

Cherokee Nation Code Annotated

Title 21: Crimes and Punishments

Part III. Crimes Against the Person

Chapter 25: Kidnapping

§ 748.2. Rights of victims of human trafficking--Civil action against perpetrator

Cite as: 21 CNCA § 748.2

A. Human trafficking victims shall:

1. Be housed in an appropriate shelter as soon as practicable;
2. Not be detained in facilities inappropriate to their status as crime victims;
3. Not be jailed, fined, or otherwise penalized due to having been trafficked;
4. Receive prompt medical care, mental health care, food, and other assistance, as necessary;
5. Have access to legal assistance, information about their rights, and translation services, as necessary; and
6. Be provided protection if the safety of the victim is at risk or if there is a danger of additional harm by recapture of the victim by a trafficker, including:
 - a. taking measures to protect trafficked persons and their family members from intimidation and threats of reprisals, and
 - b. ensuring that the names and identifying information of trafficked persons and their family members are not disclosed to the public.

B. Any person aggrieved by a violation of 21 CNCA § 748(8) may bring a civil action against the person or persons who committed the violation to recover actual and punitive damages and reasonable attorney fees and costs. The civil action brought under this section may be instituted in the Cherokee Nation District Court. A criminal case or prosecution is not a necessary precedent to civil action. The statute of limitations for the cause of action shall not commence until the latter of the victim's emancipation from the defendant, the victim's twenty-first birthday, or the plaintiff discovers or reasonably should have discovered that he or she was a victim of human trafficking and that the defendant caused, was responsible for or profited from the human trafficking.

C. Upon availability of funds, the Principal Chief is authorized to establish an emergency hotline number for victims of human trafficking to call in order to request assistance or rescue.

D. Any peace officer who comes in contact with a human trafficking victim shall inform the victim of the human trafficking emergency hotline number and give notice to the victim of certain rights. The notice shall consist of handing the victim a written statement of the rights provided for in subsection A of this section.

E. Any peace officer or employee of the Cherokee Nation courts or the Department of Juvenile Justice who has reasonable suspicion that a minor may be a victim of human trafficking and is in need of immediate protection shall assume protective custody over the minor and immediately notify Cherokee Nation Indian Child Welfare. The minor shall be transferred to the emergency custody of Cherokee Nation Indian Child Welfare. While in the custody thereof, the minor shall be provided with any necessary emergency social services which include, but shall not be limited to, medical examination or treatment, or a mental health assessment.

Law enforcement and Cherokee Nation Indian Child Welfare shall conduct a joint investigation into the claim.

The minor shall remain in the custody of Cherokee Nation Indian Child Welfare until the investigation has been completed, but for no longer than two (2) judicial days, for the show cause hearing. The Cherokee Nation Indian Child Welfare may release the minor to the custody of a parent or legal guardian if it determines the minor will not be subject to further exploitation. If no such determination is made, the minor shall be subject to the deprived child provisions of the Cherokee Nation Code Annotated and made eligible for appropriate child welfare services.

The minor shall not be subject to juvenile delinquency proceedings for prostitution or other nonviolent misdemeanor offenses committed as a direct result of being a victim of human trafficking. It shall be an affirmative defense to delinquency or criminal prosecution for any misdemeanor or felony offense that the offense was committed during the time of and as the direct result of the minor being the victim of human trafficking.

Historical Data

LA 29-21, eff. June 18, 2021.