domestic violence is necessary because domestic violence crimes impact the community as a whole. These crimes redirect tribal resources-whether personnel, financial, public safety or other resources-elsewhere and require an immediate response. As a result of this impact on the Nation's resources, the Tribal Council deems it necessary to address domestic violence and family violence to the fullest extent permitted by existing law or as may be adopted or amended in the future.

This Act the Cherokee Nation Code Annotated to conform to the requirements of the Violence Against Women Act (VAWA) of 2013 as authorized by Congress and codified at 25 U.S.C. 1304. This act authorizes special domestic violence criminal jurisdiction over non-Indians who commit domestic violence, dating violence, or a violation of a protection order. This act shall amend portions of Titles 21 and 22 of the Cherokee Nation Code Annotated."

GENERAL PROVISIONS

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§ 31. Who may resist

Lawful resistance to the commission of a public offense may be made:

1. By the party about to be injured.

2. By other parties.

LA 10-90, eff. November 13, 1990.

§ 32. Resistance by party to be injured

Resistance sufficient to prevent the offense may be made by the party about to be injured:

1. To prevent an offense against his person or his family, or some member thereof.

2. To prevent an illegal attempt, by force, to take or injure property in his lawful possession.

LA 10-90, eff. November 13, 1990.

§ 33. Resistance by other person

Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the offense.

LA 10-90, eff. November 13, 1990.

§ 34. Intervention by officers

Public offenses may be prevented by the intervention of the officers of justice:

1. By requiring security to keep the peace.

2. By forming a police, and by requiring their attendance in exposed places.

3. By suppressing riots.

LA 10-90, eff. November 13, 1990.

§ 35. Persons assisting officers

When the officers of justice are authorized to act in the prevention of public offenses, other persons, who, by their command, act in their aid, are justified in so doing.

LA 10-90, eff. November 13, 1990.

§ 36. Civil and criminal immunity for private citizens aiding police officers

Private citizens aiding a police officer, or other officers of the law in the performance of their duties as police officers or officers of the law, shall have the same civil and criminal immunity as such officer, as a result of any act or commission for aiding or attempting to aid a police officer or other officer of the law, when such officer is in imminent danger of loss of life or grave bodily injury or when such officer requests such assistance and when such action was taken under emergency conditions and in good faith.

LA 10-90, eff. November 13, 1990.

§ 36.1. Police dog handlers-Civil liability

Any dog handler as defined by 21 CNCA § 648 who uses a police dog in the line of duty in accordance with the policies or standards established by the law enforcement agency for which he is employed shall not be civilly liable for any damages arising from the use of said dog.

LA 10-90, eff. November 13, 1990.

§ 37.1. Off-duty law enforcement officers-Powers and duties-Liability

An "off-duty" law enforcement officer in official uniform in attendance at a public function, event or assemblage of people shall have the same powers and obligations as when he is "on-duty".

Nothing herein shall impose liability upon the governmental entity, by whom the law enforcement officer is employed, for actions of the said officer in the course of his employment by a nongovernmental entity.

LA 10-90, eff. November 13, 1990.

§ 39. Benefits for citizens who aid

Any citizen who shall be aiding in the maintaining of law and order shall likewise be entitled to the benefits of this act.

LA 10-90, eff. November 13, 1990.

VICTIM OF RAPE, FORCIBLE SODOMY, OR DOMESTIC ABUSE

§ 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, marriage, or adoption, or persons living in the same household or who formerly shared the same residence. This shall include the elderly and disabled;

3. “Forcible sodomy” means the act of forcing another person to engage in the detestable and abominable crime against nature pursuant to 21 CNCA §§ 886 and 887;

4. “Rape” means an act of sexual intercourse accomplished with a person pursuant to 21

CNCA §§ 111, 111.1 and 1114.

5. "Dating relationship" means an intimate association, a courtship, or an engagement relationship. Such relationships may be commonly characterized by affectionate or sexual involvement. For purposes of this act, a casual acquaintance or ordinary fraternization between persons in a business or social context shall not constitute a dating relationship;

6. **"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.

7. "Domestic abuse" means any act of physical harm, or the threat of imminent physical harm which is committed by an adult, emancipated minor, or minor child thirteen (13) years of age or older against another adult, emancipated minor or minor child who is currently or was previously an intimate partner or family or household member; the occurrence of one or more of the following acts between family or household members:

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.

8. "Foreign protective order" means any valid order of protection issued by a court of another state or a tribal court;

LA 10-90, eff. November 13, 1990. Amended LA 12-18, eff. June 13, 2018, LA 52-21, eff. December 16, 2021, LA 31-22, eff. October 4, 2022.

§ 40.1. Victim of rape or forcible sodomy-Notice of rights

Upon the preliminary investigation of any rape or forcible sodomy, it shall be the duty of the officer who interviews the victim of the rape or forcible sodomy 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 the crime of rape or forcible sodomy, 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;

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

"4. The right to a free medical examination for the procurement of evidence to aid in the prosecution of your assailant."

The written notice shall also include the telephone number of the twenty-four-hour telephone communication service established by the State of Oklahoma.

LA 10-90, eff. November 13, 1990.

§ 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."

LA 10-90, eff. November 13, 1990. Amended LA 12-18, eff. June 13, 2018.

§ 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 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.

LA 10-90, eff. November 13, 1990. Amended LA 31-06, eff. December 20, 2006; LA 12-18, eff. June 13, 2018.

§ 40.3. A. Emergency Temporary Order of Protection

A. When the court is not open for business. the victim of domestic violence, stalking, harassment, rape, forcible sodomy, a sex offense. kidnapping or assault and battery with a deadly weapon or member of the immediate family of a victim of first-degree murder may request a petition for an emergency temporary order of protection. The peace officer making the preliminary investigation shall:

1. Provide the victim or member of the immediate family of a victim of first-degree murder with a petition for an emergency temporary order of protection and, if necessary, assist the victim or member of the immediate family of a victim of first-degree murder in completing the petition form. The petition shall be in substantially the same form as provided by 22 CNCA § 60.2 for a petition for protective order in domestic abuse cases:

2. Immediately notify. by telephone or otherwise. a judge of the district court of the request for an emergency temporary order of protection and describe the circumstances. The judge shall inform the peace officer of the decision to approve or disapprove the emergency temporary order:

3. Immediately inform the victim or member of the immediate family of a victim of first-degree murder whether the judge has approved or disapproved the emergency temporary order. If an emergency temporary order has been approved, the officer shall provide the victim, or a responsible adult if the victim is a minor child or an incompetent person or member of the immediate family of a victim of first-degree

murder, with a copy of the petition and a written statement signed by the officer attesting that the judge has approved the emergency temporary order of protection; and

4. Notify the person subject to the emergency temporary protection order of the issuance and conditions of the order, if known. Notification pursuant to this paragraph may be made personally by the officer upon arrest or, upon identification of the assailant. notice shall be given by any law enforcement officer. A copy of the petition and the statement of the officer attesting to the order of the judge shall be made available to the person.

B. The fom1s utilized by law enforcement agencies in carrying out the provisions of this section may be substantially similar to those used under 22 CNCA § 60.2.

LA31-22, eff. October 4, 2022

§ 40.5. Short title

Sections 40.2 through 40.6 of this Title shall be known and may be cited as the Domestic Abuse Reporting Act.

LA 10-90, eff. November 13, 1990.

§ 40.6. Record of reported incidents of domestic abuse-Reports

A. It shall be the duty of every law enforcement agency to keep a record of each reported incident of domestic abuse as provided in subsection (B) of this section and to submit a monthly report of such incidents as provided in subsection (C) of this section.

B. The record of each reported incident of domestic abuse shall:

1. Show the type of crime involved in the domestic abuse;

2. Show the day of the week the incident occurred;

3. Show the time of day the incident occurred; and

4. Shall include a Lethality Assessment conducted upon a preliminary investigation of domestic violence. This assessment shall include, but not be limited to, the following information:

1. Has the accused ever used a weapon against the victim or threatened the victim with a weapon?

2. Has the person threatened to kill the victim or the children of the victim?
3. Does the victim believe the accused will try to kill the victim?
4. Has the accused ever tried to choke the victim?
5. Is the accused violently or constantly jealous of the victim or does the accused control most of the daily activities of the victim?
6. Does the person have a gun or can get a gun easily?
7. Has the victim left or separated from the person after living together or being married?
8. Is the person unemployed?
9. Has the person ever tried to kill himself or herself?
10. Has the person ever tried to kill the victim or a family member or anyone else?
11. Does the victim have a child that the person knows is not his or her own child?
12. Does the person follow or spy on the victim or leave the victim threatening messages?

13. Is there anything else that worries the victim about his or her safety and if so, what worries the victim?

C. Based upon the results of the lethality assessment, referrals to shelters, domestic violence intervention programs and other social services shall be provided to the victim.

D. If the results of the lethality assessment indicate a referral is suggested, the assessing officer shall implement the protocol referral process to a domestic violence advocate from a certified or tribal program as follows:

1. Advise the victim of the results of the assessment;
2. Advise the victim that based on the results of the assessment the officer will call the domestic violence hotline to allow the victim to speak with an advocate;
3. If the victim does not want to speak with an advocate, the officer shall document the refusal on the form.

E. Regardless of the results of the lethality assessment, referral information for shelters, domestic violence programs and other social services shall be provided to the victim.

F. Regardless of the results of the lethality assessment, the officer shall submit the lethality assessment form to the office of the Attorney General and One Fire.

G. The Office of the Attorney General, in conjunction with One Fire, shall maintain a database of all alleged abusers and

victim(s) of domestic violence and crimes against children. This database shall be searchable by the alleged abuser's name and victim's name(s) and contain all lethality assessments received by the Attorney General and/or One Fire. The contents of such database shall be exempt from public disclosure pursuant to 67 CNCA § 105(A)(3).

H. A monthly report of the recorded incidents of domestic abuse shall be submitted to the Cherokee Nation Marshal and the Director of the Oklahoma State Bureau of Investigation on forms provided by the State Bureau of Investigation for such purpose.

LA 10-90, eff. November 13, 1990, LA 52-21, eff. December 16, 2021.

PROTECTION FROM DOMESTIC ABUSE ACT

§ 60. Short title

This act shall be known and may be cited as the Protection from Domestic Abuse Act.

LA 10-90, eff. November 13, 1990.

§ 60.1. Definitions

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

1. **"Dating Relationship"** means an intimate association, a courtship, or an engagement relationship. Such relationships may be commonly characterized by affectionate or sexual involvement. For purposes of this act, a casual acquaintance or ordinary fraternization between persons in a business or social context shall not constitute a dating relationship;

2. **"Domestic Abuse"** means any act of physical harm, or the threat of imminent physical harm which is committed by an adult, emancipated minor, or minor child thirteen (13) years of age or older against another adult, emancipated minor or minor child who is currently or was previously an intimate partner or family or household member;

3. **"Family or Household Members"**

a. parents, including grandparents, stepparents, adoptive parents and foster parents,

b. children, including grandchildren, stepchildren,

adopted children and foster children, and

c. persons otherwise related by blood or marriage living in the same household;

4. "Foreign protective order" means any valid order of protection issued by a court of another state or a tribal court;

5. "Harassment" means a knowing and willful course or pattern of conduct by a family or household member or an individual who is or has been involved in a dating relationship with the person, directed at a specific person which seriously alarms or annoys the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress,and must actually cause substantial distress to the person. "Harassment" shall include, but not be limited to, harassing or obscene telephone calls in violation of 21 CNCA § 1172 and fear of death or bodily injury;

6. "Intimate partner" means:

a. current or former spouses,

b. persons who are or were in a dating relationship,

c. persons who are the biological parents of the same child, regardless of their marital status or whether they have lived together at any time, and

d. persons who currently or formerly lived together in an intimate way, primarily characterized by affectionate or sexual involvement. A sexual relationship may be an indicator that a person is an intimate partner, but is never a necessary condition;

7. "Mutual protective order" means a final protective order or orders issued to both a plaintiff who has filed a petition for a protective order and a defendant included as the defendant in the plaintiff's petition restraining the parties from committing domestic violence, stalking, harassment or rape against each other. If both parties allege domestic abuse, violence, stalking, harassment or rape against each other, the parties shall do so by separate petition pursuant to Section 60.4 of this title;

8. "Rape" means rape and rape by instrumentation in violation of 21 CNCA §§ 1111 and 1111.1;

9. "Stalking" means the willful, malicious, and repeated following or harassment of a person by an adult,

emancipated minor, or minor thirteen (13) years of age or older, in a manner that would cause a reasonable person to feel frightened, intimidated, threatened, harassed, or molested and actually causes the person being followed or harassed to feel terrorized, frightened, intimidated, threatened, harassed or molested. Stalking also means a course of conduct composed of a series of two or more separate acts over a period of time, however short, evidencing a continuity of purpose or unconsented contact with a person that is initiated or continued without the consent of the individual or in disregard of the expressed desire of the individual that the contact be avoided or discontinued. Unconsented contact or course of conduct includes, but is not limited to:

a. following or appearing within the sight of that individual,

b. approaching or confronting that individual in a public place or on private property,

c. appearing at the workplace or residence of that individual,

d. entering onto or remaining on property owned, leased or occupied by that individual,

e. contacting that individual by telephone,

f. sending mail or electronic communications to that individual, or

g. placing an object on, or delivering an object to, property owned, leased or occupied by that individual; and

10. “Victim support person” means a person affiliated with a domestic violence, sexual assault or adult human sex trafficking program, certified by the Attorney General or operating under a tribal government, who provides support and assistance for a person who files a petition under the this act.

LA 10-90, eff. November 13, 1990. Amended LA 12-18, eff. June 13, 2018, LA 20-21, eff. March 1, 2021, LA 31-22, eff.

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October 4, 2022.

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

A.

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.
Any of the following persons may seek relief under this chapter by filing a petition with the Court alleging that domestic violence has been committed by the respondent. The person may petition for relief on behalf of any victim including minors within the family or household members:
1. Any person claiming to be the victim of recent domestic violence. harassment or stalking as defined in this Act;
2. Any family member or household member of a person claimed to be the victim of domestic violence. harassment, or stalking as defined in this Act, on behalf of the alleged victim;
3. A police officer;
4. A victim advocate or Victim Support Person; and/or
5. The Attorney General or any Assistant Attorneys General

b. 1. There is no minimum requirement of residency to petition for a protective order.

2. The District Court shall have jurisdiction over a petition for protective ·order in any case where either the plaintiff or defendant resides within the boundaries of the Cherokee Nation or the act(s) constituting domestic violence, harassment, or stalking have occurred within the boundaries of the Cherokee Nation.

3. If a petition has been filed in an action for divorce or separate maintenance in the Cherokee Nation District Court and either party to the action files a petition for a protective order in the District Court the petition for the protective order may be heard together if the court finds that hearing the actions together would further the interest of judicial economy; provided. however, the petition for a protective order. including. but not limited to. a petition in which children are named as petitioners, shall remain a separate action and a separate order shall be entered in the protective order action. Protective orders may be dismissed in favor of restraining orders in the divorce or separate maintenance action if the court specifically finds, upon hearing, that such dismissal is in the best interests of the parties and does not compromise the safety of any petitioner.

a. If the defendant is a minor child, the petition shall be filed with the court having jurisdiction over juvenile matters.

b. When the abuse occurs when the court is not open for business, such person may request an immediate emergency temporary order of protection as authorized by this title.

f.:_The petition forms shall be provided by the Clerk of the Comi. The District Comi shall develop a standard form for the petition. No filing fee shall be charged the plaintiff at the time the petition is filed. The Comi may assess court costs and filing fees to either party at the hearing on the petition.

D:- c.The plaintiff shall prepare the petition as provided by the Court, or at the request of the plaintiff, the Clerk of the Court or the victim support person may prepare or assist the plaintiff in preparing the same.

d. 1. Except as otherwise provided by this section, no filing fee, service of process fee, attorney fees or any other fee or costs shall be charged the plaintiff or victim at any time for filing a petition for a protective order whether a protective order is granted or not granted. The court may assess court costs, service of process fees, attorney fees, other fees and filing fees against the defendant at the hearing on the petition, if a protective order is granted against the defendant; provided, the court shall have authority to waive the costs and fees if the court finds that the party does not have the ability to pay the costs and fees.

2. If the court makes specific findings that a petition for a protective order has been filed frivolously and no victim exists, the court may assess attorney fees and court costs against the plaintiff.

3. If, after investigation, the Court finds that a party's allegations of domestic violence in a domestic violence protective order proceeding, divorce proceeding, child custody proceeding, child visitation proceeding, separation proceeding or termination of parental rights proceeding are false and not made in good faith, the Court shall order the party making the false allegations to pay court costs and reasonable attorney fees incurred by the other party in responding to the allegation.

e. The person seeking a protective order may further request the exclusive care, possession, or control of any animal owned, possessed. leased, kept, or held by either the petitioner, defendant or minor child residing in the residence of the petitioner or defendant. The court may order the defendant to make no contact with the animal and forbid the defendant from taking, transferring,

encumbering. concealing, molesting. attacking, striking. threatening. harming, or otherwise disposing of the animal.

f. A court may not require the victim to seek legal sanctions against the defendant including, but not limited to, divorce, separation, paternity or criminal proceedings prior to hearing a petition for protective order.

g. A victim of rape, forcible sodomy, a sex offense, kidnapping, assault and battery with a deadly weapon or member of the immediate family of a victim of first-degree murder,

as such te1ms are defined in the Cherokee Nation Code Annotated, may petition for an emergency temporary order or emergency ex parte order regardless of any relationship or scenario pursuant to the provisions of this section. The District Court shall modify the petition forms as necessary to effectuate the provisions of this subsection.

LA 10-90, eff. November 13, 1990. Amended LA 33-03, eff. November 13, 1990; LA 12-18, eff. June 13, 2018, LA 31-22, eff. October 4, 2022.

§ 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,_if the court finds sufficient grounds within the scope of the Protection from Domestic Abuse Act stated in the petition to hold such a hearing. The court may. for good cause shown at the hearing. issue any emergency ex paiie order that it finds necessary to protect the victim from immediate and present danger of domestic abuse, stalking, or harassment. The emergency ex parte order shall be in effect until after the full hearing is conducted. Provided, if the defendant, after having been served. does not appear at the hearing, the emergency ex parte order shall remain in effect until the defendant is served with the permanent order. If the terms of the permanent order are the same as those in the emergency order,or are less restrictive. then it is not necessary to serve the defendant with the permanent order. The District Court shall develop a standard form for emergency ex parte protective orders.

b. An emergency ex parte protective order authorized by this section shall include the name. sex, race, date of birth of the defendant, and the dates of issue and expiration of the protective order.

c. If a plaintiff requests an emergency temporary ex paite order of protection as provided by 22 CNCA § 40.3.A. the judge who is notified of the request by a peace officer may issue such order verbally to the officer or in writing when there is reasonable cause to believe that the order. is

necessary to protect the victim from immediate and present danger of domestic abuse. When the order is issued verbally the judge shall direct the officer to complete and sign a statement attesting to the order. The emergency temporary ex parte order shall be in effect until noon on the next day the court is open for business or the court date that was assigned by the court during the approval of the order. Emergency temporary ex parte orders shall be heard within fourteen (14) days after issuance.

d. If an action for divorce. separate maintenance. guardianship. adoption or any other proceeding involving custody or visitation has been filed and is pending in the district court, the hearing on the petition for a final protective order shall be transferred and held in the same county in which the action for divorce, separate maintenance,

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guardianship. adoption or any other proceeding involving custody or visitation is pending.

LA 10-90, eff. November 13, 1990. Amended LA 12-18, eff. June 13, 2018, LA 31-22, eff. October 4, 2022.

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

1. 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 Marshal and can be served twenty-four (24) hours a day.

2.Emergency temporary orders, emergency ex parte orders and notice of hearings shall be given priority for service and can be served twenty-four (24) hours a day when the location of the defendant is known. When service cannot be made upon the defendant by the Marshal, the Marshal may contact ai1other law enforcement officer or a private investigator or private process server to serve the defendant.

3. If service has not been made on the defendant at the time of the hearing. the court shall, at the request of the petitioner, issue a new emergency order reflecting a new hearing date and direct service to issue.

4. A petition for a protective order shall not expire unless the petitioner fails to appear at the hearing or fails to request a new order. A petitioner may move to dismiss the petition and emergency or final order at any time; however, a protective order must be dismissed by court order.

5. Failure to serve the defendant shall not be grounds for dismissal of a petition or an ex parte order unless the victim requests dismissal or fails to appear for the hearing thereon.

6. A final protective order shall be granted or denied within six (6) months of service on the defendant unless all parties agree that a temporary protective order remain in effect; provided, a victim shall have the right to request a final protective order hearing at any time after the passage of six *(*6) months.

B. Within (14) 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. 1. At the hearing, the Court may grant any protective order to bring about the cessation of domestic abuse against the victim. At the hearing, the court may impose any terms and

conditions in the protective order that the court reasonably believes are necessary to bring about the cessation of domestic abuse against the victim or stalking or harassment of the victim or the immediate family of the victim but shall not impose any term and condition that may compromise the safety of the victim including. but not limited to, mediation, couples

counseling, family counseling, parenting classes or joint victim-offender counseling sessions. The court may order the defendant to obtain domestic abuse counseling or treatment in a program approved by the Court at the expense of the defendant.

2. If the court grants a protective order and the defendant is a minor child. the court shall order a preliminary inquiry in a juvenile proceeding to determine whether further court action pursuant to the Cherokee Nation Juvenile Code should be taken against a juvenile defendant.

3.Final protective orders authorized by this section shall be on a standard form developed by the District Court.

D. 1. After notice and hearing, protective orders authorized by this section may require the defendant to undergo treatment or participate in the court-approved counseling services necessary to bring about cessation of domestic abuse against the victim. but shall not order any treatment or counseling that may compromise the safety of the victim including. but not limited to, mediation. couples counseling, family counseling, parenting classes or joint victim-offender counseling sess10ns.

2. The defendant may be required to pay all or any part of the cost of such treatment or counseling services. The court shall not be responsible for such cost.

3. Should the plaintiff choose to w1dergo treatment or participate in court-approved counseling services for victims of domestic abuse. the court may order the defendant to pay all or any part of the cost of such treatment or counseling services if the court determines that payment by the defendant is appropriate.

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.

G. 1. Any protective order issued on or after the effective date of this Act, pursuant to subsection C of this section shall be:

a. for a fixed period not to exceed a period of five (5) years unless extended.

modified, vacated or rescinded upon motion by either party or if the court approves any consent agreement entered into by the plaintiff and defendant; provided. if the defendant is incarcerated. the protective order shall remain in full force and effect during the period of incarceration. The period of incarceration, in any jurisdiction. shall not be included in the calculation of the five-year time limitation. or

b. continuous upon a specific finding by the court of one of the following:

(I) the person has a history of violating the orders of any court or governmental entity,

(2) the person has previously been convicted of a violent felony offense,

(3) the person has a previous felony conviction for stalking under this Code or the laws of a tribe. state. or territory of the United States,

(4) a court order for a final Victim Protection Order has previously been issued against the person in the Nation, a state. or other tribe, or

(5) the victim provides proof that a continuous protective order is necessary for his or her protecti on.

Further, the court may take into consideration whether the person has a history of domestic violence or a history of other violent acts. The protective order shall remain in effect until modified, vacated or rescinded upon motion by either party or if the court approves any consent agreement entered into by the plaintiff and defendant. If the defendant is incarcerated, the protective order shall remain in full force and effect during the period of incarceration.

2. The court shall notify the parties at the time of the issuance of the protective order of the duration of the protective order.

3. Upon the filing of a motion by either party to modify, extend. or vacate a protective order, a hearing shall be scheduled and notice given to the parties. At the hearing. the issuing court may take such action as is necessary under the circumstances. Notice of the motion and hearing date shall be served upon the opposing party by regular mail to the party's last known address, unless the Comi determines personal service of the motion and hearing date is appropriate under the facts of the case.

H. 1. It shall be unlawful for any person to knowingly and willfully seek a protective order against a spouse or ex-spouse pursuant to the Protection from Domestic Abuse Act for purposes of harassment, undue advantage, intimidation, or limitation of child visitation rights in any divorce proceeding or separation action without justifiable cause.

2. The violator shall, upon conviction thereof, be guilty of a misdemeanor punishable by imprisonment in a penal institution not exceeding one (1) year, or by a fine of not more than Five Thousand Dollars ($5,000.00), or both, at the discretion of the Court.

3. A second or subsequent conviction under this subsection shall be a felony punishable by imprisonment in a penal institution for a period not to exceed three (3) years. or by a fine not to exceed Ten Thousand Dollars ($15,000.00). or by both such fine and imprisonment.

I. 1. A protective order issued under the Protection from Domestic Abuse Act shall not in any manner affect title to real property. purport to grant to the parties a divorce or otherwise purport to determine the issues between the parties as to child custody,

visitation or visitation schedules, child support or division of property or any other like relief. except child visitation orders may be temporarily suspended or modified to protect from threats of abuse or physical violence by the defendant or a threat to violate a custody order. Orders not affecting title may be entered for good cause found to protect an animal owned by either of the parties or any child living in the household.

2. When granting any protective order for the protection of a minor child from violence or threats of abuse. the court shall allow visitation only under conditions that provide adequate supervision and protection to the child while maintaining the integrity of a temporary or permanent order or decree related to custody and visitation.

J. 1. In order to ensure that a petitioner can maintain an existing wireless telephone number or household utility account the court, after providing notice ai1d a hearing. may issue an order , directing a wireless service provider or public utility provider to transfer the billing responsibility for and rights to the wireless telephone number or numbers of any minor children in the care of the petitioning party or household utility account to the petitioner if the petitioner is not the wireless service or public utility account holder.

2. The order transferring billing responsibility for and rights to the wireless telephone number or numbers or household utility account to the petitioner shall list the name ai1d billing telephone number of the account holder, the name and contact information of the person to whom the telephone number or numbers or household utility account will be transferred and each telephone number or household utility to be transferred to that person. The court shall ensure that the contact information of the petitioner is not provided to the account holder in proceedings held under this subsection.

3. Upon issuance, a copy of the final order of protection shall be transmitted, either electronically or by certified mail, to the registered agent of the wireless service provider or public utility provider listed with the Secretary of State or Corporation Commission of Cherokee Nation and/or Oklahoma or electronically to the email address provided by the wireless service provider or public utility provider. Such transmittal shall constitute adequate notice for the wireless service provider or public utility provider.

4. If the wireless service provider or public utility provider cannot operationally or technically effectuate the order due to ce1iain circumstances. the wireless service provider or public utility

provider shall notify the petitioner. Such circumstances shall include, but not be limited to. the following:

a. the account holder has already terminated the account,

b. the differences in network technology prevent the functionality of a mobile device on the network, or

c. there are geographic or other limitations on network or service availability.

5. Upon transfer of billing responsibility for and rights to a wireless telephone number or numbers or household utility account to the petitioner under the provisions of this subsection by a wireless service provider or public utility provider, the petitioner shall assume all financial responsibility for the transferred wireless telephone number or numbers or household utility account. monthly service and utility billing costs and costs

for any mobile device associated with the wireless telephone number or numbers. The wireless service provider or public utility provider shall have the right to pursue the original account holder for purposes of collecting any past due amounts owed to the wireless service provider or public utility provider.

6. The provisions of this subsection shall not preclude a wireless service provider or public utility provider from applying any routine and customary requirements for account establishment to the petitioner as part of this transfer of billing responsibility for a household utility account or for a wireless telephone number or numbers and any mobile devices attached to that number including, but not limited to, identification. financial information and customer preferences.

7. The provisions of this subsection shall not affect the ability of the court to apportion the assets and debts of the parties as provided for in law or the ability to determine the temporary use, possession and control of personal property.

8. No cause of action shall lie against any wireless service provider or public utility provider, its officers, employees or agents for actions taken in accordance with the terms of a court order issued under the provisions of this subsection.

9. As used in this subsection:

a. "wireless service provider" means a provider of commercial mobile service under Section 332(d) of the federal Telecommunications Act of 1996,

b. "public utility provider" means every corporation organized or doing business in this state that owns. operates or manages any plai1t or equipment for the manufacture. production. transmission, transportation, delivery or furnishing of water, heat or light with gas or electric current for heat, light or power, for public use in this state, ai1d

c. "household utility account" shall include utility services for water, heat. light, power or gas that are provided by a public utility provider.

K. 1. A court shall not issue any mutual protective orders.

2. If both parties allege domestic abuse by the other party, the parties shall do so by separate petitions. The court shall review each petition separately in ai1 individual or a consolidated hearing and grant or deny each petition on its individual merits. If the court finds cause to grant both

motions, the court shall do so by separate orders and with specific findings justifying the issuance of each order.

3. The court may only consolidate a hearing if:

a. the court makes specific findings that:

(1) sufficient evidence exists of domestic abuse, stalking, harassment or rape against each party, and

(2) each party acted primarily as aggressors.

b. the defendant filed a petition with the court for a protective order no less than three (3) days, not including weekends or holidays. prior to the first scheduled full hearing on the petition filed by the plaintiff. and

c. the defendant had no less than forty-eight (48) hours of notice prior to the full hearing on the petition filed by the plaintiff.

L. The court may allow a plaintiff or victim to be accompanied by a victim support person at court proceedings. A victim support person shall not make legal arguments; however, a victim suppmi person who is not a licensed attorney may offer the plaintiff or victim comfort or support and may remain in close proximity to the plaintiff or victim.

LA 10-90, eff. November 13, 1990. Amended LA 12-18, eff. June 13, 2018, LA 31-22, eff. October 4, 2022.

§ 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.

b. Any law enforcement agency receiving copies of the documents listed in subsection (a) of this section shall be required to ensure that other law enforcement agencies have access twenty-four
(24) hours a day to the information contained in the documents which may include entry of information about the emergency temporary. ex parte or final protective order in the National Crime Information Center database.

LA 10-90, eff. November 13, 1990. Amended LA 12-18, eff. June 13, 2018, LA 31-22, eff. October 4, 2022.

§ 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.

In addition to any other penalty specified by this section, the court shall 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 or to bring about the cessation of stalking or harassment of the victim. For every conviction of violation of a protective order:

1. The court shall specifically order as a condition of a suspended sentence or probation that a defendant participate in counseling or undergo treatment to bring about the cessation of domestic• abuse as specified in paragraph 2 of this subsection;

2. a. The court shall require the defendant to participate in counseling or undergo treatment for domestic abuse by an individual licensed practitioner or a domestic abuse treatment program approved by the District Comi. If the defendant is ordered to participate in a domestic abuse counseling or treatment program, the order shall require the defendant to attend the program for a minimum of fifty-two (52) weeks, complete the program, and be evaluated before and after attendance of the program by a program counselor or a private counselor.

b. A program for anger management, couples counseling, or family and marital counseling shall not solely qualify for the counseling or treatment requirement for domestic abuse pursuant to this subsection. The counseling may be ordered in addition to counseling specifically for the treatment of domestic abuse or per evaluation as set forth below. If, after sufficient evaluation and attendance at required counseling sessions, the domestic violence treatment program or licensed professional determines that the defendant does not evaluate as a perpetrator of domestic violence or does evaluate as a perpetrator of domestic violence and should complete other programs of treatment simultaneously or prior to domestic violence treatment, including but not limited to programs related to the mental health, apparent substance or alcohol abuse or inability or refusal to manage anger, the defendant shall be ordered to complete the counseling as per the recommendations of the domestic violence treatment program or licensed

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professional:

3. a. The court shall set a review hearing no more than one hundred twenty (120) days after the defendant is ordered to participate in a domestic abuse counseling program or undergo treatment for domestic abuse to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements.

b. The court shall set a second review hearing after the completion of the counseling or treatment to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements. The court may suspend sentencing of the defendant until the defendant has presented proof to the court of enrollment in a program of treatment for domestic abuse by an individual licensed practitioner or a domestic abuse treatment program approved by the District Court and attendance at weekly sessions of such program. Such proof shall be presented to the court by the defendant no later than one hundred twenty (120) days after the defendant is ordered to such counseling or treatment. At such time, the court may complete sentencing, beginning the period of the sentence from the date that proof of enrollment is presented to the court, and schedule reviews as required by subparagraphs a and b of this paragraph and paragraphs 4 and 5 of this subsection. The court shall retain continuing jurisdiction over the defendant during the course of ordered com1seling through the final review hearing;

4. The court may set subsequent or other review hearings as the court determines necessary to assure the defendant attends and fully complies with the provisions of this subsection and the domestic abuse counseling or treatment requirements;

5. At any review hearing, if the defendant is not satisfactorily attending individual counseling or a domestic abuse counseling or treatment program or is not in compliance with any domestic abuse com1seling or treatment requirements, the court may order the defendant to further or continue counseling, treatment, or other necessary services. The court may revoke all or any part of a suspended sentence, deferred sentence, or probation and subject the defendant to any or all remaining portions of the original sentence;

6. At the first review hearing. the court shall require the defendant to appear in court. Thereafter, for any subsequent review hearings, the court may accept a report on the progress of the defendant from individual counseling, domestic abuse counseling, or the treatment program. There shall be no requirement for the victim to attend review hearings.

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.

G. The district court and any judge thereof shall be immune from any liability or prosecution for issuing ai1 order that requires a defendant to:

1. Attend a treatment program for domestic abusers approved by the District Court;

2. Attend counseling or treatment services ordered as part of any final protective order or for any violation of a protective order: and

3. Attend, complete, and be evaluated before and after attendance by a treatment program for domestic abusers certified by the Attorney General.

H. At no time. under any proceeding, may a person protected by a protective order be held to be in violation of that protective order. Only a defendant against whom a protective order has been issued may be held to have violated the order.

I. In addition to any other penalty specified by this section, the court may order a defendant to use an active, real-time, twenty-four-hour Global Positioning System (GPS) monitoring device as a condition of a sentence. The court may further order the defendant to pay costs and expenses related to the GPS device and monitoring.

LA 10-90, eff. November 13, 1990. Amended LA 12-18, eff. June 13, 2018, LA 31-22, eff. October 4, 2022.

§ 60.7. Statewide Validity of orders

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

LA 10-90, eff. November 13, 1990. Amended LA 12-18, eff. June 13, 2018, LA 31-22, eff. October 4, 2022.

§ 60.8 - Seizure and Forfeiture of Weapons and Instruments

A. Any authorized peace officer of the Nation shall seize any weapon or instrument when such officer has probable cause to believe such weapon or instrument has been used to commit an act of domestic abuse as defined by 22 CNCA § 60.1, provided an arrest is made, if possible, at the same time.

B. After any such seizure, the Office of the Attorney General shall file a notice of seizure and forfeiture as provided in this section within ten (10) days of such seizure. or any weapon or instrument seized pursuant to this section shall be returned to the owner.

C. The seizure and forfeiture provisions of the Nation shall be followed for any seizure and forfeiture of property pursuant to this section. No weapon or instrument seized pursuant to this section or monies from the sale of any such seized weapon or instrument shall be turned over to the person from whom such property was seized if a forfeiture action has been filed within the time required by subsection B of this section. unless authorized by this section. Provided further, the owner may prove at the forfeiture hearing that the conduct giving rise to the seizure was justified, and if the owner proves

justification, the seized property shall be returned to the owner. Any proceeds gained from this seizure shall be placed in the Crime Victims Compensation Revolving Fund.

§ 60.9 Statement Required on All Ex Parte or Final Protective Order

1. The filing or nonfiling of criminal charges and the prosecution of the case shall not be determined by a person who is protected by the protective order, but shall be determined by the prosecutor;

2. No person, including a person who is protected by the order, may give permission to anyone to ignore or violate any provision of the order. During the time in which the order is valid, every provision of the order shall be in full force and effect unless a court changes the order;

3. The order shall be in effect for a fixed period of five (5) years unless extended, modified, vacated or rescinded by the court or shall be continuous upon a specific finding by the court as provided in subparagraph b of paragraph 1 of subsection G of 22 CNCA § 60.4 unless modified, vacated or rescinded by the court;

4. The order shall be entered into the National Crime Information Center (NCIC) database:

5. A violation of the order is punishable by a fine of up to One Thousand Dollars ($1,000.00) or imprisonment for up to one (1) year in a penal institution, or by both such fine and imprisonment. A violation of the order which causes injury is punishable by imprisonment for twenty (20) days to one (1) year in a penal institution or a fine of up to Five Thousand Dollars *($5,000.00),* or by both such fine and imprisonment;

6. Possession of a firearm or ammunition by a defendant while an order is in effect may subject the defendant to prosecution for a violation of federal law even if the order does not specifically prohibit the defendant from possession of a firearm or ammunition:

7. The defendant must avoid the residence of the petitioner or any premises temporarily occupied by the petitioner:

8. The defendant must avoid contact that harasses or intimidates the petitioner. Contact includes, but is not limited to, contact at the home, work, or school of the petitioner, public places, in person, by phone, in writing, by electronic communication or device, or in any other manner;

9. The defendant shall not impersonate or adopt the personification of the petitioner by pretending to be the petitioner, ordering items, posting information or making inquiries, or publishing photographs of the petitioner, by use of social media, or by use of computer, telephone, texting, emailing, or by use of any electronic means;

10. The defendant must refrain from removing, hiding, damaging, harming, mistreating, or disposing of a household pet

11. The defendant must allow the petitioner or a family member or household member of the petitioner acting on his or her behalf to retrieve a household pet

12. The defendant must avoid contacting the petitioner or causing any person other than an attorney for the petitioner or law enforcement officer to contact the petitioner unless the petitioner consents in writing: and

13. A peace officer will accompany the petitioner and assist in placing the petitioner in physical possession of his or her residence, if requested.

60.10 Expungement of Victim Protective Orders

A. Persons authorized to file a motion for expungement of victim protective orders (VPOs) issued pursuant to the Protection from Domestic Abuse Act in the District Comi must be within one of the following categories:

1. An ex parte order was issued to the plaintiff but later terminated due to dismissal of the petition before the full hearing, or denial of the petition upon full hearing, or failure of the plaintiff to appear for full hearing, and at least ninety (90) days have passed since the date set for full hearing;

2. The plaintiff filed an application for a victim protective order and failed to appear for the full hearing and at least ninety (90) days have passed since the date last set by the court for the full hearing, including the last date set for any continuance, postponement or rescheduling of the hearing;

3. The plaintiff or defendant has had the order vacated and three (3) years have passed since the order to vacate was entered; or

4. The plaintiff or defendant is deceased.

B. For purposes of this section:

1. "Expungement" means the sealing of victim protective order (VPO) court records from public inspection, but not from law enforcement agencies, the court or the Office of the Attorney General;

2. "Plaintiff" means the person or persons who sought the original victim protective order (VPO) for cause; and

3. "Defendant" means the person or persons to whom the victim protective order (VPO) was directed.

C. 1. Any person qualified under subsection A of this section may petition the District Court for the expungement and sealing of the court records from public inspection. The face of the petition shall state whether the defendant in the protective order has been convicted of any violation of the protective order and whether any prosecution or complaint is pending in this state or any other state for a violation or alleged violation of the protective order that is sought to be expunged. The petition shall further state the authority pursuant to subsection A of this section for eligibility for requesting the expungement. The other party to the protective order shall be mailed a copy of the petition by regular mail within ten *(l* 0) days of filing the petition. A written answer or objection may be filed within thirty (30) days of receiving the notice and petition.

2. Upon the filing of a petition, the court shall set a date for a hearing and shall provide at least a thirty-day notice of the hearing to all parties to the protective order. the Office of Attorney General and any other person or agency whom the court has reason to believe may have relevant information related to the sealing of the victim protective order (VPO) court record.

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3. Without objection from the other party to the victim protective order (VPO) or upon a finding that the harm to the privacy of the person in interest or dangers of unwarranted adverse consequences outweigh the public and safety interests of the parties to the protective order in retaining the records, the court may order the court record, or any part thereof_ to be sealed from public inspection. Any order entered pursuant to this section shall not limit or restrict any law enforcement agency, the Office of the Attorney General or the court from accessing said records without the necessity of a court order. Any order entered pursuant to this subsection may be appealed by any party to the protective order or by the Office of the Attorney General to the Supreme Comi in accordance with the rules of the Supreme Comi.

4. Upon the entry of an order to expunge and seal from public inspection a victim protective order (VPO) court record, or any part thereof, the subject official actions shall be deemed never to have occurred, and the persons in interest and the public may properly reply, upon any inquiry in the matter, that no such action ever occurred and that no such record exists with respect to the persons.

5. Inspection of the protective order court records included in the expungement order issued pursuant to this section may thereafter be permitted only upon petition by the persons in interest who are the subjects of the records. or without petition by the district attorney or a law enforcement agency in the due course of investigation of a crime.

6. Employers. educational institutions. state and local government agencies, officials. and employees shall not require, in any application or interview or otherwise, an applicant to disclose any information contained in sealed protective order court records. An applicant need not. in

. answer to any question concerning the records. provide information that has been sealed, including any reference to or information concerning the sealed information and may state that no such action has ever occurred. The application may not be denied solely because of the refusal of the applicant to disclose protective order court records information that has been sealed.

7. The provisions of this section shall apply to all protective order court records existing in the District Court on, before and after the effective date of this section.

8. Nothing in this section shall be construed to authorize the physical destruction of any court records, except as otherwise provided by law for records no longer required to be maintained by the court.

9. For the purposes of this section, sealed materials which are recorded in the same document as unsealed material may be recorded in a separate document, and sealed, then obliterated in the original document.

10. For the purposes of this act, district court index reference of sealed material shall be destroyed. removed or obliterated.

11. Any record ordered to be sealed pursuant to this section may be obliterated or destroyed at the end of the ten-year period.

12. Nothing herein shall prohibit the introduction of evidence regarding actions sealed pursuant to the provisions of this section at any hearing or trial for purposes of impeaching the credibility of a witness or as evidence of character testimony pursuant to the Cherokee Nation Rules of Civil Procedure.

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§ 60.11 Foreign domestic violence protective orders-Full faith and credit recognition and enforcement

A. Subject to registration, a domestic violence protective order issued by a court of competent jurisdiction of another state. Indian tribe. the District of Columbia or a commonwealth, territory or possession of the United States must be accorded full faith and credit by the Cherokee Nation Court and enforced as if the order was issued by the Cherokee Nation Court.

1. A foreign domestic violence protective order is enforceable in the Cherokee Nation's jurisdiction. and as extended by cross-deputization or cooperative enforcement agreements, if all of the following are satisfied:

a. The respondent received notice of the protective order in compliance with requirements of the issuing jurisdiction;

b. The protective order is in effect in the issuing jurisdiction;

c. The issuing court had jurisdiction over the parties and the subject matter;

d. The respondent was afforded reasonable notice and opp01iunity to be heard sufficient to protect that person's right to due process. In the case of ex parte protective orders, notice and opportw1ity to be heard must have been provided within the time required by the law of the issuing jurisdiction and in any event within a reasonable time after the protective order was issued, sufficient to protect the respondent's due process rights. Failure to provide reasonable notice and opportunity to be heard is an affirmative defense to any prosecution for violation of the foreign protective order or any process filed seeking enforcement of the protective order; and

e. If the protective order also provides protection for the respondent a petition, application or other written pleading must have been filed with the issuing court seeking such a protective order and the issuing court must have made specific findings that the respondent was entitled to the protective order.

B. A person entitled to protection under a foreign domestic violence protective order may file the foreign protective order in the Clerk of Court's office. The person filing the protective order shall also file an affidavit with the Clerk of Court ce1iifying the validity and status of the foreign protective order and attesting to the person's belief that the protective order has not been amended, rescinded or superseded by any other orders from a court of competent jurisdiction. If a foreign protective order is filed under this section. the Clerk of Court shall transmit a copy of the protective order to the Cherokee Marshal Service. Filing of a foreign protective order under this Section is not a prerequisite to the order's enforcement by Cherokee Nation. A fee for filing the foreign protective order shall not be assessed.

C. A law enforcement officer may rely upon any foreign domestic violence protective order that has been provided to the officer by any source. The officer may make arrests for violation of the protective order in the same manner as for violation of a protective order issued by Cherokee Nation. A law enforcement officer may rely on the statement of the person protected by the protective order that the protective order is in effect and that the respondent was personally served with a copy of the protective order. A law enforcement officer acting in good faith and without malice in enforcing a foreign protective order under this section is immune from civil or criminal liability for any action arising in connection with the enforcement of the protective order.

D. Any person who intentionally provides a law enforcement officer with a copy of a

foreign domestic violence protective order known by that person to be false or invalid or who denies
having been served with a protective order when that person has been served with such an order is guilty of a crime.

§ 60.12 Tribal registry for protective orders

A. The Comi shall maintain a registry of all orders for protective orders issued by the Court. The 228

Clerk of Court shall provide the Cherokee Nation Marshal with ce1iified protective orders within twenty-four (24) hours after issuance.
B. The Clerk of Court shall also provide the Cherokee Nation Marshal with any modifications of, revocations of. withdrawal of and/or expiration of protective orders.
C. The information contained in the registry is available at all times to the Court law enforcement agencies and domestic violence shelters.
D. Facsimile and electronic copies shall be recognized.

SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION

§ 70. Special Tribal Criminal Jurisdiction

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

1. Notice - habeas corpus. The Cherokee Nation has a duty to timely notify, in writing, any person or defendant detained under such authority of their rights and privileges under this section and under 25 USC§ 1303.

B. Special tribal criminal jurisdiction shall apply to a non-Indian offender for criminal conduct in violation of the following covered crimes;

(1)Assault of Tribal justice persom1el. The term "assault of Tribal justice personnel" means any violation of any provision of the Criminal Code of the Cherokee Nation when the violation occurs within their jurisdiction where the violation occurs that involves the use, attempted use, or threatened use of physical force against an individual authorized to act for, or on behalf of, the Cherokee Nation during, or because of. the performance or duties of that individual in-

(A) preventing, detecting, investigating, making arrests relating to, making apprehensions for, or prosecuting a covered crime:

(B) adjudicating, participating in the adjudication of, or supporting the adjudication of a covered crime;

(C) detaining, providing supervision for, or providing services for persons charged with a covered crime; or

(D) incarcerating, supervising, providing treatment for, providing rehabilitation services for, or providing reentry services for persons convicted of a covered crime.

Protected individuals under this section include, but are not limited to police officers, peace officers, or other duly appointed persons charged with the responsibility of maintaining public order, safety, and health on behalf of the Cherokee Nation as referenced in 21 CNCA § 648 and

§ 649 and any other applicable provision reasonably construed. Protected individuals further include employees of the Cherokee Nation Comi, Office of the Attorney General, Marshal Service, and other Cherokee Nation employees or individuals authorized to provide services contained in section A, B, C, and D above.

(2) Child violence. The term "child violence" means any action which constitutes the use. threatened use, or attempted use of violence against a child. including but not limited to those outlined within 21 CNCA § 843 or other applicable statute.

(3) Dating violence. The term "dating violence" means any violation of the Criminal Code of the Cherokee Nation where the violation occurs that is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(4) Domestic violence. The term "domestic violence" means any violation of the Criminal Code of the Cherokee Nation when the violation occurs within their jurisdiction that 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 who has cohabitated with the victim as a spouse or intimate partner; or

(D) a person similarly situated to a spouse of the victim, or relevant person under 21 C CA § 1130 or any other applicable provision.

(5) Obstruction of justice. The term "obstruction of justice" means violation of the Criminal Code of the Cherokee Nation when the violation occurs within their jurisdiction where the violation occurs that involves interfering with the administration or due process of the laws of the India11 tribe, including any Tribal criminal proceeding or investigation of a crime: including but not limited to 21 CNCA § 540.

(6) Sex trafficking. The term "sex trafficking" means conduct within the meaning of section 1591(a) of title 18, United States Code.

(7) Sexual violence. The term "sexual violence" means a11y nonconsensual sexual act or contact proscribed by the Criminal Code of the Cherokee Nation when the violation occurs within their jurisdiction, including in any case in which the victim lacks the capacity to consent to the act. Such acts include but are not limited to those defined as: Rape, 21 CNCA §§ 1111: 1111.1; 1114; Lewd or indecent proposals or act as to child, 21 CNCA § 1123; Sexual Battery, 21 CN § 1123.1: or any other applicable provision reasonably construed.

(8) Stalking. The term "stalking" means engaging in a course of conduct directed at a specific person proscribed by the Criminal Code of the Cherokee Nation when the violation occurs within their jurisdiction that would:

(A) cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress; or

(B) otherwise fall within the provisions of Stalking, 21 CNCA § 1134.

(9) Protection order. In addition to Chapter 5 of the Cherokee Nation Tribal Code - "Civil Protective Orders", 22 CNCA § 60.4 "Service of Process - Ex Parte Orders - Hearing - Protective Orders -Period of Relief', and 21 CNCA § 1132- "Protection from Domestic Abuse Act", the term "protection order"-

(A) means 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) includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendent lite order in another proceeding, if the civil or criminal order was issued in response to a complaint. petition, or motion filed by or on behalf of a person seeking protection.

(10) Violation of a protection order. In addition to the provisions of 22 CNCA § 60.6 - "Violation of Ex Parte or Final Protective Order", the term "violation of a protection order" means an act that-

(A) occurs within the jurisdiction of the Cherokee Nation; and

(B) violates a provision of a protection order that-

(i) 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;

(ii) was issued against the defendant;

(iii) is enforceable by the Cherokee Nation or another jurisdiction; and

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(iv) is consistent with section 2265(b) of title 18, United States Code.

C. The Cherokee Nation hereby declares its special tribal 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 tribal criminal jurisdiction over an alleged offence other than obstruction of justice or assault of Tribal justice personnel if neither the defendant nor the alleged victim is an 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 Tribal Criminal Jurisdiction, the rights enumerated in the Cherokee Nation Code Annotated shall be provided to all defendants.

B. In proceedings in which the Special Tribal Criminal Jurisdiction is being exercised, a defendant charged under Special Tribal 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 Court will ensure that the eligible juror list 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

RESISTANCE TO EXECUTION OF PROCESS

§ 93. Refusal to assist officer a misdemeanor

Every person commanded by a public officer to assist him in the execution of a process, who, without lawful cause, refuses or neglects to obey the commands, is guilty of a misdemeanor.

LA 10-90, eff. November 13, 1990.

CHAPTER 3

JURISDICTION AND COMMITMENT

JURISDICTION AND VENUE

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JURISDICTION AND VENUE

§ 121. Offenses commenced outside and consummated within the Nation

When the commission of a public offense, commenced without this Nation, is consummated within its boundaries, the defendant is liable to punishment therefor in this Nation, though he were out of the Nation at the time of the commission of the offense charged if he consummated it in this Nation through the intervention of an innocent or guilty agent, or by any other means proceeding directly from himself; and in such case, the jurisdiction is in the Nation.

LA 10-90, eff. November 13, 1990.

§ 126. Kidnapping, enticing away children and similar offenses, jurisdiction

The jurisdiction of an information:

1. For forcibly and without lawful authority seizing and confining another, or inveigling or kidnapping him, with intent, against his will, to cause him to be secretly confined or imprisoned in this Nation, or to be sent out of the Nation; or

2. For decoying or taking or enticing away a child under the age of twelve (12) years, with intent to detain and conceal it from its parents, guardian, or other person having lawful charge of the child; or

3. For the inveigling, enticing, or taking away person under the age of twenty-one (21) years for the purpose of prostitution; or

4. For taking away any person under the age of sixteen (16) years from her father, mother, guardian or other person having the legal charge of her person without their consent either for the purpose of concubinage or prostitution;

is in Cherokee Nation if the offense is committed within Cherokee Nation or the person upon whom the offense was committed, may, in the commission of the offense, have been brought within Cherokee Nation, or if an act done by the defendant in instigating, procuring, promoting, aiding or in being an accessory to the commission of the offense, or in abetting the parties concerned therein was performed within Cherokee Nation.

LA 10-90, eff. November 13, 1990.

§ 129. Accessory, jurisdiction in case of

In the case of an accessory in the commission of a public offense, the jurisdiction is where the offense of the accessory was committed, notwithstanding the principal offense was committed in another jurisdiction.

LA 10-90, eff. November 13, 1990.

§ 130. Conviction or acquittal outside Nation a bar

When an act charged as a public offense is within the jurisdiction of another territory, state or nation, as well as this Nation, a conviction or acquittal thereof in the former is a bar to a prosecution therefore in this Nation.

LA 10-90, eff. November 13, 1990.

§ 133. Stealing property in another jurisdiction-Receiving such stolen property

The jurisdiction of a prosecution for stealing in a state, or other territory, the property of another, or receiving it, knowing it to have been stolen, and bringing the same into this Nation, is in the Nation.

LA 10-90, eff. November 13, 1990.

§ 134. Murder or manslaughter, jurisdiction in certain cases

The jurisdiction of a prosecution for murder or manslaughter, when the injury which caused the death was inflicted in one jurisdiction, and the party injured dies in another jurisdiction, or out of the Nation, is in the jurisdiction where the injury was inflicted.

LA 10-90, eff. November 13, 1990.

§ 135. Principal not present, jurisdiction

The jurisdiction of a prosecution against a principal in the commission of a public offense, when such principal is not present at the commission of the public offense, is in the same jurisdiction as it would be under this chapter, if he were so present and aiding and abetting therein.

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LA 10-90, eff. November 13, 1990.

LIMITATIONS

§ 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.

LA 10-90, eff. November 13, 1990, LA 29-20, eff. December 16, 2020.

§ 152. Reserved

LA 10-90, eff. November 13, 1990. Amended LA 24-02, eff. August 21, 2002, LA 29-20, eff. December 16, 2020.

§ 153. Absence from Nation, limitation does not run

If when the offense is committed the defendant be out of the Nation, the prosecution may be commenced within the term herein limited after his coming within the nation, and no time during which the defendant is not an inhabitant of or usually resident within the Nation, is part of the limitation.

LA 10-90, eff. November 13, 1990.

§ 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.

LA 29-20, eff. December 16, 2020.

§ 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.

LA 29-20, eff. December 16, 2020.

MAGISTRATES

§ 161. Magistrate defined

A Magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense.

LA 10-90, eff. November 13, 1990.

§ 162. Who are Magistrates

The following persons are Magistrates:

First. Justices of the Supreme Court;

Second. Judges of the District Court, including Associate District Judges, Special Judges and Magistrates.

LA 10-90, eff. November 13, 1990.

ARREST AND TAKING BEFORE MAGISTRATE

§ 171. Complaint-Issuance of warrant of arrest

When a complaint, verified by oath or affirmation, is laid before a Magistrate, of the commission of a public offense, he must, if satisfied therefrom that the offense complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, issue a warrant of arrest.

LA 10-90, eff. November 13, 1990.

§ 172. Form of warrant

A warrant of arrest is an order in writing, in the name of the Nation, signed by a Magistrate, commanding the arrest of the defendant, and may be substantially in the following form:

Cherokee Nation

To any marshal, sheriff, constable, marshal or policeman in this Nation:

Complaint upon oath having been this day made before me that the crime of (designating it) has been committed, and accusing C. D. thereof, you are therefore commanded forthwith to arrest the above named C. D. and bring him before me at (naming the place), or, in case of my absence or inability to act, before the nearest or most accessible Magistrate.

Dated at .... this .... day of .... 20 ....

E. F., Judge (or as the case may be.)

LA 10-90, eff. November 13, 1990.

WARRANTS AND TAKING BEFORE MAGISTRATE

§ 173. Requisites of warrant

The warrant must specify the name of the defendant, or, if it is unknown to the Magistrate, the defendant may be designated therein by any name. It must also state an offense in respect to which the Magistrate has authority to issue the warrant, and the time of issuing it, and the county, city, or town where it is issued, and if the offense charged is bailable, shall fix the amount of bail and an endorsement shall be made on the warrant, to the following effect: "The defendant is to be admitted to bail in the sum of $____" and be signed by the Magistrate with his name of office.

LA 10-90, eff. November 13, 1990.

§ 174. Warrant directed to whom

The warrant must be directed to and executed by a peace officer.

LA 10-90, eff. November 13, 1990.

§ 178. Proceedings when bail is taken

On taking bail, the Magistrate must certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer having charge of the defendant. The officer must then discharge the defendant from arrest, and must, without delay, deliver the warrant and undertaking to the Clerk of the Court at which the defendant is required to appear.

LA 10-90, eff. November 13, 1990.

§ 179. When bail is not given

If, on the admission of the defendant to bail, bail be not forthwith given, the officer must take the defendant before the Magistrate who issued the warrant, or some other Magistrate, as provided in the next section.

LA 10-90, eff. November 13, 1990.

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§ 180. Magistrate absent-Taking defendant before another

When, by the preceding sections of this chapter, the defendant is required to be taken before the Magistrate who issued the warrant, he may, if the Magistrate be absent or unable to act, be taken before the nearest or most accessible Magistrate in the Nation. The officer must, at the same time, deliver to the Magistrate the warrant, with the return endorsed and subscribed by him.

LA 10-90, eff. November 13, 1990.

§ 181. Delay in taking before Magistrate not permitted

The defendant must, in all cases, be taken before the Magistrate without unnecessary delay.

LA 10-90, eff. November 13, 1990.

§ 186. Arrest defined

Arrest is the taking of a person into custody, that he may be held to answer for a public offense.

LA 10-90, eff. November 13, 1990.

§ 187. Arrest made by whom

An arrest may be either:

1. By a peace officer, under warrant;

2. By a peace officer without a warrant; or

3. By a private person.

LA 10-90, eff. November 13, 1990.

§ 188. Aid to officer

Every person must aid an officer in the execution of a warrant, if the officer require his aid.

LA 10-90, eff. November 13, 1990.

§ 189. Arrest, when made

If the offense charged is a crime which under the laws of the State of Oklahoma would be a felony, the arrest may be made on any day, and at any time of the day or night. If it is a crime which under the laws of the State of Oklahoma would be a misdemeanor, the arrest may be made only during the hours of six o'clock a.m. to ten o'clock p.m., inclusive, except as otherwise may be directed by the Magistrate endorsed upon the warrant. Provided, an arrest on a warrant which charges a criminal offense may be made at any time of the day or night if the defendant is in a public place or on a public roadway.

LA 10-90, eff. November 13, 1990.

§ 190. Arrest, how made

An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of the officer.

LA 10-90, eff. November 13, 1990.

§ 191. Restraint which is permissible

The defendant is not to be subjected to any more restraint than is necessary for his arrest and detention.

LA 10-90, eff. November 13, 1990.

§ 192. Officer must show warrant

The officer must inform the defendant that he acts under the authority of the warrant, and must also show the warrant

within a reasonable time under the circumstances, if requested.

LA 10-90, eff. November 13, 1990.

§ 193. Resistance, means to overcome

If, after notice of intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest.

LA 10-90, eff. November 13, 1990.

§ 194. Officer may break open door or window, when

The officer may break open an outer or inner door or window of a dwelling house, to execute the warrant, if, after notice of his authority and purpose, he be refused admittance.

LA 10-90, eff. November 13, 1990.

§ 195. Officer's breaking door or window to liberate himself or another arrester

An officer may break open an outer or inner door or window of a dwelling house for the purposes of liberating a person who, having entered for the purpose of making an arrest, is detained therein, or when necessary for his own liberation.

LA 10-90, eff. November 13, 1990.

§ 196. Arrest without warrant by officer

A peace officer may, without a warrant, arrest a person:

1. For a public offense, committed or attempted in his presence;

2. When the person arrested has committed a crime under the laws of Cherokee Nation which if committed under the laws of the State of Oklahoma would be a felony, although not in his presence;

3. When a crime under the laws of Cherokee Nation which if committed under the laws of the State of Oklahoma would be a felony, has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it;

4. On a charge, made upon reasonable cause, of the commission of a crime under the laws of Cherokee Nation which if committed under the laws of the State of Oklahoma would be a felony, by the party arrested;

5. When he has probable cause to believe that the party was driving or in actual physical control of a motor vehicle involved in an accident upon the public highways, streets or turnpikes and was under the influence of alcohol or intoxicating liquor or who was under the influence of any substance included in the Uniform Controlled Dangerous Substances Act, 21 CNCA § 2101 et seq.; or

6. Anywhere, including his place of residence, if the peace officer has probable cause to believe the person within the preceding four (4) hours has committed an act of domestic abuse as defined by 22 CNCA § 60.1, 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.

LA 10-90, eff. November 13, 1990.

§ 197. Arrest without warrant, breaking door or window

To make an arrest, as provided in the last section, the officer may break open an outer or inner door or window of a dwelling house, if, after notice of his office and purpose, he be refused admittance.

LA 10-90, eff. November 13, 1990.

§ 198. Nighttime, arrest of suspected criminal

He may also at night, without a warrant, arrest any person whom he has reasonable cause for believing to have committed a crime under the laws of Cherokee Nation which if committed under the laws of the State of Oklahoma would be a felony, and is justified in making the arrest though it afterward appear that the felony had not been committed.

LA 10-90, eff. November 13, 1990.

§ 199. Authority must be stated on arrest without warrant, when

When arresting a person without a warrant, the officer must inform him of his authority and the cause of the arrest, except when he is in actual commission of a public offense, or is pursued immediately after an escape.

LA 10-90, eff. November 13, 1990.

§ 200. Arrest by bystander-Officer may take defendant before Magistrate

He may take before a Magistrate, a person, who being engaged in a breach of the peace, is arrested by a bystander and delivered to him.

LA 10-90, eff. November 13, 1990.

§ 201. Offense committed in presence of Magistrate

When a public offense is committed in the presence of a Magistrate, he may, by a verbal or written order, command any person to arrest the offender, and may thereupon proceed as if the offender had been brought before him on a warrant of arrest.

LA 10-90, eff. November 13, 1990.

§ 202. Arrest by private person

A private person may arrest another:

1. For a public offense committed or attempted in his presence.

2. When the person arrested has committed a crime under the laws of Cherokee Nation which if committed under the laws of the State of Oklahoma would be a felony although not in his presence.

3. When the person has committed a crime under the laws of Cherokee Nation which if committed under the laws of the State of Oklahoma would be a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

LA 10-90, eff. November 13, 1990.

§ 203. Private person must inform person of cause of arrest

He must, before making the arrest, inform the person to be arrested of the cause thereof, and require him to submit, except when he is in actual commission of the offense or when he is arrested on pursuit immediately after its commission.

LA 10-90, eff. November 13, 1990.

§ 204. Private person may break door or window

If the person to be arrested have committed crime under the laws of Cherokee Nation which if committed under the laws of the State of Oklahoma would be a felony, and a private person, after notice of his intention to make the arrest, be refused admittance, he may break open an outer or inner door or window of a dwelling house, for the purpose of making the arrest.

LA 10-90, eff. November 13, 1990.

§ 205. Private person making arrest must take defendant to Magistrate or officer

A private person who has arrested another for the commission of a public offense, must, without unnecessary delay, take him before a Magistrate or deliver him to a peace officer.

LA 10-90, eff. November 13, 1990.

§ 206. Disarming person arrested

Any person making an arrest must take from the person arrested all offensive weapons which he may have about his person, and must deliver them to the Magistrate before whom he is taken.

LA 10-90, eff. November 13, 1990.

§ 207. Pursuit and arrest of escaped prisoner

If a person arrested escape or be rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him, at any time, and in any place in the Nation.

LA 10-90, eff. November 13, 1990.

§ 208. Breaking door or window to arrest person escaping

To take the person escaping or rescued, the person pursuing may, after notice of his intention and refusal of admittance, break open an outer or inner door or window of a dwelling house.

LA 10-90, eff. November 13, 1990.

§ 209. Citation to appear-Issuance-Summons-Failure to appear

A. A law enforcement officer who has arrested a person on a criminal charge, without a warrant, which if committed under the laws of the State of Oklahoma would be a misdemeanor, may issue a citation to such person to appear in Court.

B. In issuing a citation hereunder the officer shall proceed as follows:

1. He shall prepare a written citation to appear in Court, containing the name and address of the cited person and the offense charged, and stating when the person shall appear in Court. Unless the person requests an earlier date, the time specified in the citation to appear shall be at least five (5) days after the issuance of the citation.

2. One (1) copy of the citation to appear shall be delivered to the person cited, and such person shall sign a duplicate written citation which shall be retained by the officer.

3. The officer shall thereupon release the cited person from any custody.

4. As soon as practicable, the officer shall file one (1) copy of the citation with the Court specified therein and shall deliver one (1) copy to the Prosecuting Attorney.

C. In any case in which the judicial officer finds sufficient grounds for issuing a warrant, he may issue a summons

commanding the defendant to appear in lieu of a warrant.

D. If a person summoned fails to appear in response to the summons, a warrant for his arrest shall issue, and any person who willfully fails to appear in response to a summons is guilty of a crime.

LA 10-90, eff. November 13, 1990.

§ 221. Fresh pursuit

A. Any member of a duly-organized tribal, state, county, or municipal peace unit of a jurisdiction of the United States who enters Indian Country in fresh pursuit, and continues within Indian Country in such fresh pursuit, of a person in order to arrest him on the ground that he is believed to have committed a felony in such state, or to have committed a misdemeanor in the presence of the arresting officer shall have the same authority to arrest and hold such person in custody, as has any member of any duly-organized state, county, or municipal peace unit of Cherokee Nation, to arrest and hold in custody a person on the ground that he is believed to have committed a felony or has committed a misdemeanor in the presence of the arresting officer in Cherokee Nation.

B. If an arrest is made in Indian Country by an officer of a state in accordance with the provisions of 22 CNCA § 221(A) he shall without unnecessary delay take the person arrested before a Magistrate of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the Magistrate determines that the arrest was lawful he shall commit the person arrested to the custody of the arresting officer.

C. Section 221 of this Title shall not be construed so as to make unlawful any arrest in Oklahoma which would otherwise be lawful.

D. The term **"fresh pursuit"** as used in this act shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony. It shall also include the pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. It shall also include misdemeanors which are committed in the presence of the arresting officer. **"Fresh pursuit"** as used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

LA 10-90, eff. November 13, 1990.

§ 222. Exception

Section 221 of this Title shall not apply where the crime or offense charged is a lawful act under Cherokee Nation law.

LA 10-90, eff. November 13, 1990.

§ 231. Crimes-Warrant for arrest-Complaint submitted to Prosecuting Attorney-Cost bond

In all criminal cases, before a warrant shall issue for the arrest of the defendant the complaint must be submitted to the Prosecuting Attorney, or drawn by him and endorsed as follows: "I have examined the facts in this case and recommend that a warrant do issue," and then filed with the Court.

LA 10-90, eff. November 13, 1990.

§ 232. Form of cost bond

The bond may be substantially in the following form:

Cherokee Nation, against (naming the defendant). I, (naming the principal) as principal and .... as surety bind ourselves to pay all costs in this cause if the defendant is acquitted. Signed this .... day of ...., 20 .....

The surety must qualify before the bond is approved.

LA 10-90, eff. November 13, 1990.

§ 233. Judgment on bond

In all cases where bonds have been given under the provisions of this chapter, and the maker thereof shall be liable thereon, by the conviction or acquittal of the defendant, the Court shall, at the time of rendering judgment for or against the defendant, render such judgment as may be proper on the bond, and issue execution thereon, as in cases of a civil judgment.

LA 10-90, eff. November 13, 1990.

EXAMINATION AND COMMITMENT

§ 251. Magistrate must inform defendant of charge and rights

When the defendant is brought before a Magistrate upon an arrest, either with or without a warrant, on a charge of having committed a public offense, the Magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings, and also of his right to waive an examination before any further proceedings are had.

LA 10-90, eff. November 13, 1990.

§ 252. Defendant allowed counsel-Messages to counsel-Change of venue

He must also allow to the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose; and must, upon the request of the defendant, require a peace officer to take a message to such counsel in the county or city as the defendant may name. The officer must, without delay, perform that duty, and shall receive fees therefor as upon a service of a subpoena.

LA 10-90, eff. November 13, 1990.

§ 270. Witnesses to give undertaking

On holding the defendant to answer, the Magistrate may take from each of the material witnesses examined before him on the part of the Nation, a written undertaking, without surety, to the effect that he will appear and testify at the Court to which the complaint and deposition, if any are to be sent or that he will forfeit such sum as the Magistrate may fix and determine.

LA 10-90, eff. November 13, 1990.

§ 271. Sureties may be required for witness

When the Magistrate is satisfied, by proof on oath, that there is reason to believe that any such witness will not appear and testify, unless security be required, he may order the witness to enter into a written undertaking, with such sureties and in such sum as he may deem proper, for his appearance, as specified in the last section.

LA 10-90, eff. November 13, 1990.

§ 273. Witness not giving undertaking committed, when

If a witness, required to enter into an undertaking to appear and testify, either with or without sureties, refuse compliance with the order for that purpose, the Magistrate must commit him to the penal institution until he comply, or is legally discharged.

LA 10-90, eff. November 13, 1990.

§ 274. Subsequent security may be demanded-Arrest of witness

When, however, any material witness on the part of the people has been discharged on his undertaking, without surety, if afterwards, on the sworn application of the Prosecuting Attorney or other person on behalf of the Nation, made to the Magistrate or to any Judge, it satisfactorily appears that the presence of such witness or any other person on the part of the people is material or necessary on the trial in Court, such Magistrate or Judge may compel such witness, or any other material witness on the part of the Nation, to give an undertaking with sureties, to appear on the said trial and give his testimony therein; and, for that purpose, the said Magistrate or Judge may issue a warrant against such person, under his hand, with or without seal, directed to a sheriff, marshal or other officer, to arrest such person and bring him before such Magistrate or Judge.

LA 10-90, eff. November 13, 1990.

§ 275. Arrested witness may be confined

In case the person so arrested shall neglect or refuse to give said undertaking in the manner required by said Magistrate or Judge, he may issue a warrant of commitment against such person, which shall be delivered to said marshal, sheriff or other officer, whose duty it shall be to convey such person to the penal institution mentioned in said warrant, and the said person shall remain in confinement until he shall be removed to the grand jury and to the Court, for the purpose of giving his testimony, or until he shall have given the undertaking required by said Magistrate or Judge.

LA 10-90, eff. November 13, 1990.

§ 277. Deaf-mute charged with commission of offense-Right to interpreter

Every deaf-mute person who is charged with the commission of a criminal offense shall be entitled to the assistance and services of a qualified interpreter. Prior to questioning upon arrest and all subsequent proceedings, the Court shall procure a qualified interpreter to assist such person in communications with officers of the Court.

LA 10-90, eff. November 13, 1990.

§ 278. Arrest of deaf-mute-Interpreter-Evidence

When a deaf-mute is arrested he shall be entitled to the assistance of an interpreter. Evidence by the Nation relating to any statement made by a deaf-mute to a law enforcement officer shall be limited solely to statements offered, elicited, or made in the presence of a qualified interpreter.

LA 10-90, eff. November 13, 1990.

§ 279. Qualified interpreter

For the purposes of this act, a qualified interpreter shall mean one who is readily able to translate simultaneously in either direction the manual system or lip reading and spoken English, and a deaf-mute means a person who has a physical handicap which prevents him from fully hearing or speaking. A qualified interpreter shall be furnished, or recommended, by the principal administrative officer of the Oklahoma School for the Deaf upon direction of any District Court of this Nation.

LA 10-90, eff. November 13, 1990.

§ 280. Per diem and mileage

Payment of per diem and mileage of a qualified interpreter, at the rate and basis provided by law for Nation employees, in attending the Court which he is requested by the Judge thereof to attend for the purposes of assisting and serving a deaf-mute is authorized upon approval of the claim therefor against the Court Fund of the county by the District Judge.

LA 10-90, eff. November 13, 1990.

CHAPTER 4

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GENERAL PROVISIONS

§ 301. Manner of prosecution of offenses

Every crime must be prosecuted by information in the District Court.

LA 10-90, eff. November 13, 1990.

§ 303. Subscription, endorsement and verification of information-Excusing endorsement

The Prosecuting Attorney shall subscribe his name to informations filed in the District Court and endorse thereon the names and last-known addresses of all the witnesses known to him at the time of filing the same. Thereafter, he shall

also endorse thereon the names and last-known addresses of such other witnesses as may afterwards become known to him, if they are intended to be called as witnesses at trial, at such time as the Court may by rule prescribe. All informations shall be verified by the oath of the Prosecuting Attorney, complainant or some other person.

Upon filing of a verified application by the Prosecuting Attorney, notice to defense counsel, and hearing establishing need for witness protection or preservation of the integrity of evidence, the District Court may excuse witness endorsement, or some part thereof. Such proceedings shall be conducted in camera, and the record shall be sealed and filed in the office of the District Court Clerk, and shall not be opened except by order of the District Court.

LA 10-90, eff. November 13, 1990.

§ 304. Information may be amended

An information may be amended in matter of substance or form at any time before the defendant pleads, without leave, and may be amended after plea on order of the Court where the same can be done without material prejudice to the right of the defendant; no amendment shall cause any delay of the trial, unless for good cause shown by affidavit.

LA 10-90, eff. November 13, 1990.

§ 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;

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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.

LA 08-21, eff. March 1, 2021

§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.

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.

LA 08-21, eff. March 1, 2021

§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. On and after the effective date of this act, if an agreement is terminated by the Cherokee Nation for failure of the person to comply with the terms of the deferred prosecution agreement, the termination document and supporting documentation shall be open to the public.

C. 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.

LA 08-21, eff. March 1, 2021

§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.

LA 08-21, eff. March 1, 2021

§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.

LA 08-21, eff. March 1, 2021

§ 387. Forms and rules of pleading

All forms of pleading in criminal actions, and rules by which the sufficiency of pleadings is to be determined are those prescribed by this code.

LA 10-90, eff. November 13, 1990.

§ 388. Information first pleading

The first pleading on the part of the Nation is the information.

LA 10-90, eff. November 13, 1990.

REQUISITES AND SUFFICIENCY OF INDICTMENT OR INFORMATION

§ 401. Requisites of information

The information must contain:

1. The title of the action, specifying the name of the Court to which the information is presented, and the names of the parties.

2. A statement of the acts constituting the offense, in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended.

LA 10-90, eff. November 13, 1990.

§ 402. Information certain and direct

The information must be direct and certain as it regards:

1. The party charged.

2. The offense charged.

3. The particular circumstances of the offense charged, when they are necessary to constitute a complete offense.

LA 10-90, eff. November 13, 1990.

§ 403. Designation of defendant by fictitious name

When a defendant is prosecuted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it must be inserted in the subsequent proceedings, referring to the fact of his being charged by the name mentioned in the information.

LA 10-90, eff. November 13, 1990.

§ 404. Single offense to be charged-Different counts

The information must charge but one offense, but where the same acts may constitute different offenses, or the proof may be uncertain as to which of two or more offenses the accused may be guilty of, the different offenses may be set forth in separate counts in the same information and the accused may be convicted of either offense, and the Court or jury trying the cause may find all or either of the persons guilty of either of the offenses charged, and the same offense may be set forth in different forms or degrees under different counts; and where the offense may be committed by the use of different means, the means may be alleged in the alternative in the same count.

LA 10-90, eff. November 13, 1990.

§ 405. Allegation of time

The precise time at which the offense was committed need not be stated in the information; but it may be alleged to have been committed at any time before the finding thereof, except where the time is a material ingredient in the offense.

LA 10-90, eff. November 13, 1990.

§ 406. Misdescription of person injured or intended to be injured

When an offense involves the commission of, or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, is not material.

LA 10-90, eff. November 13, 1990.

§ 407. Words, how construed

The words used in an information must be construed in their usual acceptation, in common language, except words and phrases defined by law, which are to be construed according to their legal meaning.

LA 10-90, eff. November 13, 1990.

§ 408. Statute not strictly pursued

Words used in a statute to define a public offense, need not be strictly pursued in the information; but other words conveying the same meaning may be used.

LA 10-90, eff. November 13, 1990.

§ 409. Information, when sufficient

The information is sufficient if it can be understood therefrom:

1. That it is entitled in a Court having authority to receive it, though the name of the Court be not stated.

2. That it was presented by the Prosecuting Attorney in which the Court was held.

3. That the defendant is named, or if his name cannot be discovered, that he is described by a fictitious name, with the statement that his true name is unknown.

4. That the offense was committed at some place within the jurisdiction of the Court, except where the act, though done

without the local jurisdiction, is triable therein.

5. That the offense was committed at some time prior to the time of filing the information.

6. That the act or omission charged as the offense is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended.

7. That the act or omission charged as the offense, is stated with such a degree of certainty, as to enable the Court to pronounce judgment upon a conviction according to the right of the case.

LA 10-90, eff. November 13, 1990.

§ 410. Immaterial informalities to be disregarded

No information is insufficient, nor can the trial, judgment, or other proceedings thereon be affected, by reason of a defect or imperfection in the matter of form which does not tend to the prejudice of the substantial rights of the defendant upon the merits.

LA 10-90, eff. November 13, 1990.

§ 411. Matters which need not be stated

Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in an information.

LA 10-90, eff. November 13, 1990.

§ 412. Pleading a judgment

In pleading a judgment or other determination of, or proceeding before a Court or officer of special jurisdiction it is not necessary to state the facts conferring jurisdiction; but the judgment or determination may be stated to have been duly given or made. The facts constituting jurisdiction, however, must be established on the trial.

LA 10-90, eff. November 13, 1990.

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§ 413. Pleading private statute

In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute by its title and the day of its passage, and the Court must thereupon take judicial notice thereof.

LA 10-90, eff. November 13, 1990.

INDICTMENTS AND INFORMATIONS FOR PARTICULAR OFFENSES

§ 421. Arson-Omission or error in designating owner or occupant

An omission to designate, or error in designating in information for arson, the owner or occupant of a building, shall not prejudice the proceedings thereupon, if it appears that upon the whole description given of the building, it is sufficiently identified to enable the defendant to prepare his defense.

LA 10-90, eff. November 13, 1990.

§ 423. Forgery, misdescription of forged instrument immaterial, when

When an instrument, which is the subject of an information for forgery, has been destroyed or withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the information and established on the trial, the misdescription of the instrument is immaterial.

LA 10-90, eff. November 13, 1990.

§ 424. Perjury, information for

In an information for perjury, or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and in what Court or before whom the oath alleged to be false was taken; and that the Court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the information need not set forth the pleadings, record, or proceedings with which the oath is connected, nor the commission or authority of the Court or person before whom the perjury was committed.

LA 10-90, eff. November 13, 1990.

§ 425. Larceny or embezzlement, information for

In an information for the larceny or embezzlement of money, bank notes, certificates of stock or valuable securities, or for a conspiracy to cheat and defraud a person of any such property, it is sufficient to allege the larceny or embezzlement, or the conspiracy to cheat and defraud, to be of money, bank notes, certificates of stock or valuable securities, without specifying the coin, number, denomination or kind thereof.

LA 10-90, eff. November 13, 1990.

§ 426. Obscene literature, information for handling

An information for exhibiting, publishing, passing, selling or offering to sell, or having in possession with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper or writing, but it is sufficient to state generally the fact of the lewdness or obscenity thereof.

LA 10-90, eff. November 13, 1990.

PARTIES PROSECUTED

§ 431. Several defendants

Upon an information against several defendants, any one or more may be convicted or acquitted.

LA 10-90, eff. November 13, 1990.

§ 432. Accessories and principals in crime

All persons concerned in the commission of a crime, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, must be prosecuted, tried and punished as principals, and no additional facts need be alleged in any information against such an accessory than are required in an information against his principal.

LA 10-90, eff. November 13, 1990.

§ 433. Accessory tried independently of principal

An accessory to the commission of a crime may be prosecuted, tried and punished, though the principal be neither prosecuted nor tried, and though the principal may have been acquitted.

LA 10-90, eff. November 13, 1990.

§ 434. Compounding a crime-Separate prosecution

A person may be prosecuted for having, with the knowledge of the commission of a public offense, taken money or property of another, or a gratuity or reward, or an engagement or promise therefor, upon the agreement or understanding, express or implied, to compound or conceal the offense, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original offense has not been indicted or tried.

LA 10-90, eff. November 13, 1990.

JOINDER OF OFFENSES AND OF DEFENDANTS

§ 436. Charging of two or more defendants in same information-Counts

Two or more defendants may be charged in the same information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately, provided that all of the defendants charged together in the same information are alleged to have participated in all of the same acts or transactions charged.

LA 10-90, eff. November 13, 1990.

§ 437. Singular to include the plural

All laws in this chapter wherein the singular of words is used are hereby amended to include the plural of such words to give effect to the purpose of this act.

LA 10-90, eff. November 13, 1990.

§ 438. Trial of two or more informations

The Court may order two or more informations or both to be tried together if the offenses and the defendants, if there is more than one, could have been joined in a single information. The procedure shall be the same as if the prosecution was under such single information.

LA 10-90, eff. November 13, 1990.

§ 439. Relief from prejudicial joinder

If it appears that a defendant or the Nation is prejudiced by joinder of offenses or of defendants in an information or by such joinder for trial together, the Court shall order an election or separate trial of counts, grant a severance of defendants, or provide whatever other relief justice requires.

LA 10-90, eff. November 13, 1990.

CHAPTER 7

PROCEEDINGS BEFORE TRIAL

ARRAIGNMENT AND APPEARANCE

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ARRAIGNMENT AND APPEARANCE

§ 451. Arraignment

When the information is filed, the defendant must be arraigned thereon before the Court in which it is filed.

LA 10-90, eff. November 13, 1990.

§ 452. Defendant must appear personally, when

If the information is for a crime the defendant must be personally present.

LA 10-90, eff. November 13, 1990.

§ 453. Officer to bring defendant before Court

When his personal appearance is necessary, if he be in custody, the Court may direct the officer in whose custody he is to bring him before it to be arraigned, and the officer must do so accordingly.

LA 10-90, eff. November 13, 1990.

§ 454. Bench warrant to issue, when

If the defendant has been discharged on bail, or have deposited money instead thereof, and does not appear to be arraigned, when his personal attendance is necessary, the Court in addition to the forfeiture of the undertaking of bail or of the money deposited, may direct the Clerk to issue a bench warrant for his arrest.

LA 10-90, eff. November 13, 1990.

§ 455. Bench warrant may issue

The Clerk, on the application of the Prosecuting Attorney, may, accordingly, at any time after the order, whether the Court be sitting or not, issue a bench warrant for any part of Cherokee Nation.

LA 10-90, eff. November 13, 1990.

§ 456. Bench warrant, form of, in case of felony

The bench warrant must, if the offense is a crime, be substantially in the following form:

In Cherokee Nation,

To any sheriff, constable, policeman or marshal in this state:

An information having been filed on the .... day of ...., A. D., 20.., in the District Court in and for Cherokee Nation ...., charging C.D. with the crime of ...., (designating it generally) you are therefore commanded forthwith to arrest the above named C. D., and bring him before the Court (or before the court to which the information may have been removed, naming it) to answer said information; or if the Court have adjourned for the term, that you deliver him into the custody of the Marshal or Sheriff of Cherokee Nation.

Given under my hand, with the seal of said Court affixed this .... day of ...., A. D., 20 ....

By order of the Court.

(Seal) E. F., Clerk.

LA 10-90, eff. November 13, 1990.

§ 457. Bench warrant in case

If the offense is a bailable crime, the bench warrant must be in a similar form, adding to the body thereof a direction to the following effect:

Or if he requires it that you take him before any Magistrate that he may give bail to answer the information.

LA 10-90, eff. November 13, 1990.

§ 458. Court to fix amount of bail-Endorsement

If the offense charged is bailable, the Court, upon directing the bench warrant to issue, must fix the amount of bail and an endorsement must be made on the bench warrant and signed by the Clerk, to the following effect:

The defendant is to be admitted to bail in the sum of ....

LA 10-90, eff. November 13, 1990.

§ 459. Defendant held when offense not bailable

The defendant, when arrested under a warrant for an offense not bailable, must be held in custody by the Marshal or Sheriff.

LA 10-90, eff. November 13, 1990.

§ 464. Counsel before trial-Compensation-Expert witnesses

If the defendant appear for trial, without counsel, he must be informed by the Court that it is his right to have counsel before being tried, and must be asked if he desires the aid of counsel. If he desires and is financially unable to employ counsel, the Court must assign counsel to defend him. The attorney so appointed shall represent said person in the examining Magistrate Court until he is discharged or bound over by said Court and shall receive such compensation as is ordered by the Court not to exceed One Hundred Dollars ($100.00) and approved by the Court.

LA 10-90, eff. November 13, 1990.

§ 465. Arraignment made, how

The arraignment must be made by the Court, or by the Clerk or Prosecuting Attorney, under its direction, and consists in reading the information to the defendant, and asking him whether he pleads guilty or not guilty thereto.

LA 10-90, eff. November 13, 1990.

§ 466. Name of defendant

When the defendant is arraigned he must be informed that if the name by which he is prosecuted be not his true name, he must then declare his true name or be proceeded against by the name in the information.

LA 10-90, eff. November 13, 1990.

§ 466A. Tribe of defendant

When the defendant is arraigned he must declare whether is he a citizen of or is eligible for citizenship in one or more Indian bands, tribes, or nations recognized by the federal government. He shall declare his blood quantum for each tribe of which he is a citizen or is eligible for citizenship and shall produce any and all citizenship documents to Indian bands, tribes or nations and any Certificate of Degree of Indian Blood that he may possess.

LA 10-90, eff. November 13, 1990.

§ 467. Proceedings when defendant gives no other name

If he gives no other name, the Court may proceed accordingly.

LA 10-90, eff. November 13, 1990.

§ 468. Proceedings where another name given

If he alleges that another name is his true name, the Court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the information may be had against him by that name, referring also to the name by which he is informed against.

LA 10-90, eff. November 13, 1990.

PLEADINGS AND MOTIONS

§ 491. Time to answer information

If, on the arraignment, the defendant require it, he must be allowed until the next day, or such further time may be allowed him as the Court may deem reasonable, to answer the information.

LA 10-90, eff. November 13, 1990.

§ 492. Pleading to information

If the defendant does not require time, as provided in the last section, or if he does, then on the next day, or at such further day as the Court may have allowed him, he may, in answer to the arraignment, either move the Court to set aside the information or may demur or plead thereto.

LA 10-90, eff. November 13, 1990.

§ 493. Information set aside, when

The information must be set aside by the Court in which the defendant is arraigned, and upon his motion in any of the following cases:

When it is not found, endorsed, presented or filed, as prescribed by the statutes.

LA 10-90, eff. November 13, 1990.

§ 494. Hearing on motion to set aside information

To enable the defendant to make proof of the matter set up as grounds for setting aside the information, the defendant may file his application before the Court, setting out and alleging that he is being proceeded against in a certain Court, naming it, and setting out a copy of his motion and alleging, all under oath, that he is acting in good faith, and praying for an order to examine witnesses in support thereof. The Court shall thereupon issue subpoenas to compel any or all witnesses desired to appear before him at the time named, and shall compel the witnesses to testify fully in regard to the matter and reduce the examination to writing, and certify to the same, and it may be used to support the motion. The mover shall pay the costs of the proceeding. He shall notify the Prosecuting Attorney at least two (2) clear days before he proceeds, of the time and place of taking such testimony, and the Prosecuting Attorney may be present and cross-examine the witnesses and if need be the case in the District Court must be adjourned for that purpose.

LA 10-90, eff. November 13, 1990.

§ 495. Witnesses on hearing to set aside information

All witnesses shall be bound to answer fully, and shall not be answerable for the testimony so given in any way, except for the crime of perjury committed in giving such evidence.

LA 10-90, eff. November 13, 1990.

§ 496. Objection to information waived, when

If the motion to set aside the information be not made the defendant is precluded from afterwards taking the objections mentioned in the last section.

LA 10-90, eff. November 13, 1990.

§ 497. Motion to set aside information heard, when

The motion must be heard at the time it is made unless for good cause the Court postpone the hearing to another time.

LA 10-90, eff. November 13, 1990.

§ 498. Defendant to answer information, when

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If the motion be denied, the defendant must immediately answer to the information, either by demurring or pleading thereto.

LA 10-90, eff. November 13, 1990.

§ 499. Motion sustained-Defendant discharged, or bail exonerated, when

If the motion be granted the Court must order that the defendant, if in custody, be discharged therefrom, or if admitted to bail, that his bail be exonerated, or if he have deposited money instead of bail, that the money be refunded to him unless it direct that the case be refiled.

LA 10-90, eff. November 13, 1990.

§ 500. Resubmission of case-Bail

If the Court direct that the case be refiled, the defendant, if already in custody, must so remain, unless he be admitted to bail; or if already admitted to bail, or money have been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new information.

LA 10-90, eff. November 13, 1990.

§ 501. Setting aside information not a bar

An order to set aside an information as provided in this chapter is no bar to a further prosecution for the same offense.

LA 10-90, eff. November 13, 1990.

§ 502. Defendant's pleadings

The only pleading on the part of the defendant is either a demurrer or a plea.

LA 10-90, eff. November 13, 1990.

§ 503. Defendant to plead in open court

Both the demurrer and the plea must be put in open court, either at the time of the arraignment or at such other time as may be allowed to the defendant for that purpose.

LA 10-90, eff. November 13, 1990.

§ 504. Demurrer to information

The defendant may demur to the information when it appears upon the face thereof either:

1. That it does not substantially conform to the requirements of this chapter;

2. That the facts stated do not constitute a public offense;

3. That the information contains any matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.

LA 10-90, eff. November 13, 1990.

§ 505. Demurrer to information, requisites of

The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of the objection to the information, or it must be disregarded.

LA 10-90, eff. November 13, 1990.

§ 506. Hearing on demurrer

Upon the demurrer being filed, the objections presented thereby must be heard, either immediately or at such time as the Court may appoint.

LA 10-90, eff. November 13, 1990.

§ 507. Ruling on demurrer

Upon considering the demurrer, the Court must give judgment either sustaining or overruling it, and an order to that effect must be entered upon the minutes.

LA 10-90, eff. November 13, 1990.

§ 508. Demurrer sustained, effect of

If the demurrer is sustained, the judgment is final upon the information demurred to, and is a bar to another prosecution for the same offense, unless the Court, being of opinion that the objection on which the demurrer is sustained may be avoided in a new information, direct that a new information be filed.

LA 10-90, eff. November 13, 1990.

§ 509. Demurrer sustained-Defendant discharged or bail exonerated, when

If the Court does not direct the case to be further prosecuted, the defendant, if in custody, must be discharged, or if admitted to bail, his bail is exonerated, or if he has deposited money instead of bail, the money must be refunded to him.

LA 10-90, eff. November 13, 1990.

§ 510. Proceedings if case resubmitted

If the Court direct that the case be further prosecuted, the same proceedings must be had thereon as are prescribed in this chapter.

LA 10-90, eff. November 13, 1990.

§ 511. Demurrer overruled, defendant to plead

If the demurrer be overruled, the Court must permit the defendant, at his election, to plead, which he must do forthwith, or at such time as the Court may allow. If he does not plead, judgment may be pronounced against him.

LA 10-90, eff. November 13, 1990.

§ 512. Certain objections, how taken

When the objections mentioned in 22 CNCA § 504 appear upon the face of the information, they can only be taken by demurrer, except that the objection to the jurisdiction of the Court over the subject of the information, or that the facts stated do not constitute a public offense, may be taken after the arraignment of the defendant, or may be taken at the trial, under the plea of not guilty, and in arrest of judgment.

LA 10-90, eff. November 13, 1990.

§ 513. Pleas to indictment or information

There are four kinds of pleas to an information. A plea of:

First, Guilty.

Second, Not guilty.

Third, Nolo contendere, subject to the approval of the Court. The legal effect of such plea shall be the same as that of a plea of guilty, but the plea may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based.

Fourth, A former judgment of conviction or acquittal of the offense charged, which must be specially pleaded, either with or without the plea of not guilty.

LA 10-90, eff. November 13, 1990.

§ 514. Pleas to be oral-Entry

Every plea must be oral and must be entered upon the minutes of the Court.

LA 10-90, eff. November 13, 1990.

§ 515. Form of plea

The plea must be entered in substantially the following form:

1. If the defendant plead guilty:

The defendant pleads that he is guilty of the offense charged in this information.

2. If he plead not guilty:

The defendant pleads that he is not guilty of the offense charged in this information.

3. If he plead a former conviction or acquittal:

The defendant pleads that he has already been convicted (or acquitted, as the case may be), of the offense charged in this information, by the judgment of the Court of .... (naming it), rendered at .... (naming the place), on the .... day of ....

LA 10-90, eff. November 13, 1990.

§ 516. Plea of guilty

A plea of guilty can in no case be put in, except by the defendant himself, in open court, unless upon an information against a corporation, in which case it can be put in by counsel.

LA 10-90, eff. November 13, 1990.

§ 517. Plea of guilty may be withdrawn

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The Court may, at any time before judgment, upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted.

LA 10-90, eff. November 13, 1990.

§ 518. Plea of not guilty, issues on

The plea of not guilty puts in issue every material allegation in the information.

LA 10-90, eff. November 13, 1990.

§ 519. Plea of not guilty, evidence under

All matters of fact tending to establish a defense other than specified in third subdivision of 22 CNCA § 513 may be given in evidence under the plea of not guilty.

§ 520. Acquittal, what does not constitute

If the defendant was formally acquitted on the ground of variance between the information and proof, or the information was dismissed upon an objection to its form or substance, or in order to hold the defendant for a higher offense, without a judgment of acquittal, it is not an acquittal of the same offense.

LA 10-90, eff. November 13, 1990.

§ 521. Acquittal, what constitutes

When, however, he was acquitted on the merits, he is deemed acquitted of the same offense, notwithstanding a defect in form or substance in the information on which he was acquitted.

LA 10-90, eff. November 13, 1990.

§ 522. Former acquittal or conviction as bar

When the defendant shall have been convicted or acquitted upon an information, the conviction or acquittal is a bar to another information for the offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that information.

LA 10-90, eff. November 13, 1990.

§ 523. Refusal to plead

If the defendant refuse to answer the information by demurrer or plea, a plea of not guilty must be entered.

LA 10-90, eff. November 13, 1990.

MISCELLANEOUS PROVISIONS

§ 581. Issue of fact arises, when

An issue of fact arises,

1st, upon a plea of not guilty; or

2nd, upon a plea of a former conviction or acquittal of the same offense.

LA 10-90, eff. November 13, 1990.

§ 582. Issue of fact, how tried

Issues of fact must be tried by a jury.

LA 10-90, eff. November 13, 1990.

§ 583. Defendant must be present, when

If the information is for a crime, the defendant must be personally present at the trial.

LA 10-90, eff. November 13, 1990.

§ 584. Postponement for cause

When an information is called for trial, or at any time previous thereto, the Court may, upon sufficient cause shown by either party, as in civil cases, direct the trial to be postponed to another day in the same or next term.

LA 10-90, eff. November 13, 1990.

§ 585. Postponement for investigation of claimed alibi

Whenever testimony to establish an alibi on behalf of the defendant shall be offered in evidence in any criminal case in any Court of record of Cherokee Nation, and notice of the intention of the defendant to claim such alibi, which notice shall include specific information as to the place at which the defendant claims to have been at the time of the alleged offense, shall not have been served upon the Prosecuting Attorney at or before five (5) days prior to the trial of the case, upon motion of the Prosecuting Attorney, the Court may grant a postponement for such time as it may deem necessary to make an investigation of the facts in relation to such evidence.

LA 10-90, eff. November 13, 1990.

CHAPTER 8

JURY-FORMATION

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ORDER OF TAKING CHALLENGES

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GENERAL PROVISIONS

§ 591. Same jurors in both civil and criminal actions

The jurors duly drawn and summoned for the trial of civil actions, may also be the jurors for the trial of criminal actions. The panel of jurors shall be drawn randomly from the Registry of citizens of Cherokee Nation. If the citizen resides outside of Cherokee Nation he, by his request, shall be released from serving as a juror.

LA 10-90, eff. November 13, 1990.

§ 592. Trial jury-How formed

Trial juries for criminal actions may also be formed in the same manner as trial juries in civil actions.

LA 10-90, eff. November 13, 1990.

§ 593. Clerk to prepare and deposit ballots

At the opening of the Court the Clerk must prepare separate ballots, containing the names of the persons returned as jurors, which must be folded as nearly alike as possible, and so that the same cannot be seen, and must deposit them in a sufficient box.

LA 10-90, eff. November 13, 1990.

§ 594. Names of panel called, when-Attachment for absent jurors

When the case is called for trial, and before drawing the jury, either party may require the names of all the jurors in the panel to be called, and the Court in its discretion may order that an attachment issue against those who are absent; but the Court may, in its discretion, wait or not for the return of the attachment.

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LA 10-90, eff. November 13, 1990.

§ 595. Manner of drawing jury from box

Before the name of any juror is drawn, the box must be closed and shaken, so as to intermingle the ballots therein. The Clerk must then, without looking at the ballots, draw them from the box.

LA 10-90, eff. November 13, 1990.

§ 596. Disposition of ballots

When the jury is completed, the ballots containing the names of the jurors sworn must be laid aside and kept apart from the ballots containing the names of the other jurors, until the jury so sworn is discharged.

LA 10-90, eff. November 13, 1990.

§ 597. Disposition of ballots-After jury discharged

After the jury is so discharged, the ballots containing their names must be again folded and returned to the box, and so on, as often as a trial is had.

LA 10-90, eff. November 13, 1990.

§ 598. Disposition of ballot-When juror is absent or excused

If a juror be absent when his name is drawn or be set aside, or excused from serving on the trial, the ballot containing his name must be folded and returned to the box as soon as the jury is sworn.

LA 10-90, eff. November 13, 1990.

§ 599. Jurors summoned to complete jury-Treated as original panel

The names of persons summoned to complete the jury as provided in the Title on "Jurors", 38 CNCA, must be written on distinct pieces of paper, folded each as nearly alike as possible, and so that the name cannot be seen, and must be deposited in the box before mentioned.

LA 10-90, eff. November 13, 1990.

§ 600. Drawing the jury

The Clerk must thereupon, under the direction of the Court, publicly draw out of the box so many of the ballots, one after another, as are sufficient to form the jury.

LA 10-90, eff. November 13, 1990.

§ 601. Number of jurors-Oaths-Fines not exceeding Two Hundred Dollars

The jury consists of six (6) persons, chosen as prescribed by law, and sworn or affirmed well and truly to try and true deliverance to make between Cherokee Nation and the defendant whom they shall have in charge, and a true verdict to give according to the evidence. Criminal cases wherein the punishment for the offense charged is by a fine only not exceeding Two Hundred Dollars ($200.00) shall be tried to the Court without a jury.

LA 10-90, eff. November 13, 1990.

§ 601A. Alternate jurors-Challenges-Oath or affirmation-Attendance upon trial

Whenever in the opinion of the Court the trial of a cause is likely to be a protracted one, the Court may, immediately after the jury is impaneled and sworn, direct the calling of as many as two (2) additional jurors to be known as "alternate juror." Such alternate jurors shall be drawn from the same source, and in the same manner, and have the same qualifications as regular jurors, and be subject to examination and challenge as such jurors, except that the Nation shall be allowed one (1) peremptory challenge to each alternate juror, and all parties defendant shall together, or any one party defendant for and on behalf and by the consent of all parties defendant, be allowed one (1) peremptory challenge to each alternate juror.

The alternate jurors shall be sworn (or affirmed) to well and truly try and true deliverance make of all issues finally submitted to them as jurors in said cause, if any such issue shall be so finally submitted to them, and shall be seated near the regular jurors with equal facilities for seeing and hearing the proceedings in the cause, shall attend at all times upon the trial of the cause in company with the regular jurors and shall obey all orders and admonitions of the Court; and if the regular jurors are ordered to be kept in the custody of an officer during the trial of the cause, the alternate jurors shall also be kept with the other jurors, and, except as hereinafter provided, shall be discharged upon the final

submission of the cause to the jury.

If, before the final submission of the cause to the jury, a regular juror, or two (2) regular jurors, shall be discharged because of illness, or shall die, the Court shall order one (1) or both alternate jurors, as circumstances may require, to take their places in the jury box. After an alternate juror is in the jury box, he shall be subject to the same regulations and requirements as other regular jurors.

LA 10-90, eff. November 13, 1990.

§ 601B. Protracted deliberations-Sequestration of alternate jurors

If, upon final submission of the cause, the Court is of the opinion that the deliberations may be protracted, the Court may order the alternate juror or jurors to remain sequestered physically or by admonition not to discuss the case with any person or allow any person to discuss the case with a juror. In such event said alternate or alternates shall remain apart from the jury and not take part in its deliberations, but shall await the call of the Court at some place designated by the Court until such time as said alternate may be needed. In the event one (1) or two (2) of the twelve jurors shall, during the course of deliberations, be discharged because of illness, or die, the Court shall order one (1) or both alternate jurors to take their places in the jury room and deliberations shall then continue.

LA 10-90, eff. November 13, 1990.

§ 602. Affirmation

Any juror who is conscientiously scrupulous of taking the oath above described, shall be allowed to make affirmation, substituting for the words "so help you God," at the end of the oath, the following: "This you do affirm under the pains and penalties of perjury."

LA 10-90, eff. November 13, 1990.

CHALLENGES GENERALLY

§ 621. Challenges classed

A challenge is an objection made to the trial jurors, and is of two (2) kinds:

1. To the panel;

2. To an individual juror.

LA 10-90, eff. November 13, 1990.

§ 622. Several defendants-Challenges

When several defendants are tried together they cannot sever their challenges, but must join therein.

LA 10-90, eff. November 13, 1990.

CHALLENGES TO PANEL

§ 631. Panel defined

The panel is a list of jurors returned by a Marshal or Sheriff, to serve at a particular Court or for the trial of a particular action.

LA 10-90, eff. November 13, 1990.

§ 632. Challenge to panel

A challenge to the panel is an objection made to all the trial jurors returned, and may be taken by either party.

LA 10-90, eff. November 13, 1990.

§ 633. Challenge to panel, causes for

A challenge to the panel can be founded only on a material departure from the forms prescribed by law, in respect to the drawing and return of the jury, or on the intentional omission of the Marshal or Sheriff to summon one or more of the jurors drawn, from which the defendant has suffered material prejudice.

LA 10-90, eff. November 13, 1990.

§ 634. When taken-Form and requisites

A challenge to the panel must be taken before a jury is sworn, and must be in writing, specifying plainly and distinctly the facts constituting the ground of challenge.

LA 10-90, eff. November 13, 1990.

§ 635. Issue on the challenge-Trying sufficiency

If the sufficiency of the facts alleged as a ground of challenge be denied, the adverse party may except to the challenge. The exception need not be in writing, but must be entered upon the minutes of the Court, and thereupon the Court must proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

LA 10-90, eff. November 13, 1990.

§ 636. Challenge and exception may be amended or withdrawn

If, on the exception, the Court deem the challenge sufficient, it may, if justice require it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge. If the exception be allowed, the Court may in like manner, permit an amendment of the challenge.

LA 10-90, eff. November 13, 1990.

§ 637. Denial of challenge-Trial of fact questions

If the challenge is denied the denial may, in like manner, be oral and must be entered upon the minutes of the Court, and the Court must proceed to try the questions of fact.

LA 10-90, eff. November 13, 1990.

§ 638. Trial of challenge

Upon the trial of the challenge, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of challenge.

LA 10-90, eff. November 13, 1990.

§ 639. Bias of officer, challenge for

When the panel is formed from persons whose names are not drawn as jurors, a challenge may be taken to the panel on account of any bias of the officer who summoned them, which would be good ground of challenge to a juror. Such challenge must be made in the same form, and determined in the same manner as if made to a juror.

LA 10-90, eff. November 13, 1990.

§ 640. Procedure after decision of challenge

If, upon an exception to the challenge, or a denial of the facts, the challenge be allowed, the Court must discharge the jury, and another jury can be summoned for the same term forthwith from the body; or the Judge may order a jury to be drawn and summoned in the regular manner. If it be disallowed, the Court must direct the jury to be impaneled.

LA 10-90, eff. November 13, 1990.

CHALLENGES TO INDIVIDUAL JURORS

§ 651. Defendant to be informed of right to challenge

When six (6) persons are called as jurors, the defendant must be informed by the Court or under its direction, of his right to challenge the jurors, and that he must do so before the jury is sworn to try the cause.

LA 10-90, eff. November 13, 1990.

§ 652. Classes of challenge to individual

A challenge to an individual juror is either:

First, Peremptory; or

Second, For cause.

LA 10-90, eff. November 13, 1990.

§ 653. When challenge taken

It must be taken when the jury is full, and as soon as one (1) person is removed by challenge, another must be put in his place, until the challenges are exhausted or waived. The Court for good cause shown may permit a juror to be challenged after he is sworn to try the cause, but not after the testimony has been partially heard.

LA 10-90, eff. November 13, 1990.

§ 654. Peremptory challenge defined

A peremptory challenge may be taken by either party, and may be oral. It is an objection to a juror for which no reason need be given, but upon which the Court must excuse him.

LA 10-90, eff. November 13, 1990.

§ 655. Peremptory challenges-Number allowed

In all criminal cases the prosecution and the defendant are each entitled to the following peremptory challenges: Provided, that if two or more defendants are tried jointly they shall join in their challenges; provided, that when two or more defendants have inconsistent defenses they shall be granted separate challenges for each defendant as hereinafter set forth.

In all criminal prosecutions, three (3) jurors each.

LA 10-90, eff. November 13, 1990.

§ 656. Challenge for cause

A challenge for cause may be taken either by the Nation or the defendant.

LA 10-90, eff. November 13, 1990.

§ 657. Challenges for cause classified

It is an objection to a particular juror and is either:

1. General, that the juror is disqualified from serving in any case on trial; or

2. Particular, that he is disqualified from serving in the case on trial.

LA 10-90, eff. November 13, 1990.

§ 658. Causes for challenge, in general

General causes of challenges are:

1. A conviction for felony;

2. A want of any of the qualifications prescribed by law, to render a person a competent juror;

3. Unsoundness of mind, or such defect in the faculties of the mind or organs of the body as renders him incapable of performing the duties of a juror.

LA 10-90, eff. November 13, 1990.

§ 659. Particular causes-Implied bias-Actual bias

Particular causes of challenge are of two (2) kinds:

1. For such a bias as when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this chapter a simplified bias;

2. For the existence of a state of mind on the part of the juror, in reference to the case, or to either party, which satisfies the Court, in the exercise of a sound discretion, that he cannot try the issue impartially, without prejudice to the substantial rights of the party challenging, and which is known in this chapter as actual bias.

LA 10-90, eff. November 13, 1990.

§ 660. Implied bias, challenge for

A challenge for implied bias may be taken for all or any of the following cases, and for no other:

1. Consanguinity or affinity within the fourth degree, inclusive; to the person alleged to be injured by the offense charged or on whose complaint the prosecution was instituted, or to the defendant;

2. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment on wages;

3. Being a party adverse to the defendant in a civil action, or having complained against, or been accused by him in a criminal prosecution;

4. Having served on a trial jury which has tried another person for the offense charged in the information;

5. Having been one of the jury formerly sworn to try the information and whose verdict was set aside, or which was discharged without a verdict, after the cause was submitted to it;

6. Having served as a juror in a civil action brought against the defendant for the act charged as an offense.

LA 10-90, eff. November 13, 1990.

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§ 661. Right of exemption from service not cause for challenge

An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

LA 10-90, eff. November 13, 1990.

§ 662. Cause for challenge must be stated-Form and entry of challenge-Juror not disqualified for having formed opinion, when

In a challenge for implied bias, one or more of the causes stated in 22 CNCA § 660 must be alleged. In a challenge for actual bias, the cause stated in the second subdivision of 22 CNCA § 659 must be alleged; but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon rumor, statements in public journals, or common notoriety, provided it appears to the Court, upon his declaration, under oath or otherwise, that he can and will, notwithstanding such opinion, act impartially and fairly upon the matters to be submitted to him. The challenge may be oral, but must be entered upon the minutes of the Court.

LA 10-90, eff. November 13, 1990.

§ 663. Exception to the challenge

The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings must be had thereon, except that if the exception be allowed the juror must be excluded. The adverse party may also orally deny the facts alleged as the grounds of challenge.

LA 10-90, eff. November 13, 1990.

§ 664. Trial of challenges

All challenges, whether to the panel or to individual jurors shall be tried by the Court, without the aid of triers.

LA 10-90, eff. November 13, 1990.

§ 665. Trial of challenge-Examining jurors

Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge, and is bound to answer every question pertinent to the inquiry therein.

LA 10-90, eff. November 13, 1990.

§ 666. Other witnesses

Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues govern the admission or exclusion of testimony, on the trial of the challenges.

LA 10-90, eff. November 13, 1990.

§ 667. Ruling on challenge

On the trial of a challenge the Court must either allow or disallow the challenge and direct an entry accordingly upon the minutes.

LA 10-90, eff. November 13, 1990.

ORDER OF TAKING CHALLENGES

§ 691. Challenges to individual jurors

All challenges to individual jurors must be taken, first by the defendant and then by the Nation alternately.

LA 10-90, eff. November 13, 1990.

§ 692. Order of challenges for cause

The challenges of either party for cause need not all be taken at once, but they must be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class:

1. To the panel;

2. To an individual juror for a general disqualification;

3. To an individual juror for implied bias;

4. To an individual juror for actual bias.

LA 10-90, eff. November 13, 1990.

§ 693. Peremptory challenges

If all challenges on both sides are disallowed, either party, first the Nation and then the defendant, may take a peremptory challenge, unless the peremptory challenges are exhausted.

LA 10-90, eff. November 13, 1990.

CHAPTER 9

WITNESSES

Section

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§ 701. Defendant a competent witness-Comment on failure to testify-Presumptions

In the trial of all informations, complaints and other proceedings against persons charged with the commission of a crime, before any Court or Committing Magistrate in this Nation, the person charged shall at his own request, but not otherwise, be a competent witness, and his failure to make such request shall not create any presumption against him nor be mentioned on the trial; if commented upon by counsel it shall be ground for a new trial.

LA 10-90, eff. November 13, 1990.

§ 702. Civil rules of evidence applicable to criminal cases-Husband or wife as witness

Except as otherwise provided in this and the following chapter, the rules of evidence in civil cases pursuant to the Oklahoma Evidence Code, 12 O.S. § 2101 et seq., are applicable also in criminal cases; Provided, however, that neither husband nor wife shall in any case be a witness against the other except in a criminal prosecution for a crime committed one against the other, or except in a criminal prosecution against either the husband or wife, or both, for a crime committed by either, or both, against the minor children of either the husband or the wife, but they may in all criminal cases be witnesses for each other, and shall be subject to cross-examination as other witnesses, and shall in no event on a criminal trial be permitted to disclose communications made by one to the other except on a trial of an offense committed by one against the other or except on a trial of a crime committed by one, or both, against the minor children of either the husband or the wife.

LA 10-90, eff. November 13, 1990.

§ 703. Subpoena defined

The process by which the attendance of a witness before a Court or Magistrate is required, is a subpoena.

LA 10-90, eff. November 13, 1990.

§ 704. Magistrate may issue subpoena

A Magistrate before whom complaint is laid, may issue subpoenas, subscribed by him, for witnesses within the Nation, either on behalf of the Nation or of the defendant.

LA 10-90, eff. November 13, 1990.

§ 706. Issuing subpoenas for trial

The Prosecuting Attorney may in like manner issue subpoena for witnesses within the Nation, in support of an information, to appear before the Court at which it is to be tried.

LA 10-90, eff. November 13, 1990.

§ 707. Defendant's subpoenas

The Clerk of the Court at which an information is to be tried, must, at all times, upon the application of the defendant, and without charge, issue as many blank subpoenas, under the seal of the Court and subscribed by him as Clerk, for witnesses within the Nation, as may be required by the defendant.

LA 10-90, eff. November 13, 1990.

§ 708. Form of subpoena

A subpoena, authorized by the last four sections, must be substantially in the following form:

IN THE NAME OF CHEROKEE NATION.

To ....

Greeting: You are commanded to appear before C. D., a Judge of .... at .... (or the grand jury of the county of .... or the District Court, or as the case may be), on the .... (stating day and hour), and remain in attendance on and call of said .... from day to day and term to term until lawfully discharged, as a witness in a criminal action prosecuted by Cherokee Nation against E. F. (or to testify as the case may be).

LA 10-90, eff. November 13, 1990.

§ 709. Continuances, witnesses must take notice of

Every witness summoned in a criminal action pending in a District Court shall take notice of the postponements and continuances and when once summoned in such action shall, without further notice or summons, be in attendance upon such action, as such witness, until discharged by the Court.

LA 10-90, eff. November 13, 1990.

§ 710. Subpoena duces tecum

If the books, papers or documents be required, a direction to the following effect must be continued in the subpoena:

And you are required also to bring with you the following: (Describe intelligently the books, papers or documents required).

LA 10-90, eff. November 13, 1990.

§ 711. Service of subpoena by whom-Return

A Marshal or peace officer must serve any subpoena delivered to him for service, either on the part of the Nation or of the defendant, and must make a written return of the service, subscribed by him, stating the time and place of service without delay. A subpoena may, however, be served by any other person.

LA 10-90, eff. November 13, 1990.

§ 712. Service, manner of

Service of subpoenas for witnesses in criminal actions in the District Courts shall be made by the officer, or other person making the service, by either personal service of such subpoena containing the time, place and the name of the Court, and the action in which he is required to testify, or by mailing a copy thereof by certified mail not less than five (5) days before the trial day of the cause upon which said witness is required to attend, and the person making such service shall make a return thereof showing the manner of service, and if the same be by certified mail, he shall file with such return the registry receipt; provided, that the person or Prosecuting Attorney shall state therein the manner in which the witness or witnesses shall be served, and the officer or person serving such subpoena shall serve the same in the manner directed by the requesting party, and make his return in accordance therewith; provided, further, that if the requesting party calls for serving such subpoena by certified letter, then the requesting party shall prepare the subpoena, the return receipt card, and the envelope for mailing.

LA 10-90, eff. November 13, 1990.

§ 715. Witness residing out of county

No person is obliged to attend as a witness, before a Court or Magistrate out of the county where the witness resides or is served with the subpoena, unless the Judge of the Court in which the offense is triable, upon an affidavit of the Prosecuting Attorney, or of the defendant or his counsel, stating that he believes that the evidence of the witness is material and his attendance at the examination or trial necessary, shall endorse on the subpoena an order for the attendance of the witness.

LA 10-90, eff. November 13, 1990.

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§ 716. Disobedience to subpoena

Disobedience to a subpoena, or a refusal to be sworn or to testify, may be punished by the Court or Magistrate, as for a criminal contempt, in the manner provided in civil procedure.

LA 10-90, eff. November 13, 1990.

§ 717. Disobeying defendant's subpoena-Forfeiture

A witness disobeying a subpoena issued on the part of the defendant, also forfeits to the defendant the sum of Fifty Dollars ($50.00), which may be recovered in a civil action.

LA 10-90, eff. November 13, 1990.

§ 718. Witnesses-Fees and mileage

A. Except as otherwise specified by law, all witnesses in a criminal action who appear pursuant to a subpoena shall be paid out of the Court Fund the fees and mileage prescribed by law. Upon conviction of the defendant, said fees and mileage shall be taxed as costs and collected as other costs in the case.

B. A witness who appears from another state to testify in this Nation in a criminal case or proceeding pursuant to a subpoena issued in accordance with the provisions of the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings shall be reimbursed from the Court Fund of the Court where prosecution is pending for travel and expenses at rates not to exceed those prescribed by law for reimbursement of Nation employees traveling interstate. Upon conviction, such fees and mileage shall be taxed as costs and collected as other costs in the case.

C. A witness who appears from a county other than the county in which a criminal case or proceeding is being conducted pursuant to a subpoena shall be reimbursed from the Court Fund of the Court where the prosecution is pending for travel and expenses at a rate not to exceed the rate of reimbursement specified for Nation employees. Upon conviction of the defendant, said fees and mileage shall be taxed as costs and collected as other costs in the case.

LA 10-90, eff. November 13, 1990.

§ 719. Persons held as material witnesses to be informed of constitutional rights-Fees

Whenever any person shall be taken into custody by any law enforcement officer to be held as a material witness in any criminal investigation or proceeding, he shall, if not sooner released, be taken before a Judge of the District Court without unnecessary delay and said Judge of the District Court shall immediately inform him of his constitutional rights including the reason he is being held in custody, his right to the aid of counsel in every stage of the proceedings, and of his right to be released from custody upon entering into a written undertaking in the manner provided by law. A witness who is held in custody pursuant to the provisions hereof shall be kept separately and apart from any person, or persons, being held in custody because of being accused of committing a crime. A witness who desires aid of counsel and is unable to obtain aid of counsel by reason of poverty shall be by the Court provided counsel at the expense of the Court Fund. During the time a witness is in custody he shall receive the witness fee provided by law for witnesses in criminal cases.

LA 10-90, eff. November 13, 1990.

CHAPTER 10

EVIDENCE AND DEPOSITIONS

EVIDENCE GENERALLY

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EVIDENCE GENERALLY

§ 741. Overt act in conspiracy

Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense, the defendant cannot be convicted unless one or more overt acts be expressly alleged in the information, nor unless one or more of the acts alleged be proved; but any other overt act, not alleged in the information may be given in evidence.

LA 10-90, eff. November 13, 1990.

§ 742. Accomplice, testimony of

A conviction cannot be had upon the testimony of an accomplice unless he be corroborated by such other evidence as tends to connect the defendant with the commission of the offense, and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

LA 10-90, eff. November 13, 1990.

§ 743. False pretenses, evidence of

Upon a trial for having, with an intent to cheat or defraud another designedly, by any false pretense, obtained the signature of any person to a written instrument, or having obtained from any person any money, personal property or valuable thing, the defendant cannot be convicted if the false pretense was expressed in language unaccompanied by a false token or writing, unless the pretense, or some note or memorandum thereof, be in writing either subscribed by, or in the handwriting of the defendant, or unless the pretense be proven by the testimony of two witnesses, or that of one witness and corroborating circumstances. But this section does not apply to prosecution for falsely representing or impersonating another, and in such assumed character, marrying or receiving money or property.

LA 10-90, eff. November 13, 1990.

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§ 744. Seduction, corroboration of prosecutrix

Upon a trial for inveigling, enticing or taking away a person, under the age of twenty-five (25) years, for the purpose of prostitution, or aiding or assisting therein, or for having, under promise of marriage, seduced and had illicit connection with an unmarried female of previous chaste character, the defendant cannot be convicted upon testimony of the person injured unless she is corroborated by other evidence tending to connect the defendant with the commission of the offense.

LA 10-90, eff. November 13, 1990.

§ 745. Murder, burden of proof in mitigation of

Upon a trial for murder, the commission of the homicide by the defendant being proven, the burden of proving circumstances of mitigation, or that justify or excuse it, devolves upon him, unless the proof on the part of the prosecution tends to show that the crime committed only amounts to manslaughter, or that the defendant was justifiable or excusable.

LA 10-90, eff. November 13, 1990.

§ 746. Bigamy, proof on trial for

Upon a trial for bigamy, it is not necessary to prove either of the marriages by the register, certificate or other record evidence thereof, but the same may be proved by such evidence as is admissible to prove a marriage in other cases, and when the second marriage took place out of the state, proof of that fact accompanied with proof of cohabitation thereafter in this state, is sufficient to sustain the charge.

LA 10-90, eff. November 13, 1990.

§ 748. Perjury in Court, evidence as to

In cases of perjury, where the perjury is charged to have been committed in a Court, it shall be sufficient to show that the oath was administered by any officer of the Court authorized so to do, or that the defendant testified and gave his testimony as under oath, or if the question be in doubt as to what particular officer administered the oath, it may be shown that it was administered by any officer authorized so to do.

LA 10-90, eff. November 13, 1990.

§ 749. Sworn statements taken by Prosecuting Attorney or peace officer of persons having knowledge of criminal offense -Use

A. In the investigation of a criminal offense, the Prosecuting Attorney or any peace officer may take the sworn statement of any person having knowledge of such criminal offense. Any person charged with a crime shall be entitled to a copy of any such sworn statement upon the same being obtained.

B. If a witness in a criminal proceeding gives testimony upon a material issue of the case contradictory to his previous sworn statement, evidence may be introduced that such witness has previously made a statement under oath contradictory to such testimony.

LA 10-90, eff. November 13, 1990.

§ 750. Rape prosecutions-Evidence of complaining witness' previous sexual conduct inadmissible-Exception

A. In any prosecution for rape or assault with intent to commit rape, opinion evidence of, reputation evidence of and evidence as to specific instances of the complaining witness' sexual conduct is not admissible on behalf of the defendant in order to prove consent by the complaining witness. Provided that this section shall not apply to evidence of the complaining witness' sexual conduct with or in the presence of the defendant.

B. If the Prosecuting Attorney introduces evidence or testimony relating to the complaining witness' sexual conduct, the defendant may cross-examine the witness giving such testimony and offer relevant evidence or testimony limited specifically to the rebuttal of such evidence or testimony introduced by the Prosecuting Attorney.

LA 10-90, eff. November 13, 1990.

§ 751. Admission of findings-State Bureau of Investigation laboratory-Controlled dangerous substances-Release by court order

At any hearing, a report of the findings of the laboratory of the Bureau, which has been made available to the accused by the Office of the Prosecuting Attorney at least five (5) days prior to the preliminary hearing, with reference to all or any part of the evidence submitted, when certified as correct by the Bureau employee making the report shall, when offered by the Nation or the accused, be received as evidence of the facts and findings stated, if relevant and otherwise admissible in evidence.

When any alleged controlled dangerous substance has been submitted to the laboratory of the Bureau for analysis, and such analysis shows that the submitted material is a controlled dangerous substance, the distribution of which

constitutes a felony under the laws of the State of Oklahoma, no portion of such substance shall be released to any other person or laboratory absent an order of a District Court. The defendant shall additionally be required to submit to the Court a procedure for transfer and analysis of the subject material to ensure the integrity of the sample and to prevent the material from being used in any illegal manner.

LA 10-90, eff. November 13, 1990.

§ 752. Admissibility of recorded statement of child twelve years of age or younger

A. This section shall apply only to a proceeding in the prosecution of an offense alleged to have been committed against a child twelve (12) years of age or younger, and shall apply only to the statement of that child or other child witness.

B. The recording of an oral statement of the child made before the proceedings begin is admissible into evidence if:

1. The Court determines that the time, content and circumstances of the statement provide sufficient indicia of reliability;

2. No attorney for any party is present when the statement is made;

3. The recording is both visual and aural and is recorded on film or videotape or by other electronic means;

4. The recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;

5. The statement is not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the child's statement and not made solely as a result of a leading or suggestive question;

6. Every voice on the recording is identified;

7. The person conducting the interview of the child in the recording is present at the proceeding and is available to testify or be cross-examined by any party;

8. Each party to the proceeding is afforded an opportunity to view the recording at least ten (10) days before trial, unless such time is shortened by leave of the Court for good cause shown; and

9. The child either:

a. testifies at the proceedings; or

b. is unavailable as defined in this Title as a witness. When the child is unavailable as defined in this Title as a witness, such recording may be admitted only if there is corroborative evidence of the act.

LA 10-90, eff. November 13, 1990.

§ 753. Taking testimony of child age twelve or under in room other than courtroom-Recording

A. This section shall apply only to a proceeding in the prosecution of an offense alleged to have been committed against a child twelve (12) years of age or younger, and shall apply only to the testimony of that child.

B. The Court may, on the motion of the attorney for any party, order that the testimony of the child be taken in a room other than the courtroom and be televised by closed-circuit equipment in the courtroom to be viewed by the Court and the finder of fact in the proceeding. Only the attorneys for the defendant, the Nation and the child, persons necessary to operate the equipment and any person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony but does not permit the child to see or hear them. The Court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant.

C. The Court may, on the motion of the attorney for any party, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the Court and the finder of fact in the proceeding. Only those persons permitted to be present at the taking of testimony under subsection (B) of this section may be present during the taking of the child's testimony, and the persons operating the equipment shall be confined from the child's sight and hearing as provided in subsection (B) of this section. Only the attorneys may question the child. The Court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant. The Court shall also ensure that:

1. The recording is both visual and aural and is recorded on film or videotape or by other electronic means;

2. The recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;

3. Every voice on the recording is identified; and

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4. Each party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom, and a copy of a written transcript transcribed by a Licensed or Certified Court Reporter is provided to the parties.

D. If the Court orders the testimony of a child to be taken under subsections (B) or (C) of this section, the child shall not be required to testify in Court at the proceeding for which the testimony was taken.

LA 10-90, eff. November 13, 1990.

DEPOSITIONS

§ 761. Examination of witnesses conditionally for defendant

When a defendant has been held to answer a charge for a public offense, he may either before or after information, have witnesses examined conditionally on his behalf as prescribed in this chapter, and not otherwise.

LA 10-90, eff. November 13, 1990.

§ 762. Conditional examinations in certain cases

When a material witness in any criminal case is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant or Cherokee Nation may apply for an order that the witness be examined conditionally.

LA 10-90, eff. November 13, 1990.

§ 763. Affidavit on application for conditional examination

The application must be made upon affidavit stating:

First. The nature of the offense charged;

Second. The state of the proceedings in the action;

Third. The name and residence of the witness, and that his testimony is material to the defense of the action;

Fourth. That the witness is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial.

LA 10-90, eff. November 13, 1990.

§ 764. Application made to Court or Judge-Notice

The application may be made to the Court or to a Judge thereof, and must be made upon five (5) days' notice to the Prosecuting Attorney.

LA 10-90, eff. November 13, 1990.

§ 765. Order for examination

If the Court or Judge is satisfied that the examination of the witness is necessary an order must be made that the witness be examined conditionally at a specified time and place, and that a copy of the order be served on the Prosecuting Attorney within a specified time before that fixed for the examination.

LA 10-90, eff. November 13, 1990.

§ 766. Examination before Magistrate

The order must direct that the examination be taken before a Magistrate named therein; and on proof being furnished to such Magistrate, of service upon the prosecuting attorney of a copy of the order, if no counsel appear on the part of the people, examination must proceed.

LA 10-90, eff. November 13, 1990.

§ 767. When examination shall not proceed

If the Prosecuting Attorney or other counsel appear on behalf of the people, and it is shown to the satisfaction of the

Magistrate by affidavit or other proof, or on examination of the witness, that he is not about to leave the state, or is not sick or infirm, or that the application was made to avoid the examination of the witness on trial, the examination cannot take place; otherwise, it must proceed.

LA 10-90, eff. November 13, 1990.

§ 768. Attendance of witness enforced, how

The attendance of the witness may be enforced by subpoena issued by the Magistrate before whom the examination is to be taken, or from the Court where the trial is to be had.

LA 10-90, eff. November 13, 1990.

§ 769. Taking and authentication of testimony

The testimony given by the witness must be reduced to writing. The Magistrate before whom the examination is had may, in his discretion, order the testimony and proceedings to be taken down in shorthand, and for that purpose he may appoint a shorthand reporter. The deposition or testimony of the witness must be authenticated in the following form:

1. It must state the name of the witness, his place of residence and his business or profession.

2. It must contain the questions put to the witness and his answers thereto, each answer being distinctly read to him as it is taken down, and being corrected or added to until it conforms to what he declares is the truth; except in cases where the testimony is taken down in shorthand, the answer or answers of the witness need not be read to him.

3. If the witness declines answering a question, that fact with the ground on which the answer was declined must be stated.

4. The deposition must be signed by the witness, or if he refuse to sign it, his reason for refusing must be stated in writing as he gives it; except in cases where the deposition is taken down in shorthand, it must not be signed by the witness.

5. It must be signed and certified by the Magistrate when reduced to writing by him or under his direction; and when taken down in shorthand, the manuscript of the reporter, appointed as aforesaid, when written out in longhand writing, and certified as being a correct statement of such testimony and proceedings in the case, shall be prima facie a correct statement of such testimony and proceedings. The reporter shall within five (5) days after the close of such examination transcribe into longhand writing his said shorthand notes, and certify and deliver the same to the Magistrate, who shall

also certify the same and transmit such testimony and proceedings, carefully sealed up, to the Clerk of the Court in which the action is pending or may come for trial.

LA 10-90, eff. November 13, 1990.

§ 770. Deposition read in evidence, when-Objections to questions therein

The deposition or certified copy thereof may be read in evidence by either party on the trial upon its appearing that the witness is unable to attend by reason of his death, insanity, sickness, or infirmity, or of his continued absence from the Nation. Upon reading the depositions in evidence, the same objections may be taken to a question or answer contained therein as if the witness had been examined orally in Court.

LA 10-90, eff. November 13, 1990.

§ 771. Prisoner, deposition of-Oath

When a material witness for a defendant under a criminal charge is a prisoner in a state prison or in a county jail of a county other than that in which the defendant is to be tried, his deposition may be taken on behalf of the defendant in the manner provided for in the case of a witness who is sick; and the foregoing provisions of this chapter, so far as they are applicable, govern in the application for, and in the taking and use of such depositions, such deposition may be taken before any Magistrate or notary public of the Nation; or in case the witness is confined in a penal institution, and the defendant is unable to pay for taking the deposition, before the warden or clerk of the board of control of the penal institution, whose duty it shall be to act without compensation. Every officer before whom testimony shall be taken by virtue hereof, shall have authority to administer, and shall administer an oath to the witness, that his testimony shall be the truth, the whole truth and nothing but the truth.

LA 10-90, eff. November 13, 1990.

CHAPTER 11

DISMISSAL OF PROSECUTION

Section

811. Discharge when no indictment found

812. Next term, dismissal when not brought to trial at

813. Continuance, when-Release of defendant

814. Effect of dismissing action

815. Dismissal by Court or on Prosecuting Attorney's application

816. Nolle prosequi abolished

817. Dismissal not to bar to another prosecution

§ 811. Discharge when no indictment found

When a person has been held to answer for a public offense, if an information is not filed against him at the next term of court at which he is held to answer, the Court must order the prosecution to be dismissed, unless good cause to the contrary be shown.

LA 10-90, eff. November 13, 1990.

§ 812. Next term, dismissal when not brought to trial at

If a defendant, prosecuted for a public offense, whose trial has not been postponed upon his application, is not brought to trial at the next term of court in which the information is triable after it is filed, the Court must order the prosecution to be dismissed, unless good cause to the contrary be shown.

LA 10-90, eff. November 13, 1990.

§ 813. Continuance when-Release of defendant

If the defendant is not prosecuted or tried, as provided in the last two sections, and sufficient reason therefor is shown, the Court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody, on his own undertaking or on the undertaking of bail for his appearance to answer the charge at the time to which the action is continued.

LA 10-90, eff. November 13, 1990.

§ 814. Effect of dismissing action

If the Court direct the action to be dismissed, the defendant must, if in custody, be discharged therefrom, or if admitted to bail, his bail is exonerated, or money deposited instead of bail must be refunded to him.

LA 10-90, eff. November 13, 1990.

§ 815. Dismissal by Court or on Prosecuting Attorney's application

The Court may either of its own motion or upon the application of the Prosecuting Attorney, and the furtherance of justice, order an action or to be dismissed; but in that case the reasons of the dismissal must be set forth in the order, which must be entered upon the minutes.

LA 10-90, eff. November 13, 1990.

§ 816. Nolle prosequi abolished

The entry of a nolle prosequi is abolished, and the Prosecuting Attorney cannot discontinue or abandon a prosecution for a public offense, except as provided in the last section.

LA 10-90, eff. November 13, 1990.

§ 817. Dismissal not to bar to another prosecution

An order for the dismissal of the action, as provided in this chapter, is not a bar to any other prosecution for the same offense.

LA 10-90, eff. November 13, 1990.

CHAPTER 12

TRIAL

Section

831. Order of trial proceedings

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856. Requisites of charge of Court-Presentation of written charge-Request to charge-Endorsement of disposition on charge presented-Partial refusal

857. Jury after the charge-Decision in court-Retirement for deliberation-Custody of officer-Conduct of jury-Return into court

858. Defendant admitted to bail committed during trial

859. Substitute for Prosecuting Attorney failing or unable to attend trial or disqualified

861. Formal exceptions to rulings or orders unnecessary

§ 831. Order of trial proceedings

The jury having been impaneled and sworn, the trial must proceed in the following order:

1. If the information is for a crime, the Clerk or Prosecuting Attorney must read it, and state the plea of the defendant to the jury.

2. The Prosecuting Attorney, or other Counsel for the Nation, must open the case and offer the evidence in support of the information.

3. The defendant or his counsel may then open his defense, and offer his evidence in support thereof.

4. The parties may then, respectively, offer rebutting testimony only, unless the Court for good reason, in furtherance of justice, or to correct an evident oversight, permit them to offer evidence upon their original case.

5. When the evidence is concluded, the attorneys for the prosecution may submit to the Court written instructions. If the questions of law involved in the instructions are to be argued, the Court shall direct the jury to withdraw during the argument, and after the argument, must settle the instructions, and may give or refuse any instructions asked, or may modify the same as he deems the law to be. Instructions refused shall be marked in writing by the Judge, if modified, modification shall be shown in the instruction. When the instructions are thus settled, the jury, if sent out, shall be recalled and the Court shall thereupon read the instructions to the jury.

6. Thereupon, unless the case is submitted to the jury without argument, the Counsel for the Nation shall commence, and the defendant or his counsel shall follow, then the Counsel for the Nation shall conclude the argument to the jury. During the argument the attorneys shall be permitted to read and comment upon the instructions as applied to the evidence given, but shall not argue to the jury the correctness or incorrectness of the propositions of law therein contained. The Court may permit one or more counsel to address the jury on the same side, and may arrange the order in which they shall speak, but shall not without the consent of the attorneys limit the time of their arguments. When the arguments are concluded, if the Court be of the opinion that the jury might be misled by the arguments of counsel, he may to prevent the same further instruct the jury. All instructions given shall be in writing unless waived by both parties, and shall be filed and become a part of the record in the case.

LA 10-90, eff. November 13, 1990.

§ 832. Court to decide the law

The Court must decide all questions of law which arise in the course of the trial.

LA 10-90, eff. November 13, 1990.

§ 834. Jury limited to questions of fact

On the trial of an information, questions of law are to be decided by the Court, and the questions of fact are to be decided by the jury; and, although the jury has the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive the law which is laid down as such by the Court.

LA 10-90, eff. November 13, 1990.

§ 836. Defendant presumed innocent-Reasonable doubt of guilt requires acquittal

A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt as to whether his guilt is satisfactorily shown, he is entitled to be acquitted.

LA 10-90, eff. November 13, 1990.

§ 837. Doubt as to degree of guilt

When it appears that a defendant has committed a public offense and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of such degree only.

LA 10-90, eff. November 13, 1990.

§ 839. Discharge of defendant that he may testify for Nation

When two or more persons are included in the same information, the Court may, at any time before the defendants have gone into their defense, on the application of the Prosecuting Attorney, direct any defendant to be discharged from the information, that he may be compelled to be a witness for the Nation.

LA 10-90, eff. November 13, 1990.

§ 840. Discharge of defendant that he may testify for codefendant

When two or more persons are included in the same information, and the Court is of the opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it must, before the evidence is closed, in order that he may be compelled to be a witness for his codefendant, submit its opinion to the jury, who, if they so find, may acquit the particular defendant for the purpose aforesaid.

LA 10-90, eff. November 13, 1990.

§ 841. Higher offense than charged, existence of-Jury discharged

If it appear by the testimony that the facts proved constitute an offense of a higher nature than that charged in the information, the Court may direct the jury to be discharged, and all proceedings on the information to be suspended, and may order the defendant to be committed or continued on, or admitted to bail, to answer any new information which may be filed against him for the higher offense.

LA 10-90, eff. November 13, 1990.

§ 842. Discharge of jury not a former acquittal

If an information for the higher offense is filed within a year next thereafter, he must be tried thereon, and a plea of former acquittal to such last prosecution is not sustained by the fact of the discharge of the jury on the first information.

LA 10-90, eff. November 13, 1990.

§ 843. Trial on original indictment, when

If a new information is not filed for a higher offense within a year, as aforesaid, the Court shall again proceed to try the defendant on the original information.

LA 10-90, eff. November 13, 1990.

§ 844. Jury may be discharged, when

The Court may direct the jury to be discharged where it appears that it has not jurisdiction of the offense, or that the facts as charged in the information do not constitute an offense punishable by law.

LA 10-90, eff. November 13, 1990.

§ 845. Disposition of prisoner on discharge of jury

If the jury is discharged because the Court has not jurisdiction of the offense charged in the information, and it appears that it was committed out of the jurisdiction of this Nation, the Court may order the defendant to be discharged, or to be detained for a reasonable time specified in the order, until a communication can be sent by the Prosecuting Attorney to the chief executive officer of the state, territory or district where the offense was committed.

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LA 10-90, eff. November 13, 1990.

§ 849. Duty of Court where no offense charged

If the jury be discharged because the facts as charged do not constitute an offense punishable by law, the Court must order that the defendant, if in custody, be discharged therefrom, or, if admitted to bail, that the bail be exonerated, or if he have deposited money instead of bail, that the money deposited be refunded to him, unless in its opinion a new information can be framed, upon which the defendant can be legally convicted, in which case a new information filed.

LA 10-90, eff. November 13, 1990.

§ 850. Court may advise jury to acquit

If, at any time after the evidence on either side is closed, the Court deem it insufficient to warrant a conviction, it may advise the jury to acquit the defendant. But the jury is not bound by the advice, nor can the Court, for any cause, prevent the jury from giving a verdict.

LA 10-90, eff. November 13, 1990.

§ 851. Jury may view place-Custody of sworn officer

When, in the opinion of the Court, it is proper that the jury should view the place in which the offense was charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of proper officers, to the place, which must be shown to them by a person appointed by the Court for that purpose, and the officers must be sworn to suffer no person to speak to or communicate with the jury, nor to do so themselves, on any subject connected with the trial, and to return them into court without unnecessary delay, or at a specified time.

LA 10-90, eff. November 13, 1990.

§ 852. Juror must declare knowledge of case

If a juror have any personal knowledge respecting a fact in controversy in a cause he must declare it in open court during the trial. If, during the retirement of a jury, a juror declare a fact, which could be evidence in the cause, as of his own knowledge, the jury must return into court. In either of these cases, the juror making the statement must be sworn as a

witness and examined in the presence of the parties.

LA 10-90, eff. November 13, 1990.

§ 853. Custody and conduct of jury before submission-Separation-Sworn officer

The jurors sworn to try an information, may, at any time before the submission of the cause to the jury, in the discretion of the Court, be permitted to separate, or to be kept in charge of proper officers. The officers must be sworn to keep the jurors together until the next meeting of the court, to suffer no person to speak to or communicate with them, nor to do so themselves, on any subject connected with the trial, and to return them into court at the next meeting thereof. Such officer or officers having once been duly sworn, it is not necessary that they be resworn at each recess or adjournment. An admonition to the officer and the jury shall be sufficient.

LA 10-90, eff. November 13, 1990.

§ 854. Court must admonish jury as to conduct

The jury must also, at each adjournment of the court, whether permitted to separate or kept in charge of officers, be admonished by the Court that it is their duty not to converse among themselves or with any one else on any subject connected with the trial, or to form or express any opinion thereon, until the case is finally submitted to them.

LA 10-90, eff. November 13, 1990.

§ 855. Sickness or death of juror-New juror sworn

If, before the conclusion of a trial, a juror becomes sick, so as to be unable to perform his duty, the Court may order him to be discharged. In that case or in the event of the death of a juror a new juror may be sworn, and the trial begin anew, or the jury may be discharged, and a new jury then or afterwards impaneled.

LA 10-90, eff. November 13, 1990.

§ 856. Requisites of charge of Court-Presentation of written charge-Request to charge-Endorsement of disposition on charge presented-Partial refusal

In charging the jury, the Court must state to them all matters of law which it thinks necessary for their information in giving their verdict, and if it state the testimony of the case, it must in addition inform the jury that they are the

exclusive judges of all questions of fact. Either party may present to the Court any written charge and request that it be given. If the Court thinks it correct and pertinent, it must be given; if not, it must be refused. Upon each charge presented and given or refused the Court must endorse or sign its decision. If part of any written charge be given and part refused the Court must distinguish, showing by the endorsement or answer what part of each charge was given and what part refused.

LA 10-90, eff. November 13, 1990.

§ 857. Jury after the charge-Decision in court-Retirement for deliberation-Custody of officer-Conduct of jury-Return into court

After hearing the charge, the jury may either decide in court, or may retire for deliberation. If they do not agree without retiring, one or more officers must be sworn to keep them together in some private and convenient place, and not to permit any person to speak to or communicate with them, nor do so themselves, unless it be by order of the Court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the Court.

LA 10-90, eff. November 13, 1990.

§ 858. Defendant admitted to bail may be committed during trial

When a defendant who has given bail appears for trial, the Court may, in its discretion, at any time after his appearance for trial order him to be committed to the custody of the proper officer of the county to abide the judgment or further order of the Court, and he must be committed and held in custody accordingly.

LA 10-90, eff. November 13, 1990.

§ 859. Substitute for Prosecuting Attorney failing or unable to attend trial or disqualified

If the Prosecuting Attorney fails, or is unable to attend at the trial or is disqualified, the Court must appoint some attorney-at-law to perform the duties of the Prosecuting Attorney on such trial.

LA 10-90, eff. November 13, 1990.

§ 861. Formal exceptions to rulings or orders unnecessary

Formal exceptions to rulings or orders of the Court in criminal proceedings shall not be necessary but for all purposes for which an exception has heretofore been necessary at the trial of a cause it shall be sufficient that a party, at the time the ruling or order of the Court has been made or sought, makes known to the Court the action which he desires the Court to take or his objection to the action of the Court with his general grounds therefor.

LA 10-90, eff. November 13, 1990.

CHAPTER 13

JURY-DELIBERATIONS AND CONDUCT

Section

891. Jury room-Expenses of providing

893. Jury may have written instructions, forms of verdict and documents injury room-Copies of public or private documents

894. Jury brought into court for information-Presence of, or notice to, parties

895. Illness of juror after retirement-Accident or cause preventing keeping together-Discharge

896. Discharge after agreement on verdict or showing of inability to agree

897. Retrial after discharge at same or other term

898. Court during jury's retirement-Sealed verdicts-Final adjournment for term discharges jury

§ 891. Jury room-Expenses of providing

A room must be provided for the use of the jury, upon their retirement for deliberation, with suitable furniture, fuel, lights and stationery.

LA 10-90, eff. November 13, 1990.

§ 893. Jury may have written instructions, forms of verdict and documents injury room-Copies of public or private documents

On retiring for deliberation the jury may take with them the written instructions given by the Court, the forms of verdict approved by the Court, and all papers which have been received as evidence in the cause, except that they shall take copies of such parts of public records or private documents as ought not, in the opinion of the Court, to be taken from the person having them in possession.

LA 10-90, eff. November 13, 1990.

§ 894. Jury brought into court for information-Presence of, or notice to, parties

After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony or if they desire to be informed on a point of law arising in the cause, they must require the officer to conduct them into court. Upon their being brought into court, the information required must be given in the presence of, or after notice to the Prosecuting Attorney and the defendant or his counsel, or after they have been called.

LA 10-90, eff. November 13, 1990.

§ 895. Illness of juror after retirement-Accident or cause preventing keeping together-Discharge

If, after the retirement of the jury, one of them become so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept together for deliberation, the jury may be discharged.

LA 10-90, eff. November 13, 1990.

§ 896. Discharge after agreement on verdict or showing of inability to agree

Except as provided in the last section, the jury cannot be discharged after the cause is submitted to them until they have agreed upon their verdict, and rendered it in open court, unless by the consent of both parties entered upon the minutes, or unless at the expiration of such time as the Court deems proper, it satisfactorily appear that there is no reasonable probability that the jury can agree.

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LA 10-90, eff. November 13, 1990.

§ 897. Retrial after discharge at same or other term

In all cases where a jury is discharged or prevented from giving a verdict, by reason of an accident or other cause, except where the defendant is discharged from the information during the progress of the trial, or after the cause is submitted to them, the cause may be again tried at the same or another term, as the Court may direct.

LA 10-90, eff. November 13, 1990.

§ 898. Court during jury's retirement-Sealed verdicts-Final adjournment for term discharges jury

While the jury are absent the Court may adjourn from time to time as to other business, but it is nevertheless deemed open for any purpose connected with the cause submitted to them until verdict is rendered or the jury discharged. If the jury agree on a verdict during a temporary adjournment or recess of the court, they may, upon the direction of the Court, sign the verdict by their foreman, securely seal the same in an envelope, and deliver the same to the foreman, when they may separate until the next convening of the court, at which time they shall reassemble in the jury room and return their verdict in open court, when the same proceedings shall be had as in case of other verdicts. A final adjournment of the court for the term discharges the jury.

LA 10-90, eff. November 13, 1990.

CHAPTER 14

VERDICT

Section

911. Return of jury into court upon agreement-Discharge on failure of some jurors to appear

912. Presence of defendant required in criminal cases when verdict received

913. Proceedings when jury appear

914. Form of verdict

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917. Several defendants-Verdict as to part-Retrial as to defendants not agreed on

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920. Judgment when jury persist in informal verdict

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922. Recording and reading verdict-Disagreement of jurors entered upon minutes-Discharge if no disagreement

923. Defendant discharged on acquittal-Variance resulting in acquittal may authorize new charges

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927. Punishment, Court to assess, when

928. Excess punishment to be disregarded

929. Remand for vacation of sentence-New sentencing proceeding-Construction of section

§ 911. Return of jury into court upon agreement-Discharge on failure of some jurors to appear

When the jury have agreed upon their verdict, they may be conducted into court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest must be discharged without giving a verdict. In that case the cause must be again tried, at the same or another term.

LA 10-90, eff. November 13, 1990.

§ 912. Presence of defendant required in criminal cases when verdict received

If the information is for a crime, the defendant must, before the verdict is received, appear in person.

LA 10-90, eff. November 13, 1990.

§ 913. Proceedings when jury appear

When the jury appear, they must be asked, by the Court or the Clerk, whether they have agreed upon their verdict, and if the foreman answers in the affirmative, they must, on being required, declare the same.

LA 10-90, eff. November 13, 1990.

§ 914. Form of verdict

A general verdict upon a plea of not guilty, is either "guilty," or "not guilty," which imports a conviction or acquittal of the offense charged. Upon a plea of a former conviction or acquittal of the same offense, it is either "for the Nation," or "for the defendant." When the defendant is acquitted on the ground that he was insane at the time of the commission of the act charged, the verdict must be "not guilty by reason of insanity." When the defendant is acquitted on the ground of variance between the charge and the proof, the verdict must be "not guilty by reason of variance between charge and proof."

LA 10-90, eff. November 13, 1990.

§ 915. Degree of crime must be found

Whenever a crime is distinguished into degrees, the jury, if they convict the defendant, must find the degree of the

crime of which he is guilty.

LA 10-90, eff. November 13, 1990.

§ 916. Included offense or attempt may be found

The jury may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged, or of an attempt to commit the offense.

LA 10-90, eff. November 13, 1990.

§ 917. Several defendants-Verdict as to part-Retrial as to defendants not agreed on

On an information against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

LA 10-90, eff. November 13, 1990.

§ 918. Jury may reconsider verdict of conviction for mistake of law-Return of same verdict

When there is a verdict of conviction in which it appears to the Court that the jury have mistaken the law, the Court may explain the reason for that opinion, and direct the jury to reconsider their verdict, and if, after there consideration, they return the same verdict, it must be entered. But when there is a verdict of acquittal, the Court cannot require the jury to reconsider it.

LA 10-90, eff. November 13, 1990.

§ 919. Informal verdict to be reconsidered

If the jury render a verdict not in form, the Court may, with proper instructions as to the law, direct them to reconsider it, and it cannot be recorded until it be rendered in some form from which it can be clearly understood what is the intent of the jury.

LA 10-90, eff. November 13, 1990.

§ 920. Judgment when jury persist in informal verdict

If the jury persist in finding an informal verdict, from which, however, it can be clearly understood that their intention is to find in favor of the defendant upon the issue, it must be entered in the terms in which it is found, and the Court must give judgment of acquittal. But no judgment of conviction can be given unless the jury expressly find against the defendant, upon the issue, or judgment be given against him on a special verdict.

LA 10-90, eff. November 13, 1990.

§ 921. Polling jury

When a verdict is rendered, and before it is recorded, the jury may be polled on the requirement of either party, in which case they must be severally asked whether it is their verdict, and if any one answer in the negative, the jury must be sent out for further deliberation.

LA 10-90, eff. November 13, 1990.

§ 922. Recording and reading verdict-Disagreement of jurors entered upon minutes-Discharge if no disagreement

When the verdict is given, and is such as the Court may receive, the Clerk must immediately record it in full upon the minutes, and the Judge or the Clerk must read it to the jury and inquire of them whether it is their verdict. If any juror disagree, the fact must be entered upon the minutes, and the jury again sent out; but if no disagreement is expressed, the verdict is complete, and the jury must be discharged from the case.

LA 10-90, eff. November 13, 1990.

§ 923. Defendant discharged on acquittal-Variance resulting in acquittal may authorize new charges

If a judgment of acquittal is given on a general verdict, and the defendant is not detained for any other legal cause, he must be discharged as soon as judgment is given, except that when the acquittal is for a variance between the proof and the information which may be obviated by a new information the Court may order his detention to the end that a new information may be preferred in the same manner and with like effect as provided in cases where the jury is discharged.

LA 10-90, eff. November 13, 1990.

§ 924. Commitment upon conviction

If a general verdict is rendered against the defendant he must be remanded if in custody, or if on bail he may be committed to the proper officer of the county to await the judgment of the Court upon the verdict. When committed his bail is exonerated, or if money is deposited instead of bail it must be refunded to the defendant.

LA 10-90, eff. November 13, 1990.

§ 925. Claim of insanity-Duty of Court and jury-Commitment to institution

When it is contended on behalf of the defendant in any criminal prosecution that he is at the time of the trial a lunatic, an insane person, or a person of unsound mind, the Court shall submit to the jury a proper form of verdict, and if the jury finds the defendant not guilty on account of such lunacy, insanity or unsoundness of mind, they shall so state in their verdict, and the Court shall thereupon order the defendant committed to the hospital for the insane, or other institution provided for the care and treatment of cases such as the one before the Court, until the sanity and soundness of mind of the defendant be judicially determined, and he be discharged from said institution according to law.

LA 10-90, eff. November 13, 1990.

§ 926. Punishment, jury may assess, when

In all cases of a verdict of conviction for any offense against any of the laws of Cherokee Nation, the jury may, and shall upon the request of the defendant assess and declare the punishment in their verdict within the limitations fixed by law, and the Court shall render a judgment according to such verdict, except as hereinafter provided.

LA 10-90, eff. November 13, 1990.

§ 927. Punishment, Court to assess, when

Where the jury find a verdict of guilty, and fail to agree on the punishment to be inflicted, or do not declare such punishment by their verdict, the Court shall assess and declare the punishment and render the judgment accordingly.

LA 10-90, eff. November 13, 1990.

§ 928. Excess punishment to be disregarded

If the jury assess a punishment, whether of imprisonment or fine, greater than the highest limit declared by law for the offense of which they convict the defendant, the Court shall disregard the excess and pronounce sentence and render judgment according to the highest limit prescribed by law in the particular case.

LA 10-90, eff. November 13, 1990.

§ 929. Remand for vacation of sentence-New sentencing proceeding-Construction of section

A. Upon any appeal of a conviction by the defendant, the appellate Court, if it finds prejudicial error in the sentencing proceeding only, may set aside the sentence rendered and remand the case to the trial Court in the jurisdiction in which the defendant was originally sentenced for resentencing. No error in the sentencing proceeding shall result in the reversal of the conviction in a criminal case unless the error directly affected the determination of guilt.

B. When a criminal case is remanded for vacation of a sentence, the Court may:

1. Set the case for a nonjury sentencing proceeding; or

2. If the defendant or the Prosecuting Attorney so requests in writing, impanel a new sentencing jury.

C. If a written request for a jury trial is filed within twenty (20) days of the date of the appellate court order, the trial Court shall impanel a new jury for the purpose of conducting a new sentencing proceeding.

1. All exhibits and a transcript of all testimony and other evidence properly admitted in the prior trial and sentencing shall be admissible in the new sentencing proceeding. Additional relevant evidence may be admitted including testimony of witnesses who testified at the previous trial.

2. The provisions of this section are procedural and shall apply retroactively to any defendant sentenced in this Nation.

D. This section shall not be construed to amend or be in conflict with the provisions of 22 CNCA § 926 and 22 CNCA § 927 relating to assessment of punishment in the original trial proceedings.

LA 10-90, eff. November 13, 1990.

CHAPTER 15

NEW TRIAL-ARREST OF JUDGMENT

Section

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§ 951. New trial defined-Proceedings on new trial-Former verdict no bar

A new trial is a reexamination of the issue in the same court, before another jury, after a verdict has been given. The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew except of witnesses who are absent from the nation or dead, in which event the evidence of such witnesses on the former trial may be presented; and the former verdict cannot be used or referred to either in evidence or in argument, or be pleaded in bar of any conviction which might have been had under the indictment or information.

LA 10-90, eff. November 13, 1990.

§ 952. Grounds for new trial-Affidavits and testimony

A court in which a trial has been had upon an issue of fact has power to grant a new trial when a verdict has been rendered against a defendant by which his substantial rights have been prejudiced, upon his application in the following

cases only:

First. When the trial has been in his absence, if the charge is for a crime;

Second. When the jury have received any evidence out of court, other than that resulting from a view of the premises;

Third. When the jury have separated without leave of the Court, after retiring to deliberate on their verdict, and before delivering or sealing the same, if it be sealed, or have been guilty of any misconduct by which a fair and due consideration of the case has been prevented;

Fourth. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of the jury;

Fifth. When the Court has misdirected the jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial;

Sixth. When the verdict is contrary to law or evidence;

Seventh. When new evidence is discovered, material to the defendant, and which he could not with reasonable diligence have discovered before the trial, and that the facts in relation thereto were unknown to the defendant or his attorney until after the trial jury in the case was sworn and were not of record. When a motion for a new trial is made on the ground of newly discovered evidence, the defendant must produce at the hearing in support thereof affidavits of witnesses, or he may take testimony in support thereof and if time is required by the defendant to procure such affidavits or testimony, the Court may postpone the hearing of the motion for such length of time as under all the circumstances of the case may seem reasonable.

LA 10-90, eff. November 13, 1990.

§ 953. Time for applying for new trial-Limitations

The application for a new trial must be made before judgment is entered; but the Court or Judge thereof may for good cause shown allow such application to be made at any time within thirty (30) days after the rendition of the judgment. A motion for a new trial on the ground of newly discovered evidence may be made within three (3) months after such evidence is discovered but no such motion may be filed more than one (1) year after judgment is rendered.

LA 10-90, eff. November 13, 1990.

§ 954. Motion in arrest of judgment-Definition-Grounds-Time for

A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on plea or verdict of guilty, or on a verdict against the defendant on a plea of former conviction or acquittal. It may be founded on any of the defects in the information mentioned as grounds of demurrer unless such objection has been waived by a failure to demur, and must be before or at the time the defendant is called for judgment.

LA 10-90, eff. November 13, 1990.

§ 955. Court may arrest on its own motion-Effect of allowing motion

The Court may also on its own view of any of these defects, arrest the judgment without motion. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the information was filed, and in no case of arrest of judgment is the verdict a bar to another prosecution.

LA 10-90, eff. November 13, 1990.

§ 956. Proceedings after motion for arrest of judgment sustained

If, from the evidence on the trial, there is reasonable ground to believe the defendant guilty, and a new information can be framed upon which he may be convicted, the Court may order him to be recommitted to the proper officer, or admitted to bail anew to answer the new information. If the evidence shows him guilty of another offense, he must be committed or held thereon; but if no evidence appears sufficient to charge him with any offense, he must, if in custody, be discharged, or, if admitted to bail, his bail is exonerated, or if money has been deposited instead of bail, it must be refunded to the defendant, and the arrest of judgment operates as an acquittal of the charge upon which the information was founded.

LA 10-90, eff. November 13, 1990.

CHAPTER 16

JUDGMENT AND EXECUTION

GENERAL PROVISIONS

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Section

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GENERAL PROVISIONS

§ 961. Court appoints time for pronouncing judgment

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After a plea or verdict of guilty, or after a verdict against the defendant on a plea of a former conviction or acquittal, if the judgment is not arrested or a new trial granted, the Court must appoint a time for pronouncing judgment.

LA 10-90, eff. November 13, 1990.

§ 962. Time for pronouncing verdict specified

The time appointed must be at least two (2) days after the verdict, if the Court intend to remain in session so long; or, if not, at as remote a time as can reasonably be allowed.

LA 10-90, eff. November 13, 1990.

§ 964. Officer may be directed to produce prisoner

When the defendant is in custody, the Court may direct the officer in whose custody he is to bring him before it for judgment, and the officer must do so accordingly.

LA 10-90, eff. November 13, 1990.

§ 965. Warrant for defendant not appearing-Forfeiture of bond or bail money

If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear for judgment when his personal attendance is necessary, the Court, in addition to the forfeiture of the undertaking of bail or of money deposited, may direct the Clerk to issue a bench warrant for his arrest.

LA 10-90, eff. November 13, 1990.

§ 966. Clerk to issue bench warrant-Several counties

The Clerk, on the application of the prosecuting attorney, may, accordingly, at any time after the order, whether the Court be sitting or not, issue a bench warrant.

LA 10-90, eff. November 13, 1990.

§ 967. Form of bench warrant

The bench warrant must be substantially in the following form:

Cherokee Nation

To any Marshal, Sheriff, Constable or policeman in this Nation:

A B having been, on the .... day of .... A. D., 20 ...., duly convicted in the .... District Court of the crime of (designating it generally), you are therefore commanded forthwith to arrest the above named A B and bring him before that Court for judgment, or if the Court has adjourned for the term, you are to deliver him into the custody of the Marshal or Sheriff of Cherokee Nation.

Given under my hand, with the seal of said Court affixed, this .... day of .... A. D., 20 ....

By order of the Court.

(Seal.) E. F., Clerk.

LA 10-90, eff. November 13, 1990.

§ 968. Service of bench warrant, mode of

The bench warrant may be served in the same manner as a warrant of arrest.

LA 10-90, eff. November 13, 1990.

§ 969. Defendant to be arrested

The officer must arrest the defendant and bring him before the Court, or commit him to the officer mentioned in the warrant, according to the command thereof.

LA 10-90, eff. November 13, 1990.

§ 970. Defendant informed of proceedings

When the defendant appears for judgment, he must be informed by the Court, or by the Clerk under its direction, of the nature of the indictment or information, and his plea and the verdict, if any thereon, and must be asked whether he has any legal cause to show why judgment should not be pronounced against him.

LA 10-90, eff. November 13, 1990.

§ 971. Defendant may show cause against judgment-Grounds-Proceedings

He may show for cause against the judgment:

1. That he is insane; and if, in the opinion of the Court, there is reasonable ground for believing him to be insane, the question of his insanity must be tried as hereinafter in this chapter, provided for. If upon the trial of that question the jury find that he is sane, judgment must be pronounced, but if they find him insane he may be committed to one of the Nation lunatic asylums, until he becomes sane, or be otherwise committed according to law, and when notice is given of that fact, as hereinafter provided, he must be brought before the Court for judgment;

2. That he has good cause to offer, either in arrest of judgment, or for a new trial, in which case the Court may, in its discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment, or for a new trial.

LA 10-90, eff. November 13, 1990.

§ 972. Rendition of judgment where cause against it not shown

If no sufficient cause be alleged or appear to the Court why judgment should not be pronounced it must thereupon be rendered.

LA 10-90, eff. November 13, 1990.

§ 973. Court may hear further evidence, when

After a plea or verdict of guilty in a case where the extent of the punishment is left with the Court, the Court, upon the suggestion of either party that there are circumstances which may be properly taken into view, either in aggravation or mitigation of the punishment, may in its discretion hear the same summarily at a specified time and upon such notice to the adverse party as it may direct.

LA 10-90, eff. November 13, 1990.

§ 974. Testimony-How presented-Deposition of sick or infirm witness

The circumstances must be presented by the testimony of witnesses examined in open court, except that when a witness is so sick or infirm as to be unable to attend, his deposition may be taken by a Magistrate of the county out of court, at a specified time and place, upon such notice to the adverse party as the Court may direct.

LA 10-90, eff. November 13, 1990.

§ 975. Other evidence in aggravation or mitigation of punishment prohibited

No affidavit or testimony, or representation of any kind, verbal or written, can be offered to or received by the Court or member thereof in aggravation or mitigation of the punishment, except as provided in the last two sections.

LA 10-90, eff. November 13, 1990.

§ 976. Sentencing for multiple offenses-Concurrent sentences

If the defendant has been convicted of two or more offenses, before judgment on either, the judgment may be that the imprisonment upon any one may commence at the expiration of the imprisonment upon any other of the offenses. Provided, that the sentencing Judge shall, at all times, have the discretion to enter a sentence concurrent with any other sentence.

LA 10-90, eff. November 13, 1990.

§ 977. Entry of judgment-Papers filed by the Clerk-Record

When judgment upon a conviction is rendered, the Clerk must enter the same upon the minutes, stating briefly the

offense for which the conviction has been had, and must immediately annex together and file the following papers, which constitute a record of the action:

1st. The information and a copy of the minutes of the plea or demurrer;

2nd. A copy of the minutes of the trial;

3rd. The charges given or refused, and the endorsements, if any, thereon; and

4th. A copy of the judgment.

LA 10-90, eff. November 13, 1990.

§ 978. Certified copy of judgment furnished to officer-Officer authorized to execute judgment

When a judgment has been pronounced, a certified copy of the entry thereof, upon the minutes, must be forthwith furnished to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require its execution.

LA 10-90, eff. November 13, 1990.

§ 979. Execution of judgment by Marshal or Sheriff in certain cases-Delivery to proper officer in other cases

When the judgment is imprisonment in a penal institution, or a fine, and that the defendant be imprisoned until it be paid, the judgment must be executed by the Marshal or Sheriff of the Nation. In all other cases when the sentence is imprisonment, the Marshal or Sheriff must deliver the defendant to the proper officer, in execution of the judgment.

LA 10-90, eff. November 13, 1990.

§ 979A. Payment of penal institution costs by inmate

The sentencing Court may require a person sentenced to confinement in penal institution, for any offense, to pay the penal institution the costs of food and maintenance for each day of incarceration, both before and after conviction, medical care, dental care, and psychiatric services. The costs for food and maintenance for each day of incarceration shall be an amount equal to the actual cost of the services, said costs to be determined by the administrator of the penal

institution. The cost of the services shall be paid to all penal institutions where the inmate may have been held before and after conviction. The costs shall not be assessed if, in the judgment of the Court, such costs would impose a manifest hardship on the inmate, or if in the opinion of the Court the property of the inmate is needed for the maintenance and support of family of the inmate.

LA 10-90, eff. November 13, 1990.

§ 981. Authority of officer while conveying prisoner-Assistance of citizens-Penalty for refusing assistance

The Marshal or Sheriff or his Deputy while conveying the defendant to the proper prison in execution of a judgment of imprisonment has the same authority to require the assistance of any citizen of this Nation in securing the defendant and in retaking him if he escape, as if the Marshal or Sheriff, and every person who refuses or neglects to assist the Sheriff, when so required, is punishable.

LA 10-90, eff. November 13, 1990.

§ 982. Presentence investigation

Whenever a person is convicted of a crime, the Court may, before imposing sentence to commit any criminal to incarceration, order a presentence investigation to be made by the Nation and defendant. The Nation and the defendant shall thereupon inquire into the circumstances of the offense, and the criminal record, social history and present condition of the convicted person; and shall make a report of such investigation to the Court, including a recommendation as to appropriate sentence, and specifically a recommendation for or against probation. Such reports must be presented to the Judge so requesting, within a reasonable time, and upon the failure to so present the same, the Judge may proceed with sentencing. Whenever, in the opinion of the Court, it is desirable, the investigation shall include a physical and mental examination of the convicted person. The reports so received shall not be referred to, or be considered, in any appeal proceedings. Before imposing sentence, the Court may advise the defendant or his counsel and the Prosecuting Attorney of the factual contents and the conclusions of any presentence investigation or psychiatric examination and afford fair opportunity, if the defendant so requests, to controvert them. If either the defendant or the Prosecuting Attorney desires, such hearing shall be ordered by the Court providing either party an opportunity to offer evidence proving or disproving any finding contained in such report, which shall be a hearing in mitigation or aggravation of punishment.

If the Prosecuting Attorney and the defendant desire to waive such presentence investigation and report, both shall execute a suitable waiver subject to approval of the Court, whereupon the Judge shall proceed with the sentencing.

LA 10-90, eff. November 13, 1990.

§ 983. Imprisonment or recommendation of suspension of driving privileges for failure to pay fines or costs-Persons

unable to pay-Hearing-Installments

A. Any defendant found guilty of an offense in any court of this Nation may be imprisoned for nonpayment of the fine and/or costs when the trial Court finds that the defendant is financially able but refuses or neglects to pay the fine and/or costs. In no case may a sentence to pay a fine be converted into a penal institution sentence automatically, i.e., without a hearing and a judicial determination, memorialized of record, that the defendant is able to satisfy the fine and costs by payment but refuses or neglects so to do.

B. After a judicial determination that the defendant may be able to pay the fine and costs in installments, the Court may order the fine and costs to be paid in installments and shall set the amount and due date of each installment.

C. The Court also may send notice of any nonpayment of fine and costs for a moving traffic violation to the Department of Public Safety with a recommendation of suspension of driving privileges of the defendant until the total amount of fine and costs has been paid. Upon receipt of payment of the total amount of fine and costs for the moving traffic violation, the Court shall send notice thereof to the Department, if a nonpayment notice was sent as provided for in this subsection. Such notices sent to the Department shall be on forms or by a method approved by the Department.

D. The Supreme Court shall implement procedures and rules for methods of payment of fines and/or costs by indigents, which procedures and rules shall be distributed to all District Courts by the Court Administrator.

LA 10-90, eff. November 13, 1990.

SUSPENSION OF JUDGMENT AND SENTENCE

§ 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; or

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; or

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-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 defendantand/or

c. To install, at the expense of the person, an ignition interlock device upon ever 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 or 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.

LA 10-90, eff. November 13, 1990. Amended LA 21-08, eff. November 12, 2008, LA 08-21, eff. March 1, 2021.

§ 991A-2. Nonviolent criminals-Night or weekend incarceration

Any person who has been convicted of a nonviolent crime in the Nation may be sentenced, at the discretion of the Judge, to incarceration in the penal institution for a period of one or more nights or weekends with the remaining portion of each week being spent under probation, in lieu of any other kind of imprisonment prescribed by law for the particular crime. Any person incarcerated in the penal institution may be assigned work duties as may be approved by the Judge. The sentencing Court may require a person incarcerated pursuant to this act to pay the Nation for food and

maintenance for each day of incarceration, an amount equal to the maximum amount prescribed by law to be paid by the Nation, to the Administrator for such expenses. For the purposes of this section, weekend incarceration shall commence at 6 p.m. on Friday and continue until 8 a.m. on the following Monday, and incarceration overnight shall commence at 6 p.m. on one day and continue until 8 a.m. of the next day. Provided, that the sentencing Judge may modify said times if the circumstances of the particular case require such action.

LA 10-90, eff. November 13, 1990.

§ 991A-3. Restitution to buyer of property unlawfully obtained

A. Upon a verdict or plea of guilty or upon a plea of nolo contendere for an offense in which any property is unlawfully obtained and the property is sold, traded, bartered, pledged or pawned, the Court may order the defendant to provide restitution to the buyer, recipient or pledgee of the property for the value of any consideration paid, loaned or given for the property unless the buyer, recipient or pledgee has violated the provisions of 21 CNCA § 1092, 21 CNCA § 1093 or 21 CNCA § 1713. Such restitution shall be in addition to any restitution to the victim and shall be in addition to any other penalties provided by law. Restitution to the buyer, recipient or pledgee shall be ordered pursuant to the provisions of 22 CNCA § 991A(A)(1)(a).

B. The buyer of any property which has been unlawfully obtained and which is lawfully returned to its rightful owner shall have the right to bring a civil action against the person who sold, traded, bartered, pledged or pawned the property for the value of any consideration paid, loaned or given for the property unless the buyer has violated the provisions of 21 CNCA § 1092, 21 CNCA § 1093 or 21 CNCA § 1713.

LA 10-90, eff. November 13, 1990.

§ 991A-4. Community service sentencing program-Eligible offenders-Presentence investigation-Recommendation and imposition of sentence-Earned credits-Notice of completion-Immunity from tort liability

A. There is hereby created the "Community Service Sentencing Program". The purpose of the program shall be to provide an alternative to incarceration for nonviolent crime offenders who would normally be sentenced to incarceration in a penal institution.

B. Any eligible offender may be sentenced, at the discretion of the Judge, to a community service sentencing program pursuant to the provisions of this section. For purposes of this section, **"eligible offender"** shall mean any person who:

1. Has not previously been convicted of two or more felonies;

2. Has been convicted of a nonviolent crime offense which shall be defined as any crime offense except assault and

battery with a dangerous weapon, aggravated assault and battery on a law officer, poisoning with intent to kill, shooting with intent to kill, assault with intent to kill, assault with intent to commit a crime, murder in the first degree, murder in the second degree, manslaughter in the first degree, manslaughter in the second degree, kidnapping, burglary in the first degree, kidnapping for extortion, maiming, robbery, child beating, wiring any equipment, vehicle, or structure with explosives, forcible sodomy, rape in the first degree or rape by instrumentation, lewd or indecent proposition or lewd or indecent act with a child under sixteen (16) years of age, use of a firearm or offensive weapon to commit or attempt to commit a crime, pointing firearms, rioting or arson in the first degree;

3. Has properly completed and executed all necessary documents; and

4. Is not otherwise ineligible by law or court rule.

C. Cherokee Nation shall administer the program. Cherokee Nation shall recommend an assignment of the offender to any one or combination of the following areas:

1. Community service, with or without compensation;

2. Education, vocational-technical education or literacy programs;

3. Substance abuse treatment programs;

4. Periodic testing for the presence of controlled substances;

5. Psychological counseling or psychiatric treatment;

6. Medical treatment;

7. Restitution;

8. Confinement in a penal institution for a period not to exceed the maximum incarceration found in 25 U.S.C. § 1823(7) [1] , night or weekend incarceration pursuant to the provisions of 22 CNCA § 991A-2;

9. Probation or conditional probation.

D. The Judge shall consider the criminal history of the offender, the nature of the offender's criminal conduct, the

employment and family history of the offender and any other factors he deems relevant when sentencing persons to the program.

E. Cherokee Nation, all counties and municipalities of the State of Oklahoma and all nonprofit or educational organizations or institutions participating in the Program are hereby immune from liability for torts committed by or against any offender participating in the Program to the extent specified in 57 O.S. §§ 227 and 228.

F. Any offender participating in the program shall be advised of the provisions of this section and shall, in writing, acknowledge that he has been advised of and understands the provisions of the program.

[1] See 25 U.S.C. § 1302(a)(7).

LA 10-90, eff. November 13, 1990.

ELDERLY AND INCAPACITATED VICTIM'S PROTECTION PROGRAM

§ 991A-5. Short title

This act shall be known and may be cited as the "Elderly and Incapacitated Victim's Protection Program".

LA 10-90, eff. November 13, 1990.

§ 991A-6. Purpose

The purpose and intent of this act is to provide enhanced sentencing for persons committing certain offenses against elderly or incapacitated persons.

LA 10-90, eff. November 13, 1990.

§ 991A-7. Definitions

As used in this act:

1. **"Elderly person"** means any person sixty-two (62) years of age or older; and

2. **"Incapacitated person"** means any person who is disabled by reason of mental or physical illness or disability to such extent he lacks the ability to effectively protect himself or his property.

LA 10-90, eff. November 13, 1990.

§ 991A-8. Offenses to which act applies

The provisions of this act shall apply to any person convicted of one or more of the following offenses where the victim is an elderly or incapacitated person:

1. Assault, battery, or assault and battery with a dangerous weapon;

2. Aggravated assault and battery;

3. Burglary in the second degree;

4. Use of a firearm or offensive weapon to commit or attempt to commit a crime, or pointing a firearm;

5. Grand larceny;

6. Extortion, or obtaining a signature by extortion;

7. Fraud, or obtaining or attempting to obtain property by trick or deception; or

8. Embezzlement.

LA 10-90, eff. November 13, 1990.

§ 991A-9. Enhancement of sentence

Whenever a person is convicted of an offense enumerated in 22 CNCA § 991A-8 in which the victim is elderly or incapacitated, the Court shall upon conviction:

1. Commit the defendant for confinement as provided by law; provided, the first thirty (30) days of the sentence shall not be subject to probation, suspension or deferral; provided further, this mandatory minimum period of confinement shall be served in the penal institution as a condition of a suspended or deferred sentence, pursuant to 22 CNCA § 991A and may be served by night or weekend incarceration pursuant to 22 CNCA § 991A-2; and

2. a. Require restitution be paid to the victim for out-of-pocket expenses, loss or damage to property and medical expenses for injury proximately caused by the conduct of the defendant pursuant to 22 CNCA § 991A-10; or

b. Assign the offender to perform a required term of community service, according to a schedule consistent with the employment and family responsibility of the person convicted; or

c. Require restitution as provided in subparagraph a of this paragraph and community service as provided in subparagraph b of this paragraph; and

3. The Court may further impose a fine or any other penalty otherwise provided by law.

LA 10-90, eff. November 13, 1990.

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

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.

LA 10-90, eff. November 13, 1990.

§ 991A-11. Seizure of property-Forfeiture for sale-Notice of proceedings-Answer and claim to property-Hearing-Proof of claim-Sale under judgment-Distribution of proceeds

A. Any peace officer of this Nation shall seize any property, except property exempt under 31 O.S. § 1, to be held until a forfeiture for sale has been declared or release ordered.

B. Notice of seizure and intended forfeiture proceeding shall be filed in the office of the Clerk of the District Court for the county in which the property is seized and shall be given all owners and parties in interest.

C. Notice shall be given by the party seeking forfeiture and sale according to one of the following methods:

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1. Upon each owner or party in interest whose right, title or interest is of record at the Oklahoma Tax Commission, by mailing a copy of the notice by certified mail to the address shown upon the records of the Oklahoma Tax Commission;

2. Upon each owner or party in interest whose name and address is known to the attorney or the party seeking the action to recover unpaid restitution, by mailing a copy of the notice by registered mail to the last-known address; or

3. Upon all other owners or interested parties, whose addresses are unknown, but who are believed to have an interest in the property, by one publication in a newspaper of general circulation in the county where the seizure was made.

D. Within sixty (60) days after the mailing or publication of the notice, the owner of the property and any other party in interest or claimant may file a verified answer and claim to the property described in the notice.

E. If at the end of sixty (60) days after the notice has been mailed or published there is no verified answer on file, the Court shall hear evidence upon the fact of exemption under 31 O.S. § 1, and shall order the property forfeited and sold to pay restitution, if such property is not proved exempt.

F. If a verified answer is filed, the forfeiture for sale proceeding shall be set for hearing.

G. At a hearing on the forfeiture the evidence of ownership and exemption under 31 O.S. § 1 shall be satisfied by a preponderance of the evidence.

H. The claimant of any right, title or interest in the property may prove his lien, mortgage or conditional sales contract to be a bona fide ownership interest.

I. In the event of such proof, the Court shall order the property released to the bona fide owner, lienholder, mortgagee or vendor if the amount due him is equal to, or in excess of, the value of the property as of the date of the seizure, it being the intention of this section to forfeit only the right, title or interest of the offender.

J. If the amount due to such person is less than the value of the property, or if no bona fide claim is established, the property shall be forfeited and sold under judgment of the Court, as on sale upon execution.

K. Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Office of the Prosecuting Attorney, subject only to the orders and decrees of the Court having jurisdiction thereof.

L. The proceeds of the sale of any property shall be distributed as follows, in the order indicated:

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1. To the bona fide purchaser, conditional sales vendor or mortgagee of the property, if any, up to the amount of his interest in the property, when the Court declaring the forfeiture orders a distribution to such person;

2. To the payment of the actual expenses of storing the property;

3. To the payment of court costs and costs of the Marshal or Sheriff in conducting the sale;

4. To the payment of restitution to the victim; and

5. The balance of the proceeds of such sale shall be paid to the defendant.

M. If the Court finds that the party seeking the forfeiture failed to satisfy the requirements provided for in subsection (G) of this section, the Court shall order the property released to the owner or owners.

LA 10-90, eff. November 13, 1990.

§ 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

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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. Provided, however, that if the crime for which the suspended sentence is given was a crime, he may be allowed bail pending appeal. If the reason for revocation be that the defendant committed a crime, he shall not be allowed bail pending appeal.

LA 10-90, eff. November 13, 1990, LA 08-21, eff. March 1, 2021.

§ 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 feeto 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.

LA 10-90, eff. November 13, 1990. Amended LA 28-06, eff. December 20, 2006. Amended LA 21-08, eff. November 12, 2008, LA 08-21, eff. March 1, 2021.

§ 991D. Probation fee-Restitution administration fee--Revolving Fund Established

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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.

LA 10-90, eff. November 13, 1990. Amended LA 28-06, eff. December 20, 2006, LA 08-21, eff. March 1, 2021.

§ 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 <https://www.oscn.net/applications/oscn/DeliverDocument.asp?citeid=69240> 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 ($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.

LA 10-90, eff. November 13, 1990, LA 08-21, eff. March 1, 2021.

§ 994. Suspension of judgment and sentence after appeal

After appeal, when any criminal conviction is affirmed, either in whole or in part, the Court in which the defendant was originally convicted may suspend the judgment and sentence as otherwise provided by law. Jurisdiction for such suspension shall be vested in said trial Court by a request by the defendant within ten (10) days of the final order of the District Court. Any order granting or denying suspension made under the provisions of this section is a nonappealable order.

LA 10-90, eff. November 13, 1990. Amended LA 28-06, eff. December 20, 2006.

§ 995. Administration of probation-Parole services

The Court Administrator shall supervise the probation officer in all Cherokee Nation Courts and for such purposes and his or her staff shall have access to all probation records of said Courts.

Subject to the approval of the Chief Justice of the Cherokee Nation Supreme Court the Court Administrator shall establish reports and forms to be maintained by probation officers, procedures to be followed by the probation officers, standards and rules of probation work, including methods and procedures of investigation, mediation supervision, case work, record keeping, accounting, caseload, and case management.

The Court Administrator shall annually submit a written budget for the probation services to the Cherokee Nation Council for administration, supplies and salaries.

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

§ 996. The Powers of the Court

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 are vocation 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.

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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.

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

§ 997. Community service unit

A. Community service is a condition of probation that requires probationers to perform services without compensation for the benefit of the community. The sanction not only provides service to the community but also enhances accountability and helps instill responsibility. Community service can be ordered by a Judge or by the supervising probation officer through the Adult Probation Department. Community service shall be ordered pursuant to the rules and conditions set forth in 22 CNCA § 991A-4.

B. The Adult Probation Department may place a probationer at a variety of work sites throughout Cherokee Nation jurisdictional boundaries. The sites shall be for the benefit of not-for-profit organizations, government agencies, and/or community service groups.

C. Officers assigned to the Adult Probation Department are responsible for placing, monitoring and evaluating all community service mandates. The needs and safety of the community as well as the skills of the probationer shall be considered when making placements. The Cherokee Nation Marshal Service may be called upon to assist with security for community service mandates.

D. Once a site has been deemed appropriate, it letter of agreement between the Adult Probation Department and the agency is signed. If a probationer fails to comply with a community service mandate a revocation hearing shall be held.

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

CHAPTER 18

APPEALS

Section

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§ 1051. Right of appeal-Review-Corrective jurisdiction-Procedure-Scope of review on certiorari

A. An appeal to the Supreme Court may be taken by the defendant as a matter of right from any judgment against him, which shall be taken as herein provided; and, upon the appeal, any decision of the Court or intermediate order made in the progress of the case may be reviewed; provided, all appeals taken from any conviction on a plea of guilty shall be taken by petition for writ of certiorari to the Supreme Court, as provided in subsection (B) of this section; provided further, such petition must be filed within ninety (90) days from the date of said conviction. The Supreme Court may take jurisdiction of any case for the purpose of correcting the appeal records when the same do not disclose judgment and sentence; such jurisdiction shall be for the sole purpose of correcting such defect or defects.

B. The procedure for the filing of an appeal in the Supreme Court shall be as provided in the Rules of Appellate Procedure; and the Supreme Court shall provide by court rules, which will have the force of statute, and be in furtherance of this method of appeal: (1) The procedure to be followed by the trial courts in the preparation and authentication of transcripts and records in cases appealed under this act; (2) the procedure to be followed for the completion and submission of the appeal taken hereunder; and (3) the procedure to be followed for filing a petition for and the issuance of a writ of certiorari.

C. The scope of review to be afforded on certiorari shall be prescribed by the Supreme Court.

LA 10-90, eff. November 13, 1990.

§ 1052. How governed

An appeal from a judgment in a criminal action may be taken in the manner and in the cases prescribed in this chapter.

LA 10-90, eff. November 13, 1990.

§ 1053. Cherokee Nation may appeal in what cases

Appeals to the Supreme Court may be taken by Cherokee Nation in the following cases and no other:

1. Upon judgment for the defendant on quashing or setting aside an indictment or information;

2. Upon an order of the court arresting the judgment;

3. Upon a question reserved by Cherokee Nation; and

4. Upon judgment for the defendant on a motion to quash for insufficient evidence in a criminal matter.

LA 10-90, eff. November 13, 1990.

§ 1053.1. Automatic appeal of judgments holding statutes unconstitutional in criminal actions

Any final judgment entered by a District Court in a criminal action rendering an act of the Council to be unconstitutional shall be automatically appealed to the Supreme Court, unless said act has been previously declared unconstitutional by said Supreme Court. Such appeals shall be by the Prosecuting Attorney upon a reserved question of law.

LA 10-90, eff. November 13, 1990.

§ 1054. Time for taking appeal-Transcript-Notification of nonfiling of case made or transcript

In criminal cases the appeal must be taken within one hundred twenty (120) days after the judgment is rendered. A transcript in criminal cases must be filed as hereinafter directed.

It shall be the duty of the Clerk of the Court from which notice of appeal has been given, and in which case made or transcript has been filed and withdrawn, to notify the Clerk of the Supreme Court if a certificate from such Clerk acknowledging receipt of such case made or transcript is delayed three (3) days beyond the one hundred twenty (120) days maximum time from date of judgment provided for appeal in a criminal case, and on notification by the Clerk of nonfiling of case made or transcript in the Supreme Court, the judgment of the trial court will be immediately carried

out as provided by law.

LA 10-90, eff. November 13, 1990.

§ 1054.1. Perfecting appeal without filing motion for new trial

The right of a party to perfect an appeal from a judgment, order or decree of the trial court to the Supreme Court shall not be conditioned upon his having filed in the trial court a motion for a new trial, but in the event a motion for a new trial is filed in the trial court by a party adversely affected by the judgment, order or decree, no appeal to the Supreme Court may be taken until subsequent to the ruling by the trial court on the motion for a new trial.

LA 10-90, eff. November 13, 1990.

§ 1056. Appeal by Nation not to suspend judgment

An appeal taken by the Nation in no case stays or affects the operation of the judgment in favor of the defendant, until the judgment is reversed.

LA 10-90, eff. November 13, 1990.

§ 1058. Conditions of bond-Surrender by sureties-Stay of execution-Confinement of defendant when crime not bailable

If an appeal is taken and the appeal bond given as provided in the preceding section, said bond shall be conditioned that the defendant will appear, submit to and perform any judgment rendered by the Supreme Court or the court in which the original judgment was rendered in the further progress of the cause, and will not depart without leave of the Court. After the determination of the appeal in the Supreme Court, or if the appeal is not perfected as provided by law, the defendant may be surrendered by the sureties to the proper authorities for the execution of the sentence. If the defendant be adjudged to be incarcerated in any penal institution and/or to pay a fine, said sureties shall be relieved of liability for such fine and costs upon surrender of the defendant to the proper authorities for incarceration pursuant to the judgment and prior to forfeiture of the bond. If no bond be given the appeal shall not stay execution of the judgment, except where otherwise specifically provided by law. If pending the appeal the bond be given, a further execution of the judgment shall be stayed and the defendant released pending the determination of the appeal. In all cases where the sentence is for a crime not bailable the defendant shall be confined in the penal institution pending the appeal.

LA 10-90, eff. November 13, 1990.

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§ 1062. Exceptions

The exceptions stated in the case shall have the same effect as if they had been reduced to writing, allowed and signed by the Judge at the time they were taken.

LA 10-90, eff. November 13, 1990.

§ 1065. Defendants may appeal jointly or severally

When several defendants are tried jointly, any one or more of them may take an appeal, but those who do not join in the appeal shall not be affected thereby.

LA 10-90, eff. November 13, 1990.

§ 1066. Power of appellate court-Return by Clerk of lower court when new trial granted

The appellate court may reverse, affirm or modify the judgment or sentence appealed from, and may, if necessary or proper, order a new trial or resentencing. In either case, the cause must be remanded to the Court below, with proper instructions, and the opinion of the Court, within the time, and in the manner, to be prescribed by rule of the Court.

If the case is reversed for a new trial, the Clerk of the court from which such cause was appealed is required to make return showing that said case was specifically called to the attention of the trial court at the time of the setting of the docket following receipt of mandate, and showing the court's action in placing said cause on the docket for trial, said return to be made immediately after the trial and entry of judgment, or earlier disposal. Should the case not be retried and should it be dismissed by the Court, return shall be made, giving the reasons stated by the Court in his minutes justifying such dismissal.

LA 10-90, eff. November 13, 1990.

§ 1067. Order when no offense committed-When indictment defective

When a judgment against the defendant is reversed, and it appears that no offense whatever has been committed, the Supreme Court must direct that the defendant be discharged; but if it appears that the defendant is guilty of an offense although defectively charged in the indictment, the Supreme Court must direct the prisoner to be returned and delivered over to the jailer of the proper county, there to abide the order of the Court in which he was convicted.

LA 10-90, eff. November 13, 1990.

§ 1069. Appeal not dismissed for informality

An appeal shall not be dismissed for any informality or defect in the taking thereof. If the same be corrected in a reasonable time after an appeal has been dismissed, another appeal may be taken.

LA 10-90, eff. November 13, 1990.

§ 1070. Judgment to be executed on affirmance

On a judgment of affirmance against the defendant, the original judgment must be carried into execution, as the appellate court may direct.

LA 10-90, eff. November 13, 1990.

§ 1071. Opinions to be recorded

All opinions of the Supreme Court must be given in writing and recorded in the journal.

LA 10-90, eff. November 13, 1990.

§ 1072. Record and enforcement of mandate or order in lower court-Return by Clerk of lower court to Clerk of Supreme Court

It is hereby made the duty of the Court Clerk in all counties, upon receipt from the Clerk of the Supreme Court of any mandate or order of the Supreme Court, to immediately and without any order from the Court, or Judge thereof, to spread said mandate or order of record in the proper court, and to issue and place in the hands of the proper officer appropriate process for carrying out such mandate or order.

That it shall be the duty of any such Court Clerk immediately upon return being made by the officer to whom process is delivered, to thereafter make return to the Clerk of the Supreme Court, showing the date that mandate was received, date filed and recorded, the date process was issued to the officer, and the date the process was served and whether the convicted person was incarcerated. If incarceration of the prisoner is delayed by reason of flight, or for any other cause for a period of more than fifteen (15) days after receipt of mandate, the return, under any such circumstance causing delay, must be immediately made to the Clerk of the Supreme Court; and upon later apprehension of prisoner

and incarceration, a further return must be made to the Clerk of the Supreme Court, reporting the facts, within ten (10) days after such incarceration.

LA 10-90, eff. November 13, 1990.

§ 1076. Notice to defendant of his right to appeal-Stay of execution of judgment

The Court shall at the time of entering judgment and sentence notify the defendant of his right to appeal. An appeal from a judgment of conviction stays the execution of the judgment in all cases where sentence of death is imposed, but does not stay the execution of the judgment in any other case unless the trial or appellate Court shall so order.

LA 10-90, eff. November 13, 1990.

§ 1077. Bail allowable

Bail on appeal shall be allowed on appeal from a judgment of conviction of a crime, or in crime cases where the punishment is a fine only, and when made and approved shall stay the execution of such judgment. Bail on appeal after the effective date of this act shall not be allowed after conviction of any of the following offenses:

1. Murder in any degree;

2. Kidnapping for purpose of extortion;

3. Robbery with a dangerous weapon;

4. Rape in any degree;

5. Arson in the first degree;

6. Shooting with intent to kill;

7. Manslaughter in the first degree;

8. Forcible sodomy;

9. Any crime conviction for which the evidence shows that the defendant used or was in possession of a firearm or other dangerous or deadly weapon during the commission of the offense;

10. Trafficking in illegal drugs; or

11. Any other crime after former conviction of a crime.

The granting or refusal of bail after judgment of conviction in all other crime cases shall rest in the discretion of the Court, however, if bail is allowed, the trial Court shall state the reason therefor.

LA 10-90, eff. November 13, 1990.

§ 1078. Amount of bond-Time to make appeal bond-Stay pending appeal-Additional bond

When bail is allowed, the Court shall fix the amount of the appeal bond and the time in which the bond shall be given in order to stay the execution of the judgment pending the filing of the appeal in the appellate Court, and until such bond is made shall hold the defendant in custody. If the bond be given in the time fixed by the Court, the execution of the judgment shall be stayed during the time fixed by law for the filing of the appeal in the appellate Court. If the appeal is filed within the time provided by law, then the bond shall stay the execution of the sentence during the pendency of the appeal, subject to the power of the Court to require a new or additional bond when the same is by the Court deemed necessary. If the bond is not given within the time fixed, or if given and the appeal not be filed in the appellate Court within the time provided by law, the judgment of the Court shall immediately be carried into execution.

LA 10-90, eff. November 13, 1990.

§ 1079. Denial of bail-Review by habeas corpus

If bail on appeal be denied, or the amount fixed be excessive, the defendant shall be entitled to a review of the action of the trial Court and its reasons for refusing bail, by habeas corpus proceedings before the appellate Court, or if the Court be not in session, then by some Judge of said Court.

LA 10-90, eff. November 13, 1990.

CHAPTER 19

BAIL

Section

1101. Offenses bailable-Who may take bail

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§ 1101. Offenses bailable-Who may take bail

Bail, by sufficient sureties, shall be admitted upon all arrests in criminal cases and in such cases it may be taken by any of the persons or Courts authorized by law to arrest or imprison offenders, or by the Clerk of the District Court or his Deputy, or by the Judge of such Courts.

LA 10-90, eff. November 13, 1990.

§ 1104. Qualifications of bail-Justification

The qualifications of bail are the same as those in civil cases, and the sureties must in all cases justify by affidavits taken before the Magistrate, Court or Judge, or before the Clerk of the District or Superior Court or his Deputy, that they each possess those qualifications.

LA 10-90, eff. November 13, 1990.

§ 1105. Defendant discharged on giving bail

Upon the allowance of bail and the execution of the requisite recognizance, bond or undertaking, to the Nation, the Magistrate, Judge or Court, must, if the defendant is in custody, make and sign an order for his discharge, upon the delivery of which to the proper officer the defendant must be discharged.

LA 10-90, eff. November 13, 1990.

§ 1106. Deposit for bail

A deposit of the sum of money mentioned in the order admitting to bail is equivalent to bail and upon such deposit the

defendant must be discharged from custody.

LA 10-90, eff. November 13, 1990.

§ 1107. Arrest of defendant by bail-Commitment of defendant and exoneration of bail

Any party charged with a criminal offense and admitted to bail may be arrested by his bail at any time before they are finally discharged, and at any place within the Nation; or by a written authority endorsed on a certified copy of the recognizance, bond or undertaking, may empower any officer or person of suitable age and discretion, to do so, and he may be surrendered and delivered to the proper Marshal, Sheriff or other officer, before any Court, Judge or Magistrate having the proper jurisdiction in the case; and at the request of such bail the Court, Judge or Magistrate shall recommit the party so arrested to the custody of the Marshal, Sheriff or other officer, and endorse on the cognizance, bond or undertaking, or certified copy thereof, after notice to the Prosecuting Attorney, and if no cause to the contrary appear, the discharge and exoneration of such bail; and the party so committed shall therefrom be held in custody until discharged by due course of law.

LA 10-90, eff. November 13, 1990.

§ 1108. Forfeiture of bail

If the defendant neglects to appear according to the terms or conditions of the recognizance, bond or undertaking, either for hearing, arraignment, trial or judgment, or upon any other occasion when his presence in court or before the Magistrate may be lawfully required, or to surrender himself in execution of the judgment, the Court must direct the fact to be entered upon its minutes, and the recognizance, bond or undertaking of bail, or the money deposited instead of bail, as the case may be, is and shall be thereupon declared forfeited and forfeiture proceedings shall then proceed as prescribed in 59 O.S. § 1332. If money deposited instead of bail be so forfeited, the Clerk of the Court or other officer with whom it is deposited, must, immediately after the final adjournment of the court, pay over the money deposited to Cherokee Nation.

LA 10-90, eff. November 13, 1990.

§ 1109. Additional security may be required

When proof is made to any Court, Judge or other Magistrate having authority to commit on criminal charges, that a person previously admitted to bail on any such charge is about to abscond, or that his bail is insufficient, or has removed from the Nation, the Judge or Magistrate shall require such person to give better security, or for default thereof cause him to be committed to prison; and an order for his arrest may be endorsed on the former commitment, or a new warrant therefore may be issued by such Judge or Magistrate, setting forth the cause thereof.

LA 10-90, eff. November 13, 1990.

§ 1110. Jumping bail-Penalties

Whoever, having been admitted to bail or released on recognizance, bond, or undertaking for appearance before any Magistrate or Court of the State of Oklahoma, incurs a forfeiture of the bail or violates such undertaking or recognizance and willfully fails to surrender himself within five (5) days following the date of such forfeiture shall, if the bail was given or undertaking or recognizance extended in connection with a charge of a crime or pending appeal or certiorari after conviction of any such offense, be guilty of a crime. Nothing in this section shall be construed to interfere with or prevent the exercise by any Court of its power to punish for contempt.

LA 10-90, eff. November 13, 1990.

BAIL BOND PROCEDURE ACT

§ 1115. Short title-Application

Sections 1115 through 1115.5 of this title shall be known and may be cited as the Bail Bond Procedure Act. The provisions of the Bail Bond Procedure Act shall not apply to parking or standing traffic violations.

LA 10-90, eff. November 13, 1990.

§ 1115.1. Release on personal recognizance-Arraignment-Plea-Failure to plead or appear

A. In addition to other provisions of law for posting bail, any person, whether a citizen of this Nation or a noncitizen, who is arrested by a law enforcement officer solely for a crime or offense, which if committed under the laws of the State of Oklahoma would constitute a misdemeanor violation, may be released by the arresting officer upon personal recognizance if:

1. The arrested person has been issued a valid license to operate a motor vehicle by Oklahoma, another state jurisdiction within the United States, which is a participant in the Nonresident Violator Compact or any party jurisdiction of the Nonresident Violator Compact;

2. The arresting officer is satisfied as to the identity of the arrested person;

3. The arrested person signs a written promise to appear as provided for on the citation; and

4. The violation does not constitute:

a. a crime which if committed under the laws of the State of Oklahoma would constitute a felony; or

b. negligent homicide; or

c. driving or being in actual physical control of a motor vehicle while impaired or under the influence of alcohol or other intoxicating substances; or

d. eluding or attempting to elude a law enforcement officer; or

e. operating a motor vehicle without having been issued a valid driver's license, or while the license is under suspension, revocation, denial or cancellation; or

f. an arrest based upon an outstanding warrant; or

g. a traffic violation coupled with any offense stated in subparagraphs a through f of this paragraph; or

h. a violation relating to the transportation of hazardous materials.

B. If the arrested person is eligible for release on personal recognizance as provided for in subsection (A) of this section, then the arresting officer shall:

1. designate the charge, crime or offense;

2. record information from the arrested person's driver's license on the citation form, including the name, address, date of birth, personal description, type of driver's license, driver's license number, issuing state, and expiration date;

3. record the motor vehicle make, model and tag information;

4. record the arraignment date and time on the citation; and

5. permit the arrested person to sign a written promise to appear as provided for in the citation.

The arresting officer shall then release the person upon personal recognizance based upon the signed promise to appear. The citation shall contain a written notice to the arrested person that release upon personal recognizance based upon a signed written promise to appear for arraignment is conditional and that failure to timely appear for arraignment shall result in the suspension of the arrested person's driver's license in Oklahoma, or in the nonresident's home state pursuant to the Nonresident Violator Compact.

C. The Court, or the Court Clerk as directed by the Court, may continue or reschedule the date and time of arraignment upon request of the arrested person or his attorney. If the arraignment is continued or rescheduled, the arrested person shall remain on personal recognizance and written promise to appear until such arraignment, in the same manner and with the same consequences as if the continued or rescheduled arraignment was entered on the citation by the arresting officer and signed by the defendant. An arraignment may be continued or rescheduled more than one time; provided however, the Court shall require an arraignment to be had within a reasonable time. It shall remain the duty of the defendant to appear for arraignment unless the citation is satisfied as provided for in subsection (D) of this section.

D. A defendant released upon personal recognizance may elect to enter a plea of guilty or nolo contendere to the violation charged at any time before he is required to appear for arraignment by indicating such plea on the copy of the citation furnished to him or on a legible copy thereof, together with the date of the plea and his signature. The defendant shall be responsible for assuring full payment of the fine and costs to the appropriate Court Clerk. Payment of the fine and costs may be made by personal, cashier's, traveler's, certified or guaranteed bank check, postal or commercial money order, or other form of payment approved by the Court in an amount prescribed as bail for the offense. Provided, however, the defendant shall not use currency for payment by mail. If the defendant has entered a plea of guilty or nolo contendere as provided for in this subsection, such plea shall be accepted by the Court and the amount of the fine and costs shall be prescribed by the Court.

E. 1. If, pursuant to the provisions of subsection (D) of this section, the defendant does not timely elect to enter a plea of guilty or nolo contendere and fails to timely appear for arraignment, the Court may issue a warrant for the arrest of the defendant.

2. The Court Clerk shall not process the notification and request provided for in paragraph 1 of this subsection if, with respect to such charges:

a. the defendant was arraigned, posted bail, paid a fine, was jailed, or otherwise settled the case; or

b. the defendant was not released upon personal recognizance upon a signed written promise to appear as provided for in this section or if released, was not permitted to remain on such personal recognizance for arraignment.

LA 10-90, eff. November 13, 1990.

§ 1115.2. Posting bail after release on personal recognizance for traffic violation-Failure to appear-Person ineligible for release on personal recognizance-Juveniles

A. If a person arrested for a crime or offense is released upon personal recognizance as provided for in 22 CNCA § 1115.1, but subsequently posts bail and thereafter fails to timely appear as provided for by law, the Court may issue a warrant for the person's arrest and the case shall be processed as provided for in 22 CNCA § 1108.

B. If the defendant is not eligible for release upon personal recognizance as provided for in 22 CNCA § 1115.1, or if eligible but refuses to sign a written promise to appear, the officer shall deliver the person to an appropriate Magistrate for arraignment and the Magistrate shall proceed as otherwise provided for by law. If no Magistrate is available, the defendant shall be placed in the custody of the appropriate municipal or county jailor or custodian, to be held until a Magistrate is available or bail is posted as provided for in 22 CNCA § 1115.3 act or as otherwise provided for by law or ordinance.

C. 1. In the event the defendant is additionally arrested for any violation for which personal recognizance is authorized pursuant to 22 CNCA § 1115.1, the arresting officer, for such additional violation, may either release the defendant upon such recognizance or require bail as provided for in this subsection;

2. If the defendant is unable to post bail with the arresting officer, then the officer shall proceed as otherwise provided for in this section.

D. 1. Notwithstanding any other provision of law, a juvenile may be held in custody pursuant to the provisions of this section, but shall be incarcerated separately from any adult offender. Provided however, the arresting officer shall not be required to:

a. place a juvenile into custody as provided for in this section; or

b. place any other offender into custody:

i. who is injured, disabled, or otherwise incapacitated; or

ii. if custodial arrest may require impoundment of a vehicle containing livestock, perishable cargo, or items requiring special maintenance or care; or

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iii. if extraordinary circumstances exist, which, in the judgment of the arresting officer, custodial arrest should not be made.

In such cases, the arresting officer may designate the date and time for arraignment on the citation and release the person. If the person fails to appear without good cause shown, the Court may issue a warrant for the person's arrest.

2. The provisions of this subsection shall not be construed to:

a. create any duty on the part of the officer to release a person from custody; or

b. create any duty on the part of the officer to make any inquiry or investigation relating to any condition which may justify release under this subsection; or

c. create any liability upon any officer, or the Nation or any political subdivision thereof, arising from the decision to release or not to release such person from custody pursuant to the provisions of this subsection.

LA 10-90, eff. November 13, 1990.

§ 1115.3. Pre-set bail

A. The Court may prescribe prior to initial appearance the amount of bail for the following Nation offenses except for the major crimes found in 18 U.S.C. § 1152, and for the crimes listed in 22 CNCA § 1115.5.

B. The amount of bail for other offenses shall be the amount of fine and costs including any penalty assessments provided for in the Cherokee Nation Code Annotated.

C. The amount of bail for a Nation wildlife-related or water safety-related offense shall be the amount of fine and costs including any penalty assessment provided for in the Cherokee Nation Code Annotated.

D. The District Court Clerk, unless otherwise directed by the Court, shall accept bail or the payment of a fine and costs in the form of currency or personal, cashier's, traveler's, certified or guaranteed bank check, or postal or commercial money order for the amount prescribed in this section for bail.

E. The District Court Clerk shall accept as bail a guaranteed arrest bond certificate issued by a surety company, an

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automobile club or trucking association, if:

1. the issuer is authorized to do business in the State of Oklahoma by the State Insurance Commissioner;

2. the certificate is issued to and signed by the arrested person;

3. the certificate contains a printed statement that appearance of such person is guaranteed and the issuer, in the event of failure of such person to appear in Court at the time of trial, will pay any fine or forfeiture imposed; and

4. the limit provided on the certificate equals or exceeds the amount of bail provided for in this section.

LA 10-90, eff. November 13, 1990. Amended LA 19-06, eff. August 13, 2006.

§ 1115.4. Dishonored check-Bench warrant and arrest of issuer

A personal check or other instrument tendered to a District Court Clerk for bail or for the payment of fine and costs, if dishonored and returned to said Clerk for any reason other than the lack of proper endorsement, shall constitute nonpayment of bail or fine, as the case may be, and the Court, in addition to any civil or criminal remedy otherwise provided for by law, may issue a bench warrant for the arrest of the person named on the citation to require his appearance on the charge specified.

LA 10-90, eff. November 13, 1990.

§ 1115.5. Appearance before Magistrate before bail set in certain cases

Any person accused of or detained for any of the following offenses or conditions shall not be eligible for bail until the offender has been brought before a magistrate of the Cherokee Nation Court. The magistrate may prescribe conditions for release of the offender at such time:

1. A person arrested for an offense involving domestic violence such as strikes, shoves, kicks, or strangulation, or who otherwise touches a person or subjects him or her to physical contact, or is charged with a violation of a protection order, may not be admitted to bail until after an appearance before a Magistrate within thirty-six (36) hours of the arrest. Prior to the release of the person, the Magistrate shall review the facts of the arrest to determine whether the person is a threat to the alleged victim, is a threat to public safety, and is reasonably likely to appear in court.

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2. Aggravated driving under the influence of an intoxicating substance, 47 CNCA § 11-902;

3. Any offense prohibited by the Oklahoma, federal and tribal Trafficking in Illegal Drug Acts, 21 CNCA § 2414 et seq.;

4. Any person having a violent felony conviction within the last ten (10) years;

5. Appeal bond;

6. Arson in the first degree, including attempts to commit arson in the first degree, 21 CNCA § 1401;

7. Assault and battery on a police officer, 21 CNCA § 649;

8. Bail jumping in any jurisdiction of the United States;

9. Bribery of a public official, 21 CNCA § 380;

10. Burglary in the first or second degree, 21 CNCA § 1431;

11. Distribution of a controlled dangerous substance, including the sale of possession of a controlled dangerous substance with intent to distribute or conspiracy to distribute, 21 CNCA § 2101;

12. Driving under the influence of intoxicating substance where property damage or personal injury occurs, 47 CNCA § 11-904;

13. Any person who engages in reckless conduct while possessing any firearm, 21 CNCA § 1289.11;

14. Sex offenses, 21 CNCA § 881 through 21 CNCA § 1111;

15. Kidnapping, 21 CNCA § 741;

16. Manufacture of a controlled dangerous substance, 21 CNCA § 2401;

17. Persons currently on pretrial release or probation or parole by any agency with proper jurisdiction who are arrested on a new offense;

18. Any person who unlawfully possesses, manufactures, sells, uses or delivers any explosive device, foul, poisonous, offensive, or injurious substance according to 21 CNCA § 1767.1;

19. Possession of a controlled dangerous substance on Schedule I or II of the Controlled Dangerous Substances Act, 21 CNCA § 2401;

20. Possession of a firearm or other offensive weapon during the commission of a crime, 21 CNCA § 1287;

21. Possession of a stolen vehicle;

22. Rape in the first degree, including attempts to commit rape in the first degree, 21 CNCA § 1111;

25. Rape in the second degree, including attempts to commit rape in the second degree, 21 CNCA § 1111;

26. Robbery by force or fear, 21 CNCA § 792;

27. Robbery with a firearm or dangerous weapon, including attempts to commit robbery with a firearm or dangerous weapon, 21 CNCA § 801;

28. Sexual assault or violent offenses against children, 21 CNCA § 852.1;

29. Shooting with intent to kill, 21 CNCA § 652;

30. Stalking or violation of a protective order from any court with proper jurisdiction;

31. Any person having two or more prior felony convictions.

LA 19-06, eff. August 13, 2006.

§ 1115.6. Consideration of certain victims' safety prior to release of defendant on bond-Emergency protective,

restraining orders and condition of release

A. The Court shall make findings on the record while considering the safety of any and all alleged victims of domestic violence and considers, acts including but not limited to, stalking, harassment, sexual assault, or forcible sodomy where the defendant is alleged to have violated a protective order, committed domestic assault and battery, stalked, sexually assaulted, or forcibly sodomized the alleged victim or victims prior to the release of the alleged defendant from custody on bond. The Court after consideration and to ensure the safety of the alleged victim or victims, may issue an emergency protective order. The Court may also issue to the alleged victim or victims, an order restraining the alleged defendant from any activity or action from which they may be restrained. The protective order shall remain in effect until either a plea has been accepted, sentencing has occurred in the case, the case has been dismissed, or until further order of the Court dismissing the protective order.

B. The conditions of release may include, but need not be limited to, enjoining the person from threatening to commit or committing acts of domestic violence against the alleged victim, prohibiting the person from telephoning, contacting, or otherwise communicating with the alleged victim with the intent to harass, either directly or indirectly; ordering the person to stay away from the home of the alleged victim, when the person and alleged victim are not residents of the same home, and ordering the person to stay away from any other location where the alleged victim is likely to be; prohibiting the person from possessing a firearm or other weapon specified by the court, except when such weapon is necessary for employment as a peace officer or military personnel; and issuing any other or modification of orders above required to protect the safety of the alleged victim or to ensure the appearance of the person in court.

C. If conditions of release are imposed, the Magistrate shall issue a written order for conditional release, immediately distribute a copy of the order to the law enforcement agency having custody and the arrested or charged person, place information pertaining to the order the in the domestic violence protection order registry, and provided the law enforcement agency with any available information concerning the location of the alleged victim in a manner that protects the safety of the victim.

LA 19-06, eff. August 13, 2006.

CHAPTER 20

FUGITIVES FROM JUSTICE

Section

1141. Extradition

§ 1141. Extradition

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Cherokee Nation hereby affirmatively surrenders any person charged with a crime or offense in another jurisdiction, regardless of their status as Indian, who may be found in Indian Country subject to the jurisdiction of Cherokee Nation. Cherokee Nation consents to duly appointed law enforcement officers of the State of Oklahoma or its political subdivisions to enter in Indian Country to execute criminal warrants of the State of Oklahoma or its political subdivisions or Governor Warrants from other states or jurisdictions who have adopted the Uniform Criminal Extradition Act, 22 O.S. § 1141.1 et seq.

LA 10-90, eff. November 13, 1990.

CHAPTER 21

HABEAS CORPUS

Section

1151. Habeas corpus for person to testify or be surrendered on bail

§ 1151. Habeas corpus for person to testify or be surrendered on bail

The Supreme Court and District Courts within this Nation, or the Judges thereof in vacation, shall have power to issue writs of habeas corpus, for the purpose of bringing the body of any person confined in any penal institution before them, to testify or be surrendered in discharge of bail. When a writ of habeas corpus shall be issued for the purpose of bringing into court any person to testify, or the principal, to be surrendered in discharge of bail, and such principal or witness, shall be confined in any prison in this Nation, in which such principal or witness is required to be surrendered, in this Nation, and there be executed and returned by any officer to whom it shall be directed, and the principal, after being surrendered, or his bail discharged, or a person testifying as aforesaid, shall by the officer executing such writ, be returned by virtue of an order of the Court, for the purpose aforesaid, an attested copy of which, lodged with the custodian, shall exonerate such prison keeper from being liable for an escape. The party praying out such writ of habeas corpus shall pay to the officer executing the same, such reasonable sum for his services as shall be adjudged by the Courts respectively.

LA 10-90, eff. November 13, 1990.

CHAPTER 22

INSANITY OF ACCUSED

Section

1161. Acts of insane person not punishable-Acquittal on ground of insanity-Discharge procedure

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An act committed by a person in a state of insanity cannot be punished as a public offense, nor can said person be tried, sentenced to punishment, or punished for a public offense while he is insane. When in any criminal action by indictment or information the defense of insanity is interposed either singly or in conjunction with some other defense, the jury shall state in the verdict, if it is one of acquittal, whether or not the defendant is acquitted on the ground of insanity. When the defendant is acquitted on the ground that he was insane at the time of the commission of the crime charged, said person shall not be discharged from custody until the Court has made a determination that said person is not presently mentally ill and dangerous to the public peace or safety.

To assist the Court in its determination, the Court shall immediately issue an examination order and specify the hospital for the mentally ill in which the said person is to be hospitalized. Upon the issuance of the order, the Marshal or Sheriff shall deliver the said person to the designated hospital for the mentally ill where the said person shall remain hospitalized for a period of not less than thirty (30) days. Within forty-five (45) days of said hospitalization, a hearing shall be conducted by the Court to ascertain whether the said person is presently mentally ill and dangerous to the public peace or safety. During the required period of hospitalization the Oklahoma Department of Mental Health or the hospital shall have the said person examined by two qualified psychiatrists or one such psychiatrist and one qualified clinical psychologist. Each examiner shall individually prepare and submit to the Court, the Prosecuting Attorney and Trial Counsel a report of his findings and an evaluation concerning whether the said person is presently mentally ill and dangerous to the public peace and safety. If the Court is unsatisfied with the psychiatric reports or if a disagreement on the issue of present mental illness and dangerousness exists between the two examiners, the Court may designate one or more additional psychiatrists and have them submit their findings and evaluations as specified above.

Within ten (10) days after the psychiatric reports are filed, the Court must conduct a hearing to determine the said person's present condition as to the issue of whether he is presently mentally ill and dangerous to the public peace or safety. The Prosecuting Attorney must establish by a preponderance of the evidence that the defendant is presently mentally ill and dangerous to the public peace or safety. At this hearing the said person shall have the assistance of counsel and may present independent evidence as to the issue of whether he is presently mentally ill and dangerous to the public peace or safety. If the Court finds that the said person is not presently mentally ill and dangerous to the public peace or safety, it shall immediately discharge the said person from hospitalization. If the Court finds that the said

person is presently mentally ill and dangerous to the public peace or safety, it shall commit the said person to the custody of Cherokee Nation or the Oklahoma Department of Mental Health. The said person shall then be subject to discharge pursuant to the procedure set forth in the Oklahoma Mental Health Law, 43A O.S. § 1-101 et seq.

During the period of hospitalization Cherokee Nation or the Oklahoma Department of Mental Health may administer or cause to be administered to the said person such psychiatric, medical or other therapeutic treatment as in its judgment should be administered.

During the period of hospitalization the Superintendent shall submit an annual report on the status of the said person to the Court, the Prosecuting Attorney and the patient's advocate of the hospital in which the said person is hospitalized. Not less than twenty (20) days prior to the scheduled release of the said person the Superintendent of the hospital for the mentally ill must deliver a written notice of the proposed discharge to the Court, the Prosecuting Attorney and the patient's advocate of the said hospital. Upon motion by the Prosecuting Attorney a second hearing shall be conducted by the Court to ascertain if the said person is mentally ill and dangerous to the public peace or safety. This hearing shall be conducted under the same procedure as the first hearing and must occur not less than ten (10) days before the scheduled release. If the Court determines that the said person continues to be mentally ill and dangerous to the public peace or safety, it shall return the said person to the hospital for additional treatment. Additional hearings may be conducted upon motion by the Prosecuting Attorney under the same provisions as described in this section.

LA 10-90, eff. November 13, 1990.

§ 1162. Jury to try sanity

When an information is called for trial, or upon conviction the defendant is brought up for judgment, if a doubt arise as to the sanity of the defendant, the Court must order a jury to be impaneled from the jurors summoned and returned for the term, or who may be summoned by direction of the Court, to inquire into the fact.

LA 10-90, eff. November 13, 1990.

§ 1163. Sanity hearing-Criminal trial to be suspended

The trial of the cause or the pronouncing the judgment, as the case may be, must be suspended until the question of insanity is determined by the verdict of the jury.

LA 10-90, eff. November 13, 1990.

§ 1164. Order of trial of sanity

The trial of the question of insanity must proceed in the following order:

1. The Counsel for the defendant must open the case and offer evidence in support of the allegation of insanity;

2. The Counsel for the Nation may then open their case and offer evidence in support thereof;

3. The parties may then respectively offer rebutting testimony only, unless the Court, for good reason, in furtherance of justice permit them to offer evidence upon their original case;

4. When the evidence is concluded, unless the case be submitted to the jury on either side or on both sides, without argument, the Counsel for the Nation must commence, and the defendant or his Counsel may conclude the argument to the jury;

5. The Court must then charge the jury before argument as in other cases.

LA 10-90, eff. November 13, 1990.

§ 1165. Rules governing sanity trial

The provisions of the chapter on trials, in respect to the duty of the Court upon questions of law, and of the jury upon questions of fact, and the provisions in respect to the charge of the Court to the jury, upon the trial of an information, apply to the questions of insanity.

LA 10-90, eff. November 13, 1990.

§ 1166. Sanity hearing-Trial or judgment to proceed if defendant sane

If the jury find the defendant sane, the trial of the information must proceed, or judgment may be pronounced as the case may be.

LA 10-90, eff. November 13, 1990.

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§ 1167. Finding of insanity-Suspension of trial or judgment-Commitment to Nation hospital

If the jury finds the defendant presently insane, the trial or judgment must be suspended until he becomes sane, and if the jury deem his discharge dangerous to the public peace or safety, the Court shall order that the defendant be committed to one of the hospitals for the mentally ill, and to be held therein and kept as a patient and inmate until he be discharged and released as presently sane by the authority of the Superintendent of said hospital. A release by the Superintendent of said hospital shall be to the custody of the Marshal or Sheriff of the jurisdiction which the criminal case theretofore suspended is or was pending and from which he was committed. The Court having jurisdiction thereof shall set the cause for trial.

LA 10-90, eff. November 13, 1990.

§ 1168. Commitment in sanity hearing exonerates bail

The commitment of the defendant as mentioned in the last section, exonerates his bail, or entitles the person authorized to receive the property of the defendant to the return of money he may have deposited instead of bail.

LA 10-90, eff. November 13, 1990.

§ 1169. Restoration to sanity

When the defendant becomes sane the Marshal or Sheriff must thereupon, without delay, place him in the proper custody until he be brought to trial or judgment, as the case may be, or be legally discharged.

LA 10-90, eff. November 13, 1990.

DETERMINATION OF COMPETENCY-PROCEDURE

§ 1175.1. Definitions

As used in this act:

1. **"Competent"** or **"competency"** means the present ability of a person arrested for or charged with a crime to understand the nature of the charges and proceedings brought against him, and is able to effectively and rationally assist in his defense. A person may be incompetent due to physical disability;

2. **"Criminal proceeding"** means every stage of a criminal prosecution after arrest and before judgment, including, but not limited to, interrogation, line up, preliminary hearing, motion dockets, discovery, pretrial hearings and trial;

3. **"Doctor"** means any physician, psychiatrist, psychologist or equivalent expert;

4. **"Incompetent"** or **"incompetency"** means any person who is not presently competent;

5. **"Physical disability"** means deafness, muteness, blindness or some combination thereof.

LA 10-90, eff. November 13, 1990.

§ 1175.2. Application for determination of competency-Service-Notice-Suspension of criminal proceedings

A. No person shall be subject to any criminal procedures after he is determined to be incompetent except as provided in 22 CNCA §§ 1175.1 through 1175.8. The question of the incompetency of a person may be raised by the person, the Defense Attorney, or the Prosecuting Attorney, by an application for determination of competency. The application for determination of competency shall allege that the person is incompetent to undergo further proceedings, and shall state facts sufficient to raise a doubt as to the competency of the person. The Court, at any time, may initiate a competency determination on its own motion, without an application, if the Court has a doubt as to the competency of the person.

If the Court so initiates such an application, it may appoint the Prosecuting Attorney for the purpose of proceeding with the application. If the Prosecuting Attorney opposes the application of the Court, and by reason of a conflict of interest could not represent the Court as applicant, then the Court shall appoint private Counsel. Said private Counsel shall be reasonably compensated by the Court Fund.

B. A copy of the application for determination of competency and a notice, as hereinafter described, shall be served personally at least one (1) day before the first hearing on the application for a competency determination. The notice shall contain the following information:

1. The definition provided by 22 CNCA § 1175.1 of competency and incompetency;

2. That, upon request, the hearing on the application may be conducted as a jury trial as provided in 22 CNCA § 1175.4;

3. That the petitioner and any witnesses identified in the application may offer testimony under oath at the hearings on the petition and that the defendant may not be called to testify against his will, unless the application is initiated by the

defendant;

4. That if the person whose competency is in question does not have an attorney, the Court will appoint an attorney for the person who shall represent him until final disposition of the case;

5. That if the person whose competency is in question is indigent or poor, the Court will pay the attorney fees; and

6. That the person whose competency is in question shall be afforded such other rights as are guaranteed by Nation and federal law and that such rights include a trial by jury, if demanded. The notice shall be served upon the person whose competency is in question, upon his father, mother, husband, or wife or, in their absence, someone of the next of kin, of full age, if any said persons are known to be residing within the county, and upon any of said relatives residing outside of the county, and within the state, as may be ordered by the Court, and also upon the person with whom the person whose competency is in question may reside, or at whose house he may be. The person making such service shall make affidavit of the same and file such notice, with proof of service, with the District Court. This notice may be served in any part of this Nation.

C. Any criminal proceedings against a person whose competency is in question shall be suspended pending the determination of the competency of the person.

LA 10-90, eff. November 13, 1990.

§ 1175.3. Hearing-Date-Evidence-Orders-Examination of accused-Instructions to physician

A. Upon filing of an application for determination of competency, the Court shall set a hearing date, which shall be as soon as practicable, but at least one (1) day after service of notice as provided by 22 CNCA § 1175.2.

B. The Court shall hold a hearing on the date provided. At the hearing, the Court shall examine the application for determination of competency to determine if it alleges facts sufficient to raise a doubt as to the competency of the person. Any additional evidence tending to create a doubt as to the competency of the person may be presented at this hearing.

C. If the Court finds there is no doubt as to the competency of the person, it shall order the criminal proceedings to resume.

D. If the Court finds there is a doubt as to the competency of the person, it shall order the person to be examined by doctors or appropriate technicians. The doctors or technicians shall be practitioners in the appropriate branch of medicine relevant to the alleged incompetency of the person. The person may be examined on an outpatient or inpatient basis, as ordered by the Court. The Court may commit the person to the custody of Cherokee Nation or the

Oklahoma Department of Mental Health and Substance Abuse Services or any other state agency or private facility for the examination provided by this act. The person shall be required to undergo examination for a period of time sufficient for the doctor or doctors or technicians to reach a conclusion as to competency, and the Court shall impose a reasonable time limitation for such period of examination. If the Court determines that the person whose competency is in question may be a threat to the safety of himself or others, it shall order the person retained in a secure facility until the completion of the competency hearing provided in 22 CNCA § 1175.4.

E. The doctor or doctors shall receive instructions that they shall examine the patient to determine:

1. Is this person able to appreciate the nature of the charges against him?

2. Is this person able to consult with his lawyer and rationally assist in the preparation of his defense?

3. If the answer to question 1 or 2 is no, can the person attain competency within a reasonable time if provided with a course of treatment, therapy or training?

4. Is the person a mentally ill person or a person requiring treatment as defined by 43A O.S. § 1-103?

5. If the person were released without treatment, therapy or training, would he probably pose a significant threat to the life or safety of himself or others?

LA 10-90, eff. November 13, 1990.

§ 1175.4. Post-examination competency hearing-Evidence-Presumptions-Jury trial-Presence of accused-Witnesses-Instructions

A. After the doctor, doctors or technicians have made the determination required in 22 CNCA § 1175.3, a hearing on the competency of the person shall be held.

B. The Court, at the hearing on the application, shall determine, by clear and convincing evidence, if the person is incompetent. The person shall be presumed to be competent for the purposes of the allocation of the burden of proof and burden of going forward with the evidence. If the Court deems it necessary, or if the person alleged to be a person requiring treatment, or any relative, friend, or any person with whom he may reside, or at whose house he may be, shall so demand, the court shall schedule the hearing on the application as a jury trial to be held within seventy-two (72) hours of the request, excluding weekends and legal holidays, or within as much additional time as is requested by the attorney of the person whose competency is in question, upon good cause shown. The jury shall be composed of six (6) persons having the qualifications required of jurors in courts of record, summoned to determine the questions of the person's competency and need for treatment. Whenever a jury is required, the Court shall proceed to the selection of

such jury in the manner as provided by law and such jury shall determine the questions of the competency and need for treatment of the person whose competency is in question. The jurors shall receive fees for attendance and mileage as are allowed by law.

C. The person whose competency is in question shall have the right to be present at the hearing on the petition unless it is made to appear to the Court that the presence of the person makes it impossible to conduct the hearing in a reasonable manner. The Court may not decide in advance of the hearing, solely on the basis of the certificate of the examining doctor or doctors, that the person whose competency is in question should not be allowed to appear. It shall be made to appear to the Court based on clear and convincing evidence that alternatives to exclusion were attempted before the Court renders his removal for that purpose or his appearance at such hearing improper and unsafe.

D. All witnesses shall be subject to cross-examination in the same manner as is provided by law. No statement, admission or confession made by the person whose competency is in question obtained during his examination for competency may be used for any purpose except for proceedings under this act. No such statement, admission or confession may be used against such person in any criminal action whether pending at the time the hearing is held or filed against such person at any later time, directly, indirectly or in any manner or form, except that if such person is found to be competent at the time of his examination hearing, any such statement made by him may be used for purposes of impeachment.

E. If the question of competency is submitted to a jury, the Court shall instruct the jury as to the law regarding competency, and the findings they are to make. If the trial of the question is to the Court, the Court shall make the required findings.

LA 10-90, eff. November 13, 1990.

§ 1175.5. Questions to be answered in determining competency

The jury or the Court, as the case may be, shall answer the following questions in determining the disposition of the person whose competency is in question:

1. Is the person incompetent to undergo further criminal proceedings at this time? If the answer is no, criminal proceedings shall be resumed. If the answer is yes, the following question shall be answered.

2. Can the incompetency of the person be corrected within a reasonable period of time, as defined by the Court, by treatment, therapy or training? If the answer is yes, the Court shall make the appropriate order. If the answer is no, the following questions shall be answered.

3. Is the person mentally ill, mentally retarded or a person requiring treatment as defined by 43A O.S. § 1-103?

4. Is the person a threat to the safety of himself or others if released?

LA 10-90, eff. November 13, 1990.

§ 1175.6. Disposition orders

A. Upon the finding by the jury or the Court as provided by 22 CNCA § 1175.5, the court shall issue the appropriate order regarding the person:

1. If the person is found to be competent, the criminal proceedings shall be resumed;

2. If the person is found to be incompetent, but capable of achieving competence with treatment, therapy, or training, the Court shall remand the person to Cherokee Nation, the Oklahoma Department of Mental Health and Substance Abuse Services, the Oklahoma Department of Human Services, other appropriate state agencies or a private care provider for appropriate treatment, therapy, or training;

3. If the person is found to be incompetent and not capable of achieving competency within a reasonable period of time, and a person requiring treatment as defined by 43A O.S., then the Court shall order treatment as if there had been a finding pursuant to 43A O.S. that the defendant was a mentally ill person requiring treatment, without any further proceedings, and shall suspend the criminal proceeding. Cherokee Nation, the Department of Mental Health and Substance Abuse Services or other agency providing treatment to the person or the institution wherein the person is confined or treated shall make periodic reports to the Court as to the competency of the defendant. If the agency or institution reports that the person appears to have achieved competency, the Court shall hold another competency hearing to determine if the person has achieved competency. If competency has been achieved, the criminal proceeding shall be resumed; and

4. If the person is found to be incompetent, and not capable of achieving competency within a reasonable period of time, but is not a person requiring treatment as defined by 43A O.S. and is not a threat to himself or society, the Court shall remand the person to Cherokee Nation or the Oklahoma Department of Human Services for assistance, subject to assistance from any other appropriate state agencies and shall suspend the criminal proceedings. Cherokee Nation or the Oklahoma Department of Human Services shall make periodic reports to the Court as to the status and activities of the person. If Cherokee Nation or the Oklahoma Department of Human Services reports that the person appears to have achieved competency, the Court shall hold another competency hearing to determine if the person has achieved competency. If competency has been achieved, the criminal proceeding shall be resumed.

B. Any person arrested and charged with a violent criminal offense, who is found to be incompetent by the Court and ordered into the custody of Cherokee Nation or the Oklahoma Department of Mental Health and Substance Abuse Services pursuant to paragraphs 2 or 3 of subsection (A) of this section, shall be placed in a maximum security ward of the mental health facility designated by Cherokee Nation or the Oklahoma Department of Mental Health and Substance

Abuse Services until such time as said person is adjudicated to be competent or is adjudicated no longer determined to be a threat to any other person.

LA 10-90, eff. November 13, 1990.

§ 1175.7. Persons incompetent but capable of achieving competency within reasonable time-Treatment order-Medical supervisor-Commitment-Private treatment

A. If the person is found incompetent, but capable of achieving competency within a reasonable period of time, as defined by the Court, the Court shall order such person to undergo such treatment, therapy or training which is calculated to allow the person to achieve competence.

B. The Court shall appoint a medical supervisor for a course of treatment. The medical supervisor of treatment may be any person or agency that agrees to supervise the course of treatment. The proposed treatment may be either inpatient or outpatient care depending on the facilities and resources available to the Court and the type of disability sought to be corrected by the Court's order. The Court may require the supervisor to provide periodic progress reports to the Court and may pay for the services of the medical supervisor from Court funds.

C. The Court may commit the incompetent person to the custody of the Department of Mental Health or other appropriate nation agency, if the Court, after the hearing provided in 22 CNCA § 1175.4, determines that such commitment is necessary for the effective administration of the treatment ordered, or if the Court determines that the defendant is dangerous to himself or society.

D. The Court may allow the person to receive treatment from private facilities if such facilities are willing, and neither the Nation nor the Court Fund is required to directly pay for such care.

LA 10-90, eff. November 13, 1990.

§ 1175.8. Resumption of competency

If the medical supervisor reports that the person appears to have achieved competency after a finding of incompetency, the Court shall hold another competency hearing to determine if the person has achieved competency. If competency has been achieved, the criminal proceedings shall be resumed.

LA 10-90, eff. November 13, 1990.

§ 1176. Raising issue of mental illness or insanity at time of offense

A. If the defendant intends to raise the question of mental illness or insanity at the time of the offense, the defendant shall file an application with the Court at least twenty (20) days before trial. The procedure to be followed for review of such an application will be the same as provided in 22 CNCA § 1175.3.

B. If the Court finds that the defendant's sanity at the time of the offense is to be a significant factor in his defense at trial and that the defendant is financially unable to obtain the services of a psychiatrist, the Court shall provide the defendant with access to a psychiatrist by authorizing Counsel to obtain the services of a psychiatrist to conduct an appropriate examination and assist in evaluation, preparation and presentation of the defense. Compensation for such services shall be paid from the Nation Judicial Fund as provided in 22 CNCA § 464(B).

LA 10-90, eff. November 13, 1990.

CHAPTER 24

SEARCHES AND SEIZURES

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GENERAL PROVISIONS

§ 1221. Search warrant defined

A search warrant is an order in writing, in the name of the Nation, signed by a Magistrate, directed to a peace officer, commanding him to search for personal property and bring it before the Magistrate.

LA 10-90, eff. November 13, 1990.

§ 1222. Grounds for issuance of search warrant-Seizure of property

A search warrant may be issued and property seized upon any of the following grounds:

First: When the property was stolen or embezzled, in which case it may be taken on the warrant, from any house or other place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or of any other person in whose possession it may be.

Second: When it was used as the means of committing a crime, in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was used in the commission of the offense, or of any other person in whose possession it may be.

Third: When it is in the possession of any person, with the intent to use it as the means of committing a public offense, or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered, in which case it may be taken on the warrant from such person, or from a house or other place occupied by him, or under his control, or from the possession of the person to whom he may have so delivered it.

Fourth: When the property constitutes evidence that an offense was committed or that a particular person participated

in the commission of an offense.

LA 10-90, eff. November 13, 1990.

§ 1223. Probable cause must be shown

A search warrant shall not be issued except upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and the place to be searched.

LA 10-90, eff. November 13, 1990.

§ 1223.1. Electronically recorded oral statement-Transcription

A Magistrate may take an oral statement under oath which shall at that time be recorded electronically and thereafter transcribed by an official Court Reporter. The original recording and transcription thereof shall become a part of and kept with the official records of the case. The transcribed statement shall be deemed to be an affidavit for the purposes of this section and 22 CNCA § 1223.

In such cases, the Magistrate and the official Court Reporter shall sign the transcription of the recording of the sworn statement. Thereafter, the transcript shall be filed with the Clerk of the District Court along with the original recording.

LA 10-90, eff. November 13, 1990.

§ 1224.1. Oral testimony supplemental to affidavit

Before issuing a search warrant the Judge may take oral testimony, sworn to under oath, supplemental to any affidavits. Provided, however, that such oral testimony shall be recorded, such record transcribed forthwith, and filed with the affidavits to support the search warrant.

LA 10-90, eff. November 13, 1990.

§ 1224.2. Filing and indexing of documents

In the event the search warrant is executed, then the search warrant, affidavit for search warrant, and transcript of oral testimony, if any, shall be filed with the Clerk of the District Court, and shall be indexed by the Clerk in alphabetical order.

Upon a criminal prosecution being filed, said document shall be filed in said case.

LA 10-90, eff. November 13, 1990.

§ 1225. Requisites of search warrant-Issuing Magistrate

A. If a Magistrate be thereupon satisfied of the existence of grounds of the application, or that there is probable cause to believe their existence, he must issue a search warrant, signed by him, with his name of office, to a peace officer of this Nation or cross-deputized state law enforcement officer, commanding him forthwith to search the person or place named, for the property specified, and to bring it before the Magistrate, and also to arrest the person in whose possession the same may be found, to be dealt with according to law.

B. The Magistrate may orally authorize a peace officer to sign the name of the Magistrate on a copy made to conform with the original warrant if the peace officer applying for the warrant is not in the actual physical presence of the Magistrate. Such copy shall be deemed to be a search warrant for the purposes of this act and it shall be returned to the Magistrate as provided for in 22 CNCA § 1233. In such cases, the Magistrate shall enter on the face of the original warrant the exact time of the issuance of the warrant and shall sign and file the original warrant and the copy made to conform with the original warrant with the Clerk of the District Court as provided for in 22 CNCA § 1224.2.

C. A search warrant authorized by this section may be issued by any Magistrate for a search of a person or property within the judicial district in which the Magistrate presides or outside the judicial district if there was probable cause to believe the property was within the judicial district when the warrant was sought, but moved outside the judicial district before the warrant was executed.

LA 10-90, eff. November 13, 1990.

§ 1226. Form of search warrant

The warrant must be in substantially the following form:

In the District Court of Cherokee Nation

In the name of Cherokee Nation. To any peace officer of this Nation or duly cross-deputized state law enforcement officer.

Probable cause having been shown on this date before me, by (name every officer and person who has made affidavit or given oral testimony supplementing an affidavit) for believing the following property (describe the property) is located at

(specify the location where the property is shown to be).

You are therefore commanded, in the daytime (or "at any time of the day or night,") as the case may be, according to 22 CNCA § 1230, as amended, to make immediate search on the person of C.D. (or "in the house situated," describing it, or any other place to be searched, with reasonable particularity, as the case may be), for the following property (describing it with reasonable particularity), and if you find the same, or any part thereof to bring it forthwith before me, at (stating the place) or before a Magistrate who presides in the judicial district in which the property was found and seized.

Dated at ____ the ____ day of ____, 20 ____.

____

(Signature of Judge)

____

(Judge's Official Designation)

LA 10-90, eff. November 13, 1990.

§ 1227. Service of search warrant

A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person except in aid of the officer, on his requiring it, he being present, and acting in its execution.

LA 10-90, eff. November 13, 1990.

§ 1228. Execution of search warrant

A peace officer may break open an outer or inner door or window of a house, or any part of the house, or anything therein, to execute the warrant when:

1. The officer has been refused admittance after having first given notice of his authority and purpose; or

2. Pursuant to an instruction inserted in the search warrant by the Magistrate that no warning or other notice of entry is necessary because there is probable cause to believe that such warning or other notice would pose a significant danger to human life.

LA 10-90, eff. November 13, 1990.

§ 1229. Execution of search warrant-Liberating person detained

He may break open any outer or inner door or window of a house for the purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation.

LA 10-90, eff. November 13, 1990.

§ 1230. Search warrant may be served, when

Search warrants shall be served during the hours of six o'clock a.m. to ten o'clock p.m., inclusive, unless the affidavits be positive that the property is on the person, or in the place to be searched and the Judge finds that there is likelihood that the property named in the search warrant will be destroyed, moved or concealed. In which case the Judge may insert a direction that it be served at any time of the day or night.

LA 10-90, eff. November 13, 1990.

§ 1231. Search warrant void after ten days

A search warrant must be executed and returned to the Magistrate by whom it is issued within ten (10) days. After the expiration of these times respectively, the warrant, unless executed, is void.

LA 10-90, eff. November 13, 1990.

§ 1232. Disposition of property recovered

When the property is delivered to the Magistrate, he must, if it was stolen or embezzled, deliver it to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the Magistrate. If it were taken on a warrant issued on the grounds stated in the second and third subdivisions of 22 CNCA §

1222, he must retain it in his possession, subject to the order of the Court to which he is required to return the proceedings before him, or of any other court in which the offense, in respect to which the property was taken, is triable.

LA 10-90, eff. November 13, 1990.

§ 1233. Return of search warrant

Any peace officer who executes a search warrant must forthwith return the warrant to the Magistrate who authorized the warrant or to a Magistrate who presides in the judicial district in which the property was found and seized together with a written inventory of the property taken, which shall be made publicly, or in the presence of the person from whose possession it was taken and of the applicant for the warrant, if they be present, verified by the affidavit of the officer, and taken before the Magistrate, to the following effect:

I, A.B., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant.

LA 10-90, eff. November 13, 1990.

§ 1234. Inventory to be furnished, when

The Magistrate must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant.

LA 10-90, eff. November 13, 1990.

§ 1235. Hearing on issuance of warrant

If the grounds on which the warrant was issued be controverted, the Magistrate must proceed to take testimony in relation thereto.

LA 10-90, eff. November 13, 1990.

§ 1236. Testimony on hearing for warrant

The testimony given by each witness must be reduced to writing and authenticated.

LA 10-90, eff. November 13, 1990.

§ 1237. Restoration of property to person searched

If it appears that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the Magistrate must cause it to be restored to the person from whom it was taken.

LA 10-90, eff. November 13, 1990.

§ 1238. Papers returned to District Court

The Magistrate must annex together the depositions, the search warrant and return, and the inventory, and then return them to the District Court.

LA 10-90, eff. November 13, 1990.

§ 1239. Procuring search warrant without cause

A person who maliciously and without probable cause procures a search warrant to be issued and executed is guilty of a crime.

LA 10-90, eff. November 13, 1990.

§ 1240. Officer exceeding his authority

A peace officer in executing a search warrant, who willfully exceeds his authority, or exercises it with unnecessary severity, is guilty of a crime.

LA 10-90, eff. November 13, 1990.

§ 1241. Search of defendant for weapons or evidence

When a person charged with a crime is supposed by the Magistrate before whom he is brought to have upon his person a dangerous weapon or anything which may be used as evidence of the commission of the offense, the Magistrate may direct him to be searched in his presence, and the weapon or other thing to be retained, subject to his order or the order of the Court in which the defendant may be tried.

LA 10-90, eff. November 13, 1990.

LIQUORS AND GAMBLING PARAPHERNALIA

§ 1261. Seized property-Report and disposition

In all cases where contraband mentioned in laws of this Nation or any personal property used for the purpose of violating any of the prohibitory liquor laws or gambling laws of this Nation, shall be seized by any officer or person with or without a search warrant, such officer or person is hereby required within five (5) days to make a written report under oath and file the same with the Court Clerk, which report shall in detail state the name of the officer or person making the seizure, the place where seized and an inventory of the property, articles or intoxicating liquors so taken into possession, and within said five (5) days said person is hereby required to deliver the same to the Sheriff of the county and take the Sheriff's receipt therefore, in duplicate and such sheriff shall retain the same and all thereof, until the same shall be destroyed pursuant to the orders of the Court. In computing the time, five (5) days, Sundays and holidays shall be excluded and not counted. A duplicate copy of said receipt shall immediately be filed with said Court Clerk, who shall keep a record of same, provided the Marshal or Sheriff and his Deputies shall be required to make the affidavit and issue the receipt and otherwise comply with the provisions of this act. Provided, that all liquors so seized shall be preserved for use as evidence in the trial of any action growing out of such seizure and all officers seizing any such liquors are hereby required to mark the bottles or containers for identification by writing thereon the date of the seizure and the name of the person from whom seized. The Marshal or Sheriff shall be liable on his bond for the safekeeping of all such property so turned over to him under the provisions of this act.

LA 10-90, eff. November 13, 1990.

CHAPTER 25

MISCELLANEOUS PROVISIONS

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IN GENERAL

§ 1271. Compensation of Counsel assigned defendant

In all criminal cases triable in Cherokee Nation, where it is satisfactorily shown to the Court that the defendant has no means and is unable to employ Counsel, the Court shall, in all such cases, where Counsel is appointed and assigned for

defense, allow and direct to be paid by the Nation in which such trial is had, out of the Court Fund of said Nation, a reasonable and just compensation to the attorney or attorneys so assigned for such services as they may render, such compensation being allowable in any court of record. The attorney shall not be paid a sum to exceed Five Hundred Dollars ($500.00) in any one case, the specific amount to be left to the discretion of the Presiding Judge. In any Court in which a Public Defender is regularly employed, the Court shall appoint such Public Defender to act as counsel for the defendant. If two or more indigent defendants are charged conjointly, and the Public Defender cannot justly defend both, the Court may appoint and compensate Counsel as provided above.

LA 10-90, eff. November 13, 1990.

§ 1272. Affidavits or depositions need not be entitled

It is not necessary to entitle an affidavit, or deposition in the action, whether taken before or after indictment; but if made without a title, or with an erroneous title, it is as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refer to the proceedings, in which it is made.

LA 10-90, eff. November 13, 1990.

§ 1273. Informalities or errors not fatal if not prejudicial

Neither a departure from the form or mode prescribed in this chapter in respect to any pleadings or proceeding, nor an error or mistake therein, renders it invalid, unless it has actually prejudiced the defendant or tended to his prejudice, in respect to a substantial right.

LA 10-90, eff. November 13, 1990.

§ 1275. Clerk to keep record of indictments, informations and bonds

The Clerk of the District Court shall keep a record in which all informations and bonds shall be entered and certified as true and correct copies of all original informations and bonds filed in his office, and whenever any such original indictment, information or bond filed with the clerk becomes either lost, destroyed or stolen, or for any other reason cannot be produced at the trial, a certified copy of the aforesaid record of such original information or bond shall be competent evidence and shall have the same validity and effect as the original thereof.

LA 10-90, eff. November 13, 1990.

§ 1276. Record of informations and bonds not public

The record provided for in the preceding section shall be kept by the Clerk as a private record and to be made public only in case the original information or bond becomes lost, stolen or cannot be found.

LA 10-90, eff. November 13, 1990.

§ 1278. Interpreters for deaf mutes-Appointment-Oath-Compensation

A. In all criminal prosecutions, where the accused is a deaf mute, he shall have all of the proceedings of the trial interpreted to him in a language that he can understand by a qualified interpreter appointed by the Court from a list of names submitted by the Oklahoma Association of the Deaf.

B. In all cases where the mental condition of a person is being considered and where such person may be committed to a mental institution, and where such person is a deaf mute, all of the court proceedings, pertaining to him, shall be interpreted to him in a language that he understands by a qualified interpreter appointed by the Court.

C. Interpreters who shall be appointed under the terms of this act shall be required to take an oath that they will make a true interpretation to the person accused or being examined, which person is a deaf mute, of all the proceedings of his case in a language that he understands; and that he will repeat said deaf mute's answers to questions to Council, Court, or jury, in the English language, in his best skill and judgment.

D. Interpreters appointed under the terms of this act shall be paid for their services a sum to be determined by the Court.

LA 10-90, eff. November 13, 1990.

CRIMINAL PROCEEDINGS AGAINST CORPORATIONS

§ 1301. Information against corporation-Summons

Upon an information against a corporation, the Magistrate may issue a summons signed by him, with his name of office, requiring the corporation to appear before him at a specified time and place to answer the charge; the time to be not less than ten (10) days after the issuing of the summons.

LA 10-90, eff. November 13, 1990.

§ 1302. Form of summons

The summons must be in substantially the following form:

IN THE DISTRICT COURT OF CHEROKEE NATION

To the (naming the corporation):

You are hereby summoned to appear before me at (naming the place), on (specifying the day and hour), to answer to the charge made against you, upon the information of A. B., for (designating the offense generally.)

Dated at the city, or town, of ...., the .... day of .... 20 ....

G .... H ....

Judge of District Court (as the case may be.)

LA 10-90, eff. November 13, 1990.

§ 1303. Service of summons

The summons must be served at least five (5) days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president, or other head of the corporation, or to the secretary, cashier or managing agent thereof.

LA 10-90, eff. November 13, 1990.

§ 1307. Appearance and plea by corporation

If an information be filed, the corporation may appear by counsel to answer the same. If they do not thus appear, a plea of not guilty must be entered, and the same proceedings had thereon as in other cases.

LA 10-90, eff. November 13, 1990.

§ 1308. Conviction of corporation-Fine collected, how

When a fine is imposed upon a corporation, on conviction it may be collected, by virtue of the order imposing it, by the Marshal, out of their real and personal property, in the same manner as upon an execution.

LA 10-90, eff. November 13, 1990.

STOLEN PROPERTY AND PROPERTY TAKEN FROM DEFENDANT

§ 1321. Custody and return of stolen or embezzled property

A. It is the intent of the Council that any stolen or embezzled money or property held in custody of the Nation, state or subdivision in any criminal action or proceeding be returned to its lawful owner without unnecessary delay.

B. If the property coming into the custody of a Nation, state, municipal, county or state peace officer is not alleged to have been stolen or embezzled, the peace officer may return such property to the owner upon satisfactory proof of ownership. The notice and hearing provisions of this section shall not be required for return of the property specified in this section if there is no dispute concerning the ownership of such property, except that within fifteen (15) days of the time the owner of such property is known, the peace officer shall notify the owner of such property that the property is in the custody of the peace officer. The property shall be returned to the owner upon request.

C. When property alleged to have been stolen or embezzled, comes into the custody of a peace officer, he shall hold it subject to the order of the Magistrate authorized by 22 CNCA § 1322 to direct the disposal thereof. Within fifteen (15) days of the time the owner of such property is known, the peace officer shall notify the owner of such property that the property is in the custody of the peace officer. Such officer may provide a copy of a nonownership affidavit to the defendant to sign if such defendant is not claiming ownership of the money or property taken from the defendant and if such defendant has relinquished his right to remain silent. Such affidavit is not admissible in any proceeding to ascertain the guilt or innocence of the defendant. A copy of this affidavit shall be provided to the defendant and a copy shall be filed by the officer with the Court Clerk. Upon request, a copy of this affidavit shall be provided to any person claiming ownership of such money or property. The owner of the property or designated representative of the owner may make application to the Magistrate for the return of the property. The application shall be on a form provided by the Administrative Director of the Courts and made available through the Court Clerk. The Court may charge the applicant a reasonable fee to defray the cost of filing and docketing the application. Once application has been made and notice provided, the magistrate shall docket said application for a hearing as provided in this section. Where notice by publication is appropriate, the publication notice form shall be provided free of charge to the applicant by the Administrative Director of the Courts through the Court Clerk with instructions on how to obtain effective publication notice. The applicant shall notify the last person in possession of such property prior to such property being seized by

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the Nation of the hearing by mailing a copy of the notice by certified mail return receipt requested at the last-known address of such person, unless such person has signed a nonownership affidavit pursuant to this section disclaiming any ownership rights to such property. If the last person in possession of the property is unable to be served notice by said certified mail, notice shall be provided by one publication in a newspaper of general circulation in the county where the property is held in custody. The applicant shall notify the Prosecuting Attorney and the Court when notice has been served to the last person in possession of such property or published pursuant to this section. The hearing shall be held not less than ten (10) days or more than twenty (20) days after the Court has been notified that the notice has been served or published.

D. If the Magistrate determines that the property is needed as evidence the Magistrate shall determine ownership and determine the procedure and time frame for future release. The Magistrate may order the release of property needed as evidence pursuant to 22 CNCA § 1327, provided however, the order may require the owner to present such property at trial. The property shall be made available to the owner within ten (10) days of the court order for release. The Magistrate may authorize ten (10) days additional time for the return of such exhibit if the Prosecuting Attorney shows cause that additional time is needed to photograph or mark such exhibit.

E. If the property is not needed as evidence, it may be released by the Magistrate to the owner or designated representative of the owner upon satisfactory proof of ownership. The owner of the property or designated representative of the owner may make application to the magistrate for the return of the property. The applicant shall notify the last person in possession of such property prior to such property being seized by the Nation of the hearing by mailing a copy of the notice by certified mail return receipt requested at the last-known address of such person, unless such person has signed a nonownership affidavit pursuant to this section disclaiming any ownership rights to such property. If the last person in possession of the property is unable to be served notice by said certified mail, notice shall be provided by one publication in a newspaper of general circulation in the county where the property is held in custody. The applicant shall notify the Prosecuting Attorney and the Court when notice has been served to the last person in possession of such property or published pursuant to this section. The hearing shall be held not less than ten (10) days or more than twenty (20) days after the Court has been notified that the notice has been served or published.

F. When property alleged to have been stolen comes into the custody of a peace officer and such property is deemed to be perishable said peace officer shall take such action as he deems appropriate to temporarily preserve the property. Provided, however, within seventy-two (72) hours of the time the property was recovered, the receiving agency shall make application for a disposition hearing before a Magistrate and the receiving agency shall notify all persons known to have an interest in the property of the date, time and place of such hearing.

G. In any case, the Magistrate may, for good cause shown, order any evidence or exhibit to be retained pending the outcome of any appeal.

LA 10-90, eff. November 13, 1990.

§ 1322. Stolen property-Magistrate to order delivery, when

On satisfactory proof of title to the property, the Magistrate before whom the information is laid, or who examines the

charge against the person accused of stealing or embezzling the property, may order it to be delivered to the owner on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the Magistrate. The order entitles the owner to demand and receive the property. Such property shall be made available to the owner within ten (10) days of the issuance of the order. The Court, however, may keep the property as evidence or on the issuance of an order, require the owner to present such property at trial.

LA 10-90, eff. November 13, 1990.

§ 1323. Magistrate to deliver stolen property, when

If the property stolen or embezzled comes into the custody of a Magistrate, it must be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the Magistrate.

LA 10-90, eff. November 13, 1990.

§ 1324. Trial Court may deliver stolen property

If property stolen or embezzled has not been delivered to the owner, the Court before which a trial is had for stealing or embezzling it, may, on proof of his title, order it to be restored to the owner.

LA 10-90, eff. November 13, 1990.

§ 1325. Unclaimed property or money in Sheriff's possession-Disposition-Procedure

A. The Marshal is authorized to sell personal property which has come into his possession, or deposit with Cherokee Nation, as hereafter provided, all money or legal tender of the United States which has come into his possession, whether said property or money be stolen, embezzled, lost, abandoned or otherwise, the owner of said property or money being unknown or not having claimed the same, and which the Marshal or Sheriff has held for at least six (6) months, and such property or money, or any part thereof, being no longer needed to be held as evidence or otherwise used in connection with any litigation.

B. The Marshal or Sheriff shall file an application in the District Court requesting the authority of said Court to conduct a sale of such personal property, and shall attach to his application a list describing such property, including all identifying numbers and marks, if any, the date said property came into his possession and the name of the owner and his address, if known. The Court shall set said application for hearing not less than ten (10) days nor more than twenty (20) days after filing.

C. Notice shall be given of said hearing to each and every owner known and asset forth in said application by certified mail directed to his last-known address at least ten (10) days prior to the date of said hearing. Said notice shall contain a brief description of the property of said owner and the place and date of the hearing. In addition thereto notice of said hearing shall be posted in three public places in the county, one being the District Courthouse at the regular place assigned for the posting of legal notices.

D. At the hearing, if no owner appears and establishes ownership to said property, the Court shall enter an order authorizing the Sheriff to sell said personal property to the highest bidder for cash, after at least five (5) days' notice has been given by publication in one issue of a legal newspaper of the county. The Sheriff shall make a return of said sale and, when confirmed by said Court, the order confirming said sale shall vest in the purchaser title to said property so purchased.

E. The Marshal, having in his possession money or legal tender under the circumstances provided in subsection (A) above, prior to appropriating the same for deposit with Cherokee Nation, shall file an application in the District Court requesting the Court to enter an order authorizing him to so appropriate said money for deposit with Cherokee Nation. Said application shall describe the money or legal tender, together with serial numbers, if any, the date the same came into his possession, and the name of the owner and his address, if known. Upon filing, said application, which may be joined with an application as described in subsection (B) above, shall be set for hearing not less than ten (10) days nor more than twenty (20) days from the filing thereof, and notice of said hearing shall be given as provided in subsection (C) above. Such notice shall state that, upon no one appearing to prove ownership to said money or legal tender, the same will be ordered by the Court to be deposited with Cherokee Nation by the Marshal or Sheriff. Said notice may be combined with a notice to sell personal property as set forth in subsection (C) above. At the hearing, if no one appears to claim and prove ownership to said money or legal tender, the Court shall order the same to be deposited by the Marshal or Sheriff with Cherokee Nation, as provided hereafter in subsection (F).

F. The money received from the sale of personal property as above provided, after payment of the court costs and other expenses, if any, together with all money in possession of said Marshal or Sheriff, which has been ordered by the Court to be deposited with Cherokee Nation, shall be deposited in the General Fund.

LA 10-90, eff. November 13, 1990.

§ 1326. Receipts for property taken from defendant

When money or other property is taken from a defendant arrested upon a charge of public offense, the officer taking it must at the time give duplicate receipts therefore, specifying particularly the amount of money or the kind of property taken. One of which receipts he must deliver to the defendant, and the other of which he must file with the Clerk of the Court to which the depositions and statement must be sent, as provided in 22 O.S. § 276.

LA 10-90, eff. November 13, 1990.

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§ 1327. Disposition of exhibits

A. All exhibits which have been introduced, filed, or held in custody of the Nation in any criminal action or proceeding may be disposed of as provided for in this section.

B. The Court may, on application of the party entitled thereto, or an agent designated in writing by the owner, order all such exhibits, other than documentary exhibits, as may be released from the custody of the Court or the Nation, without prejudice to the Nation, delivered to such party at any time after the final determination of the action or proceedings; provided, however, where the action or proceeding has resulted in an order granting probation, such delivery may be made any time after the final determination of an appeal of such order, or after the time for such appeal has elapsed. Provided, further, if the owner of such exhibit is the victim of the offense for which such exhibit is held, said owner may make application to the Court at any time prior to the final disposition of the action or proceeding for the return of the exhibit. The applicant shall notify the last person in possession of such exhibit prior to such exhibit being seized by the Nation of the hearing by mailing a copy of the notice by certified mail return receipt requested at the last-known address of such person, unless such person has signed an on ownership affidavit pursuant to 22 CNCA § 1321 disclaiming any ownership rights to such exhibit. If the last person in possession of the property is unable to be served notice by said certified mail, notice shall be provided by one (1) publication in a newspaper of general circulation in the county where the property is held in custody. The applicant shall notify the Prosecuting Attorney and the Court when notice has been served to the last person in possession of such property or published pursuant to this section. The hearing shall be held not less than ten (10) days or more than twenty (20) days after the Court has been notified that the notice has been served or published. In the event the Court orders the release of said exhibit to the owner, the Prosecuting Attorney shall photograph or mark said exhibit with an identification number and return the exhibit to the owner within ten (10) days of the court order. The Court may authorize ten (10) days additional time for the return of such exhibit if the Prosecuting Attorney shows cause that additional time is needed to photograph or mark such exhibit. Such photograph or marked exhibit may be presented as the exhibit in any further action or proceeding. If the party entitled to such exhibits is unknown, or fails to apply for the return of such exhibits, the procedure for their disposition shall be as follows:

1. After the expiration of six (6) months from the time the conviction becomes final, or if the action or proceeding has not resulted in a conviction, at any time after the judgment has become final, the Court in which the case was tried shall make an order specifying what exhibits may be released from the custody of the Court without prejudice to the Nation. Upon receipt of such an order, the property shall be transferred to the Marshal, Sheriff or other proper governmental agency for sale to the public. At least ten (10) days prior to such sale, notice of the sale shall be sent by certified mail return receipt requested to the last person in possession of such exhibit prior to such exhibit being seized by the Nation at the last-known address of such person;

2. At any time prior to the time fixed for the transfer, the owner or any person entitled to the possession of any of such exhibits may obtain from the Court an order returning them to him;

3. Articles not returned to their owners or to persons entitled to their possession at or prior to the time set for the transfer shall be sold by the proper receiving agency for cash. The articles shall be sold singly or in combinations. The money received from such sales shall be placed in the appropriate fund of the governmental agency responsible for the

sale;

4. Where the exhibit consists of money or currency and is unclaimed at the time of the transfer, it shall not be transferred but shall be immediately deposited in the appropriate fund of the governmental agency in possession of such property; and

5. If any property is transferred to the Marshal or other governmental agency pursuant to this section it may be sold in the manner provided by law for the sale of surplus personal property. If the Marshal or other proper governmental agency determines that any such property transferred to it for sale is needed for a public use, such property may be retained by the agency and need not be sold.

C. The Court may, on application of the party entitled thereto, or an agent designated in writing by the owner, order such documentary exhibits as may be released from the custody of the Court without prejudice to the Nation delivered to such party any time after the final determination of the action or proceeding; provided, however, where the action or proceeding has resulted in an order granting probation, such delivery may be made any time after the final determination of an appeal of such order, or after the time for such appeal has elapsed. Provided, further, if the owner of such exhibit is the victim of the offense for which such exhibit is held, said owner may make application to the Court at any time prior to the final disposition of the action or proceeding for the return of the exhibit. The applicant shall notify the last person in possession of such exhibit prior to such exhibit being seized by the Nation of the hearing by mailing a copy of the notice by certified mail return receipt requested at the last-known address of such person, unless such person has signed a nonownership affidavit pursuant to 22 CNCA § 1321 disclaiming any ownership rights to such exhibit. If the last person in possession of the property is unable to be served notice by said certified mail, notice shall be provided by one publication in a newspaper of general circulation in the county where the property is held in custody. The applicant shall notify the Prosecuting Attorney and the Court when notice has been served to the last person in possession of such property or published pursuant to this section. The hearing shall be held not less than ten (10) days or more than twenty (20) days after the Court has been notified that the notice has been served or published.

In the event the Court orders the release of said exhibit to the owner, the Prosecuting Attorney shall photograph or mark said exhibit with an identification number and return the exhibit to the owner within ten (10) days of the court order. The Court may authorize ten (10) days additional time for the return of such exhibit if the Prosecuting Attorney shows cause that additional time is needed to photograph or mark such exhibit. Such photograph or marked exhibit may be presented as the exhibit in any further action or proceeding. If the party entitled to such documentary exhibits is unknown, or fails to apply for the return of said exhibits, the procedure for their disposition shall be as follows:

1. After the expiration of six (6) months from the time the conviction becomes final, or if the action or proceeding has not resulted in a conviction, at anytime after the judgment has become final, the Court in which the case was tried shall make an order requiring such exhibits to be destroyed; provided, that no such order shall be made authorizing the destruction of any documentary exhibit if the destruction of such exhibit would prejudice the Nation; and

2. No exhibit shall be destroyed or otherwise disposed of until sixty (60) days after the Clerk of the Court has posted a notice conspicuously in three public places in the county, referring to the order for the disposition, describing briefly the exhibit, and indicating the date after which the exhibit will be destroyed or otherwise disposed of.

D. The provisions of subsection (B) of this section shall not apply to any dangerous or deadly weapons, narcotic or poisonous drugs, explosives, or any property of any kind or character whatsoever the possession of which is prohibited by law. Any such property filed as an exhibit or held by the Nation shall be, by order of the Trial Court, destroyed or sold or otherwise disposed of under the conditions prescribed in such order. This act shall not be interpreted to authorize the return of any property, the possession of which is prohibited by law.

LA 10-90, eff. November 13, 1990.

§ 1333. Clerk's fees

The Clerk furnishing such transcript shall be allowed the same fees for same as he is allowed by law for similar services, which shall be paid by the person entitled thereto.

LA 10-90, eff. November 13, 1990.

REWARDS

§ 1334. Dumping, etc. of trash on public or private property-Evidence-Rewards

A. Cherokee Nation may offer and pay a reward, from funds set aside for that purpose, in an amount not less than fifty percent (50%) of the fine imposed, for the arrest and conviction or for evidence leading to the arrest and conviction of any person who violates the provisions of 21 CNCA § 1761.1.

B. Cherokee Nation may create and maintain a reward fund which shall be a revolving fund not subject to fiscal year limitations, from which to pay the rewards provided for in subsection (A) of this section. Any monies for which no claim is filed within the period provided in subsection (C) of this section, shall revert to the General Fund. Any monies remaining in the reward fund after all claims have been paid or denied shall revert to the General Fund.

C. Claims for rewards shall be on forms provided by Cherokee Nation and shall be submitted to the Prosecuting Attorney no later than thirty (30) days after sentencing of the defendant. The Prosecuting Attorney shall investigate the validity of the claim and make a nonbinding written recommendation to the Council.

D. All claims relating to a conviction shall be considered together at the next regular meeting of the Council following receipt of the Prosecuting Attorney's report.

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E. In determining the amount of the reward, the Council shall have sole discretion to honor or deny the claim, but shall consider:

1. The severity of the offense;

2. The size of the fine imposed;

3. The number of persons claiming a reward and the degree to which each claimant was responsible for the arrest or conviction;

4. The burden, if any, incurred by the claimant including cost to appear at trial; and

5. Other factors which the board or governing body deems appropriate.

F. No reward shall be authorized and no debt shall accrue to Cherokee Nation upon the depletion of the reward fund authorized by this section.

G. The reward authorized by this section shall be in lieu of any other county or municipal reward.

H. Full-time peace officers of this Nation or of any state, county or municipality within this nation shall not be eligible for the reward provided by this section.

LA 10-90, eff. November 13, 1990.

SHOPLIFTING

§ 1341. Definitions

As used in this section:

1. **"Mercantile establishment"** means any mercantile place of business in, at, or from which goods, wares and merchandise are sold, offered for sale or delivered from and sold at retail or wholesale;

2. **"Merchandise"** means all goods, wares and merchandise offered for sale or displayed by a merchant;

3. **"Merchant"** means any corporation, partnership, association or person who is engaged in the business of selling goods, wares and merchandise in a mercantile establishment;

4. **"Wrongful taking"** includes stealing of merchandise or money and any other wrongful appropriation of merchandise or money.

§ 1342. Peace officers-Arrest without warrant

Any peace officer may arrest without warrant any person he has probable cause for believing has committed larceny of merchandise held for sale in retail or wholesale establishments, when such arrest is made in a reasonable manner.

LA 10-90, eff. November 13, 1990.

§ 1343. Detention of suspect-Purposes

Any merchant, his agent or employee, who has reasonable grounds or probable cause to believe that a person has committed or is committing a wrongful taking of merchandise or money from a mercantile establishment, may detain such person in a reasonable manner for a reasonable length of time for all or any of the following purposes:

1. Conducting an investigation, including reasonable interrogation of the detained person, as to whether there has been a wrongful taking of such merchandise or money;

2. Informing the police or other law enforcement officials of the facts relevant to such detention;

3. Performing a reasonable search of the detained person and his belongings when it appears that the merchandise or money may otherwise be lost; and

4. Recovering the merchandise or money believed to have been taken wrongfully. Any such reasonable detention shall not constitute an unlawful arrest or detention, nor shall it render the merchant, his agent or employee criminally or civilly liable to the person so detained.

LA 10-90, eff. November 13, 1990.

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§ 1344. Concealing unpurchased merchandise-Presumption

Any person concealing unpurchased merchandise of any mercantile establishment, either on the premises or outside the premises of such establishment, shall be presumed to have so concealed such merchandise with the intention of committing a wrongful taking of such merchandise within the meaning of 22 CNCA § 1341, and such concealment or the finding of such unpurchased merchandise concealed upon the person or among the belongings of such person shall be conclusive evidence of reasonable grounds and probable cause for the detention in a reasonable manner and for a reasonable length of time, of such person by a merchant, his agent or employee, and any such reasonable detention shall not be deemed to be unlawful, nor render such merchant, his agent or employee criminally or civilly liable.

LA 10-90, eff. November 13, 1990.

CHAPTER 26

RICO

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§ 1401. Short title

Sections 1401 through 1419 of this title shall be known and may be cited as the "Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act".

LA 30-21, eff. June 18, 2021

§ 1402. Definitions

As used in the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act:

A. "Beneficial interest" includes:

1. the interest of a person as a beneficiary pursuant to a trust, in which the trustee holds legal title to personal or real property, or

2. the interest of a person as a beneficiary pursuant to any other arrangement under which any other person holds legal title to personal or real property for the benefit of such person.

B. The term beneficial interest does not include the interest of a stockholder in a corporation or the interest of a partner in either a general or limited partnership;

C. "Enterprise" includes any individual, sole proprietorship, partnership, corporation, trust, governmental entity, or other legal entity, or any union, association, unincorporated association or group of persons, associated in fact although not a legal entity, involved in any lawful or unlawful project or undertaking or any foreign organization that the United States Secretary of State has designated a foreign terrorist organization pursuant to Title 8 U.S.C.A., Section 1189;

D. "Innocent party" includes bona fide purchasers and victims;

E. "Lien notice" means the notice pursuant to the provisions of 21 CNCA § 1412;

F. "Pattern of racketeering activity" means two or more occasions of conduct:

1. that include each of the following:

a. constitute racketeering activity,

b. are related to the affairs of the enterprise,

c. are not isolated, and

d. are not so closely related to each other and connected in point of time and place that they constitute a single event, and

2. where each of the following is present:

a. at least one of the occasions of conduct occurred after March 1, 2021,

b. the last of the occasions of conduct occurred within three (3) years, excluding any period of imprisonment served by any person engaging in the conduct, of a prior occasion of conduct, and

c. for the purposes of 21 CNCA § 1403, each of the occasions of conduct constituted a felony pursuant to the laws of the Cherokee Nation;

G. "Pecuniary value" means:

1. anything of value in the form of money, a negotiable instrument, or a commercial interest, or anything else, the primary significance of which is economic advantage, or

2. any other property or service that has a value in excess of One Hundred Dollars ($100.00);

H. "Person" means any individual or entity holding or capable of holding a legal or beneficial interest in property;

I. "Personal property" includes any personal property, or any interest in such personal property, or any right, including

bank accounts, debts, corporate stocks, patents or copyrights. Personal property and beneficial interest in personal property shall be deemed to be located where the trustee, the personal property, or the instrument evidencing the right is located;

J. "Principal" means a person who engages in conduct constituting a violation of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act or who is legally accountable for the conduct of another who engages in a violation of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act;

K. "Racketeering activity" means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any conduct which is chargeable or indictable as constituting a felony violation of one or more of the following provisions of the Cherokee Nation Code Annotated, regardless of whether such act is in fact charged or indicted:

1. relating to homicide pursuant to the provisions of 21 CNCA §§651, 652, 653, 701.7, 701.8, 701.16, 711 or 716 or relating to concealment of homicidal death pursuant to the provisions of 21 CNCA § 543,

2. relating to kidnapping pursuant to the provisions of 21 CNCA §§ 741, 745, 891 or 1119,

3. relating to sex offenses pursuant to the provisions of 21 CNCA §§ 886, 888, 1021, 1021.2, 1021.3, 1021.4, 1024.2, 1111, 1111.1, 1114 or 1123,

4. relating to bodily harm pursuant to the provisions of 21 CNCA §§ 645, 647, 649, 650, 650.2, 1289.16, 1302, 1303 or 1767.1,

5. relating to theft, where the offense constitutes a felony, pursuant to the provisions of Section 1704, 1707, 1708, 1709, 1710, 1711, 1713, 1716, 1719, 1720, 1721, 1722, 1723 or 1731,

6. relating to forgery pursuant to the provisions of 21 CNCA §§ 1561, 1562, 1571, 1572, 1573, 1574, 1575, 1577, 1578, 1579, 1580, 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1591, 1592, or 1593,

7. relating to robbery pursuant to the provisions of 21 CNCA §§ 797, 800 or 801,

8. relating to burglary pursuant to the provisions of 21 CNCA §§ 1431, 1435 or 1437,

9. relating to arson pursuant to the provisions of 21 CNCA §§ 1368, 1401, 1402, 1403 or 1404,

10. relating to use or possession of a firearm or other offensive weapon while committing or attempting to commit a felony pursuant to the provisions of 21 CNCA §§ 1287, 1289.20 or 1289.21,

11. relating to gambling pursuant to the provisions of Section 941, 942, 944, 945, 946, 956, 957, 969, 971, 981, 982, 983, 985, 987, or 991,

12. relating to interference with public officers pursuant to the provisions of 21 CNCA §§ 434, 436, 437, 438, 439, 440, 441, 443, 444, 521, 522, 532, 540, 543, 545 or 546,

13. relating to interference with judicial procedure pursuant to the provisions of 21 CNCA §§ 388, 451, 453, 454, 455, 456, 491, or 504,

14. relating to official misconduct pursuant to the provisions of 21 CNCA §§ 380, 381, 382, 383, 384, 385, 386, 388, 389, or 390, ,

15. relating to the Uniform Controlled Dangerous Substances Act, where the offense constitutes a felony, pursuant to the provisions of 21 CNCA §§ 2101 et seq.,

16. relating to automobile theft pursuant to the provisions of 21 CNCA §§ 4-102, 4-103, 4-107, 4-108, 4-109 or 4-110,

17. relating to embezzlement pursuant to the provisions of 21 CNCA §§ 341, 531 or 1451,

18. relating to extortion, where the offense constitutes a felony, pursuant to the provisions of 21 CNCA §§ 1304, 1481, 1482, 1484, 1485, 1486, 1487, or 1488,

19. relating to fraud, where the offense constitutes a felony, pursuant to the provisions of 21 CNCA §§ 358, 1411, 1412, 1413, 1414, 1415, 1416, 1503, 1541.1, 1541.2, 1541.3, 1542, 1543, 1544, 1550.2, 1550.22, 1550.23, 1550.24, 1550.25, 1550.26, 1550.27, 1550.28, 1550.29, 1550.30, 1550.31, 1550.32, 1632, 1635 or 1662,

20. relating to conspiracy, where the offense constitutes a felony, pursuant to the provisions of 21 CNCA §§ 421, 422 or 424,

21. relating to prostitution, pornography or obscenity

pursuant to the provisions of 21 CNCA §§ 1021, 1040.52, 1081, 1085, 1086, 1087 or 1088,

22. relating to human trafficking or trafficking in children pursuant to the provisions of 21 CNCA §§ 748, 866 or 867,

23. relating to organized voter fraud pursuant to the provisions of Title 26 of the Cherokee Nation Code Annotated,

24. relating to exploitation of elderly persons or disabled adults pursuant to the provisions of 21 CNCA § 843.4,

25. relating to computer crimes pursuant to the provisions of 21 CNCA §§ 1953 and 1958,

26. relating to unlawful proceeds pursuant to the provisions of 21 CNCA § 2001,

L. In addition, "racketeering activity" may be proven by proof of engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of the above described conduct within another state, regardless of whether said conduct is chargeable or indictable in that state;

M. "Real property" means any real property or any interest in real property, including any lease of, or mortgage upon real property. Real property and beneficial interest in real property shall be deemed to be located where the real property is located;

N. "Trustee" includes trustees, a corporate as well as a natural person and a successor or substitute trustee as otherwise defined within the CNCA; and

O. "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is unenforceable in the courts of the Cherokee Nation, because the debt was incurred or contracted in violation of a law relating to the business of gambling activity or in violation of the CNCA or federal law.

LA 30-21, eff. June 18, 2021

§ 1403. Prohibited acts-Venue

A. No person employed by or associated with any enterprise shall conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of racketeering

activity or the collection of an unlawful debt.

B. No person, through a pattern of racketeering activity or through the collection of an unlawful debt, shall acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.

C. No person who has received any proceeds derived, directly or indirectly, from a pattern of racketeering activity, or through the collection of any unlawful debt, in which the person participated as a principal, shall use or invest, directly or indirectly, any part of the proceeds or any proceeds derived from the investment or use of any of those proceeds in the acquisition of any right, title, or interest in real property or in the establishment or operation of any enterprise.

A purchase of securities on the open market with intent to make an investment, and without the intent of controlling or participating in the control of the issuer or of assisting another to do so, shall not be unlawful pursuant to the provisions of this section if the securities of the issuer held by the purchaser, the members of the immediate family of the purchaser, and accomplices of the purchaser or immediate family of the purchaser in any pattern of racketeering activity, or the collection of an unlawful debt after the purchase, do not amount in the aggregate to one percent (1%) of the outstanding securities of any one class and do not confer the power to elect one or more directors of the issuer.

D. No person shall attempt to violate or conspire with others to violate the provisions of subsection A, B or C of this section.

E. Venue for a civil or criminal action to enforce the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act shall be in the courts of the Cherokee Nation.

LA 30-21, eff. June 18, 2021

§ 1404. Penalty for violation-Authority to institute proceedings

A. Any person convicted of violating any provision of 21 CNCA § 1403 shall be punished by a term of imprisonment of not less than ten (10) years and shall not be eligible for a deferred sentence, probation, suspension, work furlough, or release from confinement on any other basis until the person has served one-half (1/2) of the sentence. A violation of each of the provisions of Section 1403 of this title shall be a separate offense.

B. In lieu of the fine authorized by the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act, any person convicted of violating any provision of 21 CNCA § 1403, through which the person derived pecuniary value, or by which the person caused personal injury, or property damage or other loss, may be sentenced to pay a fine that does not exceed three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred, less the value of any property ordered forfeited pursuant to the provisions of subsection A of 21 CNCA § 1405. The court shall hold a separate hearing to determine the amount of the fine authorized by the provisions of this subsection.

C. No person shall institute any proceedings, civil or criminal, pursuant to the provisions of this act, except the Attorney General.

LA 30-21, eff. June 18, 2021

§ 1405. Procedures for criminal forfeiture of property

A. Any person convicted of violating any of the provisions of 21 CNCA § 1403 shall criminally forfeit to the state, according to the procedures established in subsection B of this section, any real or personal property used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of 21 CNCA § 1403, including any property constituting an interest in or means of control or influence over the enterprise involved in the conduct in violation of 21 CNCA § 1403, including:

1. Any compensation, right, or benefit derived from a position, office, appointment, tenure, commission, or employment contract that accrued to the person during the course of conduct in violation of 21 CNCA § 1403;

2. Any interest in, security of, claim against, or property or contractual right affording the person a source of influence or control over the affairs of an enterprise that the person exercised in violation of 21 CNCA § 1403; or

3. Any amount payable or paid pursuant to any contract for goods or services that was awarded or performed in violation of 21 CNCA § 1403.

B. The criminal forfeiture procedures are as follows:

1. A judgment of criminal forfeiture shall not be entered unless a special verdict containing a finding of

property subject to forfeiture, specifying the extent of such property and describing with specificity such property and the circumstances by which the property is subject to forfeiture is returned; and

2. If any property included in a special verdict of criminal forfeiture:

   a. cannot be located,

   b. has been sold to a bona fide purchaser for value,

   c. has been placed beyond the jurisdiction of the court,

   d. has been substantially diminished in value by the conduct of the defendant,

   e. has been commingled with other property that cannot be divided without difficulty or undue injury to innocent parties,

   f. is otherwise unreachable without undue injury to innocent parties, or

   g. is subject to a valid security interest, to the extent of the security interest, held by a bank, savings and loan association, credit union or supervised lender licensed by the Oklahoma Administrator of Consumer Credit, acquired prior to the lien notice provided by 21 CNCA § 1412, the district court shall order forfeiture of any other property of the defendant up to the value of the property that is unreachable.

LA 30-21, eff. June 18, 2021

§ 1406. Authority of court after indictment or information and hearing

After the filing of an indictment or information by the Attorney General and after a hearing with respect to which any person who shall be affected has been given thirty (30) days' notice and opportunity to participate, the court may, based on the indictment or information and the hearing:

1. Enter a restraining order or injunction;

2. Require the execution of satisfactory bond in the amount of ten percent (10%) of the property value; or

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3. Take any other action, including the appointment of a receiver, that the Attorney General shows by a preponderance of the evidence is necessary to preserve the property which may be subject to criminal forfeiture.

LA 30-21, eff. June 18, 2021

§ 1407. Court authority after judgment-Authorization to seize property declared forfeited

Following the entry of a judgment that includes a fine or an order of criminal forfeiture pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act, or both, the court may enter a restraining order or an injunction, require the execution of a satisfactory bond, or take any other action, including the appointment of a receiver, that the court deems proper to protect the interests of the Nation.

An order of criminal forfeiture shall authorize the Attorney General to seize the property declared forfeited upon such terms and conditions, relating to the time and manner of seizure, as the court shall deem proper.

LA 30-21, eff. June 18, 2021

§ 1408. Penalties pursuant to act as supplemental

Criminal penalties and fines pursuant to the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act are supplemental and not mutually exclusive, except when so designated, and shall not preclude the application of any other criminal or civil remedy pursuant to any other provision of the law.

LA 30-21, eff. June 18, 2021

§ 1409. Civil proceedings instituted by Attorney General

A. The Attorney General may institute civil proceedings against any person in the Cherokee Nation courts seeking relief from conduct constituting a violation of any provisions of 21 CNCA § 1403 with the right to a trial by jury at the request of either party. If the plaintiff in such a proceeding proves the alleged violation by a preponderance of the evidence, the district court, after making due provisions for the rights of innocent parties, may grant relief by entering any appropriate order of judgment, including:

1. Ordering any defendant to divest himself of any interest

in any enterprise or any real property;

2. Imposing reasonable restrictions upon the future activities or investments of any defendant, including prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which the defendant was engaged in violation of 21 CNCA § 1403;

3. Ordering the dissolution or reorganization of any enterprise;

4. Ordering the suspension or revocation of a license, permit, or prior approval granted to any enterprise by an agency of the Nation; or

5. Ordering the surrender of the charter of a corporation organized pursuant to the laws of the Nation or the revocation of a certificate authorizing a foreign corporation to conduct business within the Nation.

In a proceeding initiated pursuant to the provisions of this section, injunctive relief shall be granted in conformity with the principles that govern the granting of relief from injury or threatened injury in other cases, but no showing of special or irreparable injury shall be required. Pending final determination of a proceeding initiated pursuant to the provisions of this section, a temporary restraining order or a preliminary injunction may be issued upon a showing of immediate danger of significant injury, including the possibility that any judgment for money damages might be difficult to execute, and, in a proceeding initiated by an aggrieved person, upon the execution of a bond in the amount of ten percent (10%) of the value of the property against injury for an injunction improvidently granted. If the court issues an injunction or grants other relief pursuant to the provisions of this section, the plaintiff shall also recover costs, including reasonable attorney fees and costs of investigation and litigation reasonably incurred.

B. The civil penalty imposed pursuant to this section shall not exceed One Hundred Thousand Dollars ($100,000.00), with no offset for the value of any property criminally forfeited or any fine imposed pursuant to the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act. This amount shall be applied to the costs and expenses of investigation and prosecution, and the balance, if any, shall be paid pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act.

C. A final judgment or decree rendered against the defendant in any civil or criminal proceeding pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act, shall estop the defendant in any subsequent civil action or proceeding brought by any person as to all matters as to which the judgment or decree would be

an estoppel as between the parties to a civil or criminal proceeding.

D. A civil action or proceeding pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act may be commenced at any time within five (5) years after the conduct made unlawful pursuant to the provisions of 21 CNCA § 1403 terminates or the cause of action accrues. If a criminal proceeding or civil action or other proceeding is brought by the Attorney General to punish, prevent, or restrain any activity made unlawful pursuant to the provisions of 21 CNCA § 1403, the running of the period of limitations prescribed by this section with respect to any cause of action of an aggrieved person, based in whole or in part upon any matter complained of in any such prosecution, action, or proceeding shall be suspended during the pendency of such prosecution, action, or proceeding and for two (2) years following its termination.

E. Service of process in an action pursuant to the provisions of this section may be made upon any person outside the state if the person was a principal in any conduct constituting a violation of the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act in this Nation. The person shall be deemed to have thereby submitted himself to the jurisdiction of the courts of the Cherokee Nation for the purposes of this section.

F. The application of any civil remedy pursuant to the provisions of this section shall not preclude the application of any other civil or criminal remedy pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act or any other provision of law. Civil remedies pursuant to the provisions of this section are supplemental and not mutually exclusive.

LA 30-21, eff. June 18, 2021

§ 1410. Disposition of forfeited property

A. Upon approval of the court, the Attorney General shall dispose of all property ordered forfeited in any criminal proceeding pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act as soon as feasible, making due provisions for the rights of innocent parties, by:

1. Public sale;

2. Transfer to a governmental agency of the Nation for official use;

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3. Sale or transfer to an innocent party; or

4. Destruction, if the property is not needed for evidence in any pending criminal or civil proceeding.

B. Any property right not exercisable by, or transferable for value to the Nation shall not revert to the defendant. No defendant or any person acting in concert with the defendant or on behalf of the defendant shall be eligible to purchase forfeited property from the Nation.

C. With respect to property ordered forfeited in any criminal proceeding pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act, the Attorney General is authorized to:

1. Compromise claims;

2. Award compensation to persons providing information resulting in a forfeiture pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act; and

3. Petition the court to mitigate or remit a forfeiture or to restore forfeited property to victims of a violation of 21 CNCA § 1403.

D. The proceeds of any sale or other disposition of forfeited property imposed pursuant to the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act shall be applied as follows:

1. To a bona fide innocent purchaser, conditional sales vendor, or mortgagee of the forfeited property up to the amount of the interest held by the person in the forfeited property;

2. To the fees and costs of the forfeiture and sale, including expenses of seizure, maintenance, and custody of the property pending its disposition, advertising, and the court costs;

3. To all costs and expenses of investigation and prosecution, including costs of resources and personnel incurred in investigation and prosecution; and

4. The balance to the credit of the Attorney General or law enforcement agencies in such proportions as are represented by the costs and expenses of investigation and prosecution as provided in the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act.

LA 30-21, eff. June 18, 2021

§ 1411. Balance of certain proceeds of forfeitures to pay costs of prosecution

The balance of the proceeds of all forfeitures ordered pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act shall be transmitted to the Cherokee Nation Treasurer and deposited in the Cherokee Nation Treasury, less any costs and expenses associated with investigation and prosecution, whether criminally or civilly, of conduct made unlawful by the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act, including costs of resources and personnel.

LA 30-21, eff. June 18, 2021

§ 1412. Lien notice-Fees-Contents-Procedure

A. At any time after the institution of any civil proceeding or at any time after the filing of an indictment or information pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act, the Nation may file a lien notice in the official records as may be required for perfecting a security interest for any given property. A filing fee in the amount as required by law for the filing of a mechanic's or materialmen's lien shall be required as a condition for filing the lien notice, and any county clerk, upon the presentation of such lien notice, shall immediately record it in the official records.

B. The lien notice shall be signed by the Attorney General and shall be in such form as the Attorney General prescribes and shall set forth the following information:

1. The name of the person against whom the proceeding has been brought or who has been charged or indicted for a violation of this act and any other names under which the person may be known. The Attorney General may also name in the lien notice any enterprise that is either controlled by or entirely owned by the person;

2. If known to the Attorney General, the present residence and business addresses of the persons named in the lien notice;

3. A reference to the criminal or civil proceeding stating that a proceeding pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act has been brought against the person named in the lien notice or that the person has been

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charged or indicted for a violation of this act, the name of the court where the proceeding has been brought or the conviction was made and any other lien notices filed, and, if known to the Attorney General at the time of filing the lien notice, the case number of the proceeding;

4. A statement that the notice is being filed pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act; and

5. The name and address of the Attorney General filing the lien notice.

A lien notice shall apply only to one person and, to the extent applicable, the names of enterprises, to the extent permitted in this section. A separate lien notice shall be filed for any other person against whom the Attorney General desires to file a lien notice pursuant to the provisions of this section.

C. Within ten (10) days after filing of each lien notice, the Attorney General shall furnish to the person named in the notice by certified mail, return receipt requested, to the last-known business or residential address, a copy of the recorded notice. In the event the person cannot be served by certified mail, service may be by publication pursuant to the Federal Rules of Civil Procedure.

D. From the time of its filing, a lien notice creates a lien in favor of the Nation on the following property of the person named in the notice:

1. Any personal or real property owned by the person under any name set forth in the lien notice which is situated in the county where the notice is filed; and

2. Any beneficial interest of said property owned by the person under any name located in the county where the notice is filed.

The lien shall commence and attach as of the time of filing of the lien notice and shall continue thereafter until expiration, termination, or release of the lien. The lien created in favor of the Nation shall be superior and prior to the interest of any other person in the personal or real property or beneficial interest in said property, if the interest is acquired subsequent to the filing of the notice.

E. In conjunction with any civil proceeding:

1. The Attorney General may file without prior court order in any county a lis pendens pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt

Organizations Act. In that event, any person acquiring an interest in the subject real property or beneficial interest in it after the filing of the lis pendens, shall take the interest subject to the civil proceeding and any subsequent judgment of forfeiture; and

2. If a lien notice has been filed, the Attorney General may name as defendants, in addition to the person named in the notice, any person acquiring an interest in the personal or real property or beneficial interest in it subsequent to the filing of the notice. If a judgment of forfeiture is entered in the proceeding in favor of the Nation, the interest of any person in the property that was acquired subsequent to the filing of the notice and judgment of forfeiture shall be subject to the notice and judgment of forfeiture.

F. Upon the entry of a final judgment of forfeiture in favor of the Nation, the title to the forfeited real property shall be transferred to the Nation and shall be recorded in the official records of the county where the real property or a beneficial interest in it is located.

In the case of personal property or a beneficial interest in it, the property shall be seized if not already in possession of the Nation and disposed of in accordance with the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act.

G. If personal or real property or a beneficial interest in it subject to forfeiture is conveyed, alienated, disposed of, or otherwise rendered unavailable for forfeiture after the filing of a lien notice, the Nation may treat it as a fraudulent and preferential conveyance and may institute an action in the Cherokee Nation courts against the person named in the lien notice, the defendant in the civil proceeding or the person convicted in the criminal proceeding; and the court shall enter final judgment against such person or any beneficial interest in it together with investigative costs and attorney’s fees incurred by the Nation in the action. If a civil proceeding is pending, such action shall be filed only in the court where such civil proceeding is pending.

H. The filing of a lien notice shall not affect the use to which personal or real property or a beneficial interest in it owned by the person named in the racketeering lien may be entitled to or the right of the person to receive any avails, rents, or other proceeds resulting from the use and ownership of the property, except for the conveyance of said property, until a judgment of forfeiture is entered.

I. The term of a lien notice shall be for a period of six (6) years from the date of filing unless a renewal lien notice has been filed by the Attorney General. In this event, the term of the renewal lien notice shall be for a period of six (6) years from the date of its filing. The Attorney General

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shall be entitled to only one renewal of the lien notice.

J. The Attorney General may release in whole or in part any lien notice or may release any personal or real property or beneficial interest in it from the lien notice upon such terms and conditions as the Attorney General may determine. Any release of a lien notice executed by the Attorney General may be filed in the official records of any county. No charge or fee shall be imposed for the filing of any release of a lien notice.

K. If no civil proceeding has been instituted by the Attorney General seeking a forfeiture of any property owned by the person named in the lien notice, the acquittal in the criminal proceeding of the person named in the lien notice or the dismissal of the criminal proceeding, shall terminate the lien notice. If the civil proceeding has been instituted, in the event the criminal proceeding has been dismissed or the person named in the lien notice has been acquitted in the criminal proceeding, the lien notice shall continue for the duration of the civil proceeding.

L. If no civil proceeding or criminal proceeding is then pending against the person named in the lien notice, any person named in a lien notice may apply to the district court in the county where the notice has been filed for the release or extinguishment of the notice and the district court shall enter a judgment extinguishing the lien notice or releasing the personal or real property or beneficial interest in it from the lien notice.

M. In the event a civil proceeding is pending against a person named in a lien notice, the court upon motion by the person may grant the relief provided for in this section at a hearing held for that purpose:

1. If a sale of the personal or real property or beneficial interest in it is pending and the filing of the notice prevents the sale of the property or interest, the court shall immediately enter its order releasing from the lien notice any specific personal or real property or beneficial interest in it. The proceeds resulting from the sale of the personal or real property or beneficial interest in it shall be deposited with the clerk of the court, subject to the further order of the court; and

2. At the hearing, the court may release from the lien notice any personal or real property or beneficial interest in it upon the posting by such person of such security as is equal to the value of the personal or real property or beneficial interest in it owned by such person.

LA 30-21, eff. June 18, 2021

§ 1413. Duties of trustees regarding lien notice-Liability-Recovery of costs

A. A trustee, who acquires actual knowledge that a lien notice or a civil proceeding or criminal proceeding has been filed against any person for whom the trustee holds legal or record title to personal or real property, shall immediately furnish to the Attorney General the following:

1. The name and address of the person;

2. The name and address of all other persons for whose benefit the trustee holds title to the personal or real property; and

3. If requested by the Attorney General, a copy of the trust agreement or other instrument pursuant to which the trustee holds legal or record title to the personal or real property. Any trustee who fails to comply with the provisions of this section, upon conviction, is guilty of a felony.

B. Any trustee having notice of the filing of the lien notice, who transfers or conveys title to personal or real property on which said notice has been filed, shall not be liable to the Nation for the greater of:

1. The amount of proceeds received directly by the person named in the lien notice as a result of the transfer or conveyance;

2. The amount of proceeds received by the trustee as a result of the transfer or conveyance and distributed to the person named in the lien notice; or

3. The fair market value of the interest of the person named in the lien notice in the personal or real property transferred or conveyed; but if the trustee transfers or conveys the personal or real property for at least its fair market value and holds the proceeds that would otherwise be paid or distributed to the beneficiary or at the direction of the beneficiary or designee of the beneficiary, the liability of the trustee shall not exceed the amount of the proceeds held for so long as the proceeds are held by the trustee.

C. The filing of a lien notice shall not constitute a lien on the record title to personal or real property owned by the trustee except to the extent the trustee is named in the lien notice. The Attorney General may bring a civil proceeding in the Cherokee Nation District Court against the trustee to recover from the trustee the amounts set forth in the

Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act, and the Nation shall also be entitled to recover investigative costs and attorneys fees incurred by the Attorney General.

D. The provisions of this section shall not apply to any transfer or conveyance by a trustee pursuant to a court order, unless the court order is entered in an action between the trustee and the beneficiary.

LA 30-21, eff. June 18, 2021

§ 1414. Foreign corporations failing to file report fall within act

Each foreign corporation doing business in this Nation that fails to file a report or fails to comply with the provisions of 18 CNCA § 130 shall be subject to the jurisdiction of the Cherokee Nation for purposes of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act.

LA 30-21, eff. June 18, 2021

§ 1415. Criminal investigation of prohibited acts

A. When any person has engaged in, is engaged in, or is attempting or conspiring to engage in any conduct constituting a violation of any of the provisions of 21 CNCA § 1403, the Attorney General may conduct an investigation of the conduct. On approval of the court, the Attorney General in accordance with the provisions of 22 CNCA § 258 is authorized before the commencement of any civil or criminal proceeding pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act to subpoena witnesses, compel their attendance, examine them under oath, or require the production of any business papers or records by subpoena duces tecum, except that such evidence taken shall not be receivable in any civil proceeding.

B. Any business papers and records subpoenaed by the Attorney General shall be available for examination by the person who produced the material or by any duly authorized representative of the person. Transcripts of oral testimony shall be available for examination by the person who produced such testimony, or counsel of the person.

Except as otherwise provided for in this section, no business papers or records or transcripts or oral testimony, or copies of it, subpoenaed by the Attorney General shall be available for examination by an individual other than another law

enforcement official without the consent of the person who produced the business papers or records or transcript.

C. All persons served with a subpoena by the Attorney General pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act shall be paid the same fees and mileage as paid witnesses in the courts of the Cherokee Nation.

D. No person shall, with intent to avoid, evade, prevent, or obstruct compliance in whole or in part by any person with any duly served subpoena of the Attorney General pursuant to the provisions of this section, knowingly remove from any place, conceal, withhold, destroy, mutilate, alter, or by any other means falsify any business papers or records that are the subject of the subpoena ducus tecum. A violation of the provisions of this subsection, upon conviction, is a misdemeanor.

LA 30-21, eff. June 18, 2021

§ 1416. Reserved

LA 30-21, eff. June 18, 2021

§ 1417. Specialized education and training for judges

Each judicial district shall select one or more of its district judges or associate district judges and if deemed necessary may also select one or more special judges to receive specialized education and training in applying the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act.

A program of judicial education and training shall be prepared and administered by the Administrator of the Cherokee Nation Courts. Such program and any materials shall be made available as needed to assist Cherokee Nation judges in applying the provisions of this act.

When available, the funds described in 21 CNCA § 1411 may be used to help defray the expenses of such program.

LA 30-21, eff. June 18, 2021

§ 1418. Annual audit

Any monies received by the Nation under this act shall be subject to an annual audit by the Treasurer.

LA 30-21, eff. June 18, 2021

§ 1419. Federal law construction of act governs

When the language of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act is the same or similar to the language of Title 18 U.S.C., Sections 1961 through 1968, the courts of the Cherokee Nation in construing the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act may follow the construction given to federal law by the federal courts, provided that nothing in this section shall be deemed to provide for any private right of action or confer any civil remedy except as specifically set out in this act.

LA 30-21, eff. June 18, 2021