



Legislation Text

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A LEGISLATIVE ACT AMENDING CERTAIN SECTIONS OF THE CRIMINAL PROCEDURE CODE RELATING TO SENTENCING, POWERS OF THE COURT, AND LIMITATION ON DEFERRED SENTENCES

BE IT ENACTED BY THE CHEROKEE NATION:

SECTION 1. TITLE AND CODIFICATION; LEGISLATIVE HISTORY.

The various parts and provisions of this Legislative Act shall be known as the Criminal Procedure Sentencing Act of 2008. The sections modified by this Legislative Act are located in Title 22 of the Cherokee Nation Code Annotated as codified in 1993. The source of the updates of this Legislative Act is Title 22 of the Oklahoma Statutes Annotated in effect as of February 22, 2008.

SECTION 2. PURPOSE AND FINDINGS.

The purpose of this legislation is to modernize and broaden the sentencing powers of the court with respect to criminal conduct and to ensure that the court has the power to order oversight of sex offenders and other criminal offenders who significantly impact the community by their behaviors.

SECTION 3. AMENDATORY. TITLE 22 CNCA § 991A SHALL BE AMENDED AS FOLLOWS:

§ 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, or

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, or

d. To pay a reasonable sum into any trust fund, established pursuant to the provisions of Sections 176 through

180.4 of Title 60 of the Oklahoma Statutes, and which provides restitution payments by convicted defendants to victims of crimes committed within the Cherokee Nation wherein such victim has incurred a financial loss, or

e. To confinement in the penal institution for a period not to exceed the maximum length of incarceration pursuant to 25 U.S.C. 1823 (7), or

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.

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

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, sentence such person to the Community Service Sentencing Program created pursuant to Section 991 a-4 of this title; and or

5. In addition to the other sentencing powers of the court, in the case of a person convicted of operating or being in control of a motor vehicle while the person was under the influence of alcohol, other intoxicating substance, or a combination of alcohol or another intoxicating substance, or convicted of operating a motor vehicle while the ability of the person to operate such vehicle was impaired due to the consumption of alcohol, require such person:

a. To participate in an alcohol and drug substance abuse course, pursuant to Sections 11-902.2 and 11-902.3 of Title 47 of the Oklahoma Statutes,

b. To attend a victims impact panel program sponsored by the Cherokee Nation, if such a program is offered, and to pay a fee, not to exceed Five Dollars (\$5.00), to the program to offset the cost of participation by the defendant, if in the opinion of the court the defendant has the ability to pay such fee,

c. To both participate in the alcohol and drug substance abuse course, pursuant to subparagraph a of this paragraph and attend a victims impact panel program, pursuant to subparagraph b of this paragraph.

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 conditions imposed by the court and subject to the supervision of the court or the Cherokee Nation. Such supervision shall be initiated upon an order of probation from the court, and shall not exceed the maximum term of imprisonment for the crime for which the defendant is found guilty.

D. The 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. The 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. The 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 Sex Offender Registration and Notification Act, Sections 1001 et seq. of Title 63 of the Cherokee Nation Code Annotated, 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 Sex Offender Registration and Notification Act, Sections 1001 et seq. of Title 63 of the Cherokee Nation Code Annotated, 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 Offenders Registration and Notification Act, Sections 1001 et seq. of Title 63 of the Cherokee Nation Code Annotated, shall submit to deoxyribonucleic acid DNA testing for law enforcement identification purposes. Except as required by the Cherokee Nation Sex Offenders Registration and Notification Act, a deferred judgment does not require submission to deoxyribonucleic acid 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 Offenders 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 Offenders Registration and Notification Act, Sections 1001 et seq. of Title 63 of the Cherokee Nation Code Annotated.

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, , Sections 1001 et seq. of Title 63 of the Cherokee Nation Code Annotated, 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.

SECTION 4. AMENDATORY. TITLE 22 CNCA § 991C SHALL BE AMENDED AS FOLLOWS:

§ 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 or the Cherokee Nation upon the 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 engage in a term of community service without compensation, according to a schedule consistent with the employment and family responsibilities of the defendant. Further, the court may order the defendant confined to the penal institution for a period not to exceed ninety (90) days to be served in conjunction with probation. Further, the court may order the defendant to pay a sum into the court fund not to exceed the amount of fine authorized for the offense alleged against the defendant or authorized under the Cherokee Nation Bond Schedule, and/or 18 U.S.C.A. 1803 (7) and an amount for reasonable attorney fee, to be paid into the court fund, if a court-appointed attorney has been provided to defendant. Further, the court may, in the case of a person before the court for the offense of operating or being in control of a motor vehicle while the person was under the influence of alcohol, other intoxicating substance, or a combination of alcohol and another intoxicating substance, before the court for the offense of operating a motor vehicle while the ability of the person to operate such vehicle was impaired due to the consumption of alcohol, require such person to participate in one or both of the following:

1. an alcohol and drug substance abuse course, pursuant to Sections 11-902.2 and 11-902.3 of Title 47 of the Oklahoma Statutes;
2. a victims impact panel program sponsored by the Cherokee Nation of the State of Oklahoma, if such a program is offered, and to pay a fee, not to exceed Five Dollars (\$5.00), to the victims impact panel program to offset the cost of participation by the defendant, if in the opinion of the court the defendant has the ability to pay such fee.

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. Upon violation of the conditions of probation, the court may enter a judgment of guilt and proceed as provided in Section 991 a of this title. Further, if the probation is for a crime offense, and the defendant violates the conditions of probation by committing another crime offense, the defendant shall not be allowed bail pending appeal. 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 the Cherokee Nation which if committed under the laws of the State of Oklahoma would be a felony.

B. 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.

SECTION 5. PROVISIONS NOT CUMULATIVE.

The provisions of this act shall not be cumulative to existing law and the provisions of this act shall supersede any existing law in conflict herewith.

SECTION 6. SEVERABILITY.

The provisions of this act are severable, and if any part or provision hereof shall be held void, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

SECTION 7. EFFECTIVE DATE.

It being necessary for the welfare of the Cherokee Nation, the Council hereby declares that this Act shall go into effect thirty (30) days after its passage by the full Council.