



Legislation Text

File #: 21-008, Version: 1

AN ACT AMENDING TITLE 22 OF THE CHEROKEE NATION CODE ANNOTATED BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act amends Title 22 of the Cherokee Nation Code Annotated and shall be codified at the sections as referenced herein of the Cherokee Nation Code Annotated.

Section 2. Purpose

The purpose of this Act is to expand and modernize the Nation's criminal procedures.

Section 3. Legislative History

LA-10-90
LA-24-02

Section 4. Amendments

Title 22 shall be amended as follows:

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The Federal Rules of Evidence shall be used in Cherokee Nation courts in all matters of a criminal nature, unless superseded by a Cherokee Nation Rule of Evidence.

§ 305.1. Deferred Prosecution for Felonies and Misdemeanors

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

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

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

system;

7. Whether the accused constitutes a substantial danger to others;
8. The impact of the deferred prosecution on the community;
9. The recommendations of the law enforcement agency involved in the case;
10. The opinions of the victim; and
11. Any mitigating or aggravating circumstances.

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

A. If an accused qualifies for the deferred prosecution program, the accused and the Cherokee Nation, through the Office of the Attorney General, may execute an agreement whereby the accused agrees to waive any rights to a speedy accusation, a speedy trial, and any statute of limitations, and agrees to fulfill such conditions to which the accused and the Cherokee Nation may agree including, but not limited to, restitution and community services.

B. The accused, as consideration for entering into a deferred prosecution agreement, consents and agrees to a full and complete photographic record of property which was to be used as evidence. The photographic record shall be competent evidence of the property and admissible in any criminal action or proceeding as the best evidence.

C. Property shall be returned to its owner only after the photographic record is made subject to the following conditions:

1. Property, except that which is prohibited by law, shall be returned to its owner after proper verification of title;
2. The return of property to the owner shall be without prejudice to the Nation or to any person who may have a claim against the property; and
3. When property is returned, the recipient shall sign, under penalty of perjury, a declaration of ownership which shall be retained by the appropriate law enforcement agency.

D. As additional consideration for the agreement, the Cherokee Nation shall agree not to file an information if the accused satisfactorily completes the conditions of the agreement.

E. The agreement between the accused and the Cherokee Nation may include provisions whereby the accused agrees to be supervised in the community, either by the Cherokee Nation Office of the Attorney General or other supervising agency. If the accused is required to be supervised pursuant to the terms of the agreement, the person shall be required to pay a supervision fee to be established by the supervisory agency. The supervision fee shall be paid to the supervisory agency as required by the rules of the supervisory agency. The supervisory agency shall monitor the person for compliance with the conditions of the agreement. The supervisory agency, if other than the Attorney General, shall report to the Office of the Attorney General on the progress of the accused, and shall report immediately if the accused fails to report or participate as required by the agreement.

F. The agreement between the parties may require the accused to participate or consult with local service providers, including tribal, federal and state services agencies, colleges, universities, technology center schools, and private or charitable service organizations. When the accused is required to participate or consult with any service provider, a program fee may be required and said fee shall be the responsibility of the accused. Any supervision fee or program fee authorized by this section may be waived, in the discretion of the provider, in whole or in part when the accused is indigent. No person who is otherwise qualified for a deferred prosecution program shall be denied services or supervision based solely on the person's inability to pay a fee or fees.

G. The agreement between the parties may require the accused to pay a victim compensation assessment pursuant to the provisions of Section 142.18 of Title 21 of the Cherokee Nation Code. The amount of the assessment shall be agreed to by the parties and shall be within the amounts specified in Section 142.18 of Title 21 of the Cherokee Nation Code for

the offense charged.

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.

§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.

§305.4. Completion of Programs- Records

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

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

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

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

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

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

1. Suspend the execution of sentence in whole or in part, with or without probation. The Court, in addition, may order the convicted defendant at the time of sentencing or at any time during the suspended sentence to do one or more of the following:
 - a. To provide restitution to the victim according to a schedule of payments established by the sentencing Court, together with interest upon any pecuniary sum at the rate of twelve percent (12%) per annum, if the defendant agrees to pay such restitution or, in the opinion of the Court, if he is able to pay such restitution without imposing manifest hardship on the defendant or his immediate family and if the extent

of the damage to the victim is determinable with reasonable certainty; 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 60 O.S. §176 et seq. 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 the a penal institution for a period not to exceed the maximum length of incarceration pursuant to 25 U.S.C. § 1823(7), or 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 the a 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, 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 convicted of charged with an offense contained in 47 C.N.C.A. sections 11-902 through 11-904 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, 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 sponsored approved by 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; and/or

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

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

C. Probation, for purposes of subsection (A) of this section, is a procedure by which a defendant found guilty of a crime is released by the Court subject to rules and conditions imposed by the Court and subject to the supervision of the Court, the Attorney General of the Cherokee Nation, a private supervision provider or other Cherokee Nation department. Such supervision shall be initiated upon an order of probation from the Court, and shall not exceed two (2) years.

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

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

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

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

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

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

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

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

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

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

A. Whenever a sentence has been suspended by the Court after conviction of a person for any crime, the suspended sentence of said person may not be revoked, in whole or in part, for any cause unless a petition setting forth the grounds for such revocation is filed by the Prosecuting Attorney with the Clerk of the sentencing Court and competent evidence justifying the revocation of said suspended sentence is presented to the Court at a hearing to be held for that purpose within twenty (20) days after the date of arrest entry of the plea of not guilty to the petition, unless waived by both the Cherokee Nation and the defendant.

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

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

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

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

§ 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.

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. § 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 an offense contained in 47 C.N.C.A. sections 11-902 through 11-904 the offense of operating or being in control of 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 all of the following:

1. A an alcohol and drug substance abuse course, pursuant to 47 CNCA § 11-902.2 and 47 CNCA §11-902.3;
2. Aa victims' impact panel program sponsored approved 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.; 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. 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.

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.

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

§ 991D. Probation fee-Restitution administration fee-Drug and alcohol testing fFees-Revolving Fund Established

A. A Court granting probation shall fix a fee of Forty Dollars (\$40.00) per month to be paid by the probationer to Cherokee Nation during the probationary period, provided, however, that this mandatory fee will not pertain if, unless in the judgment of the Court, such a fee would impose an unnecessary hardship on the probationer. In such hardship cases, the Court shall 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 of One Dollar (\$1.00) 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 shall may be waived.

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

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

§ 991F. Definitions

For the purposes of this act:

1. **"Economic loss"** means actual economic detriment suffered by the victim consisting of medical expenses actually incurred, damage to real and personal property and any other out-of-pocket expenses reasonably incurred as the direct result of the criminal act of the defendant. No other elements of damage shall be included.
2. **"Monetary restitution"** shall mean the sum to be paid by the defendant to the victim of his criminal act to compensate that victim for the economic loss suffered as a direct result of the criminal act of the defender.
3. **"Victim"** means any person, partnership or corporation that suffers an economic loss as a direct result of the criminal act of another person.

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.

Section 5. Provisions as cumulative

The provisions of this act shall be cumulative to existing law.

Section 6. Severability

The provisions of this act are severable and if any part of 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/Emergency Declared

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this act shall take effect and be in full force upon its passage and approval.

Section 8. Self-Help Contributions

To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.