



## Legislation Text

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### AN ACT AMENDING TITLE 10A OF THE CHEROKEE NATION CODE ANNOTATED AND DECLARING AN EMERGENCY

#### BE IT ENACTED BY THE CHEROKEE NATION:

##### Section 1. Title and Codification

This act amends Title 10A of the Cherokee Nation Code Annotated and shall be codified as referenced herein of the Cherokee Nation Code Annotated.

##### Section 2. Purpose

The purpose of this Act is to expand the miscellaneous offenses available under the Nation's Juvenile Code.

##### Section 3. Legislative History

LA-11-21

##### Section 4. Amendments

Title 10A shall be amended as follows:

#### CHAPTER 7. RESERVED

#### CHAPTER 8. MISCELLANEOUS OFFENSES

##### **§ 2-8-111. Use of information to commit crime or cause physical harm or damage to property--Penalties**

Any person who uses information obtained pursuant to this title to commit a crime or to cause physical harm to any person or damage to property shall be guilty of a misdemeanor upon conviction, and, in addition to any other punishment, shall be punished by imprisonment in the county jail for a term not to exceed one (1) year, or

by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

**§§ 2-8-112-2-8-220. Reserved**

**§ 2-8-221. Transmission of obscenity and child pornography**

A. Whenever the Attorney General has reasonable cause to believe that an individual, with knowledge of its content, is engaged in sending a transmission or causing a transmission to originate within this state containing obscene material or child pornography, as such terms are defined in 21 CNCA § 1024.1, the district attorney for the district into which the transmission is sent or caused to be sent, may institute an action in the district court for an adjudication of the obscenity or child pornographic content of the transmission. Provided that if the conditions of subsection B of this section are present, then it shall be at the discretion of the district attorney whether the action instituted is a juvenile offense as defined in subsection B of this section or whether the action instituted is a felony for a violation of 21 CNCA § 1040.13a.

The individual sending the transmission specified in this section may be charged and tried in any district wherein the transmission is sent or in which it is received by the person to whom it was transmitted.

For purposes of any criminal prosecution pursuant to a violation of this section, the person violating the provisions of this section shall be deemed to be within the jurisdiction of this state by the fact of accessing any computer, cellular phone, or other computer-related or satellite-operated device in this state, regardless of the actual jurisdiction where the violator resides.

B. Any individual under eighteen (18) years of age who engages in the original or relayed transmission of obscene material or child pornography via electronic media in the form of digital images, videos, or other depictions of real persons under the age of

eighteen (18) years, and:

1. The original or relayed transmission is of another minor over thirteen (13) years of age and is made with the consent of the pictured individual and is transmitted to five or fewer individual destinations, known or unknown, shall be guilty of a misdemeanor violation of this section punishable by:

a. a fine not to exceed Five Hundred Dollars (\$500.00) for the first offense,

b. a fine not to exceed One Thousand Dollars (\$1,000.00) for a second and subsequent offense,

c. up to forty (40) hours of community service,

d. a referral for a proposed probation plan which shall be adopted through disposition, or

e. attendance and successful completion of an educational program or a delinquency prevention and diversion program. The court shall have the discretion to order the parent or legal guardian of the juvenile to attend and successfully complete the educational program.

2. The original or relayed transmission is of another minor over thirteen (13) years of age and is made without the consent of the pictured individual, or is sent to six or more individual destinations, known or unknown, shall be guilty of a misdemeanor violation of this section punishable by:

a. a fine not to exceed Seven Hundred Dollars (\$700.00) for the first offense,

b. a fine not to exceed One Thousand Four Hundred Dollars (\$1,400.00) for a second or subsequent offense,

c. up to sixty (60) hours of community service,

d. a referral for a proposed probation plan which shall be adopted through disposition, and

e. attendance and successful completion of an educational program or a delinquency prevention and diversion program. The court shall have the discretion to order the parent or legal guardian of the juvenile to attend and successfully complete the educational program.

3. The original or relayed transmission is of another minor thirteen (13) years of age or younger, with or without the pictured individual's consent, and is transmitted to any number of destinations, known or unknown, shall be guilty of a misdemeanor violation of this section punishable by:

a. a fine not to exceed Nine Hundred Dollars (\$900.00) for the first offense,

b. a fine not to exceed One Thousand Eight Hundred Dollars (\$1,800.00) for a second or subsequent offense,

c. up to eighty (80) hours of community service,

d. a referral for a proposed probation plan which shall be adopted through disposition, and

e. attendance and successful completion of an educational program or a delinquency prevention and diversion program. The court shall have the discretion to order the parent or legal guardian of the juvenile to attend and successfully complete the educational program.

C. The fact that the individual making the transmission and the individual pictured are the same does not alter the criminality provided in this section.

D. It is an affirmative defense to the relayed transmission of obscene material or child pornography, as these terms are defined in 21 CNCA § 1024.1, if a juvenile:

1. Has not solicited the visual depiction; and

2. Does not subsequently distribute, present, transmit, post, print, disseminate or exchange the visual depiction except for the purpose of reporting the original transmission or relayed transmission to appropriate school or law enforcement authorities.

## **§ 2-8-222. Intoxicating beverages or low-point beer--Possession by persons under age 21**

A. It shall be unlawful for any person under the age of twenty-one (21) years to be in the possession of any alcoholic beverage, as defined by Subsection B of this provision, containing more than three and two-tenths percent (3.2%) alcohol by weight or any

low-point beer, as defined by Subsection C of this provision, while such person is upon any public street, road, or highway or in any public building or place.

B. For the purposes of this provision, "alcoholic beverage" means alcohol, spirits, beer and wine as those terms are defined herein and also includes every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by human beings.

C. For the purposes of this provision, "low-point beer" shall mean any beverages containing more than one-half of one percent ( $\frac{1}{2}$  of 1%) alcohol by volume, and not more than three and two-tenths percent (3.2%) alcohol by weight, including but not limited to, beer or cereal malt beverages obtained by the alcoholic fermentation of an infusion by barley or other grain, malt or similar product.

#### **§ 2-8-223. Purchase, receipt or possession of tobacco or vapor products by those under 21 prohibited--Falsifying proof of age--Penalties**

A. It is unlawful for a person who is under twenty-one (21) years of age to purchase, receive, or have in his or her possession a tobacco product, or vapor product, or to present or offer to any person any purported proof of age which is false or fraudulent, for the purpose of purchasing or receiving any tobacco product or vapor product. It shall not be unlawful for an employee under twenty-one (21) years of age to handle tobacco products or vapor products when required in the performance of the employee's duties.

B. For the purposes of this section, the term "vapor products" shall have the same meaning as provided in 21 CNCA § 1241(B).

#### **§ 2-8-224. Penalties**

Any person violating the provisions of this title, unless otherwise prescribed, may be punished by:

1. a fine not to exceed One Thousand Dollars (\$1,000.00) per offense;
2. up to eighty (80) hours of community service;
3. a referral for a proposed probation plan which shall be adopted through disposition;
4. attendance and successful completion of an educational program or a delinquency prevention and diversion program. The court shall have the discretion to order the parent or legal guardian of the juvenile to attend and successfully complete the educational program; and/or
5. imprisonment for a term not to exceed thirty (30) days or by payment of a fine not to exceed One Hundred Dollars (\$100.00) or by both such fine and imprisonment.

**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 after 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.