

Cherokee Nation Code Annotated

Title 22: Criminal Procedure

Chapter 19: Bail

**§ 1115.2. Posting bail after release on personal recognizance for traffic violation—
Failure to appear—Person ineligible for release on personal recognizance—Juveniles**

Cite as: 22 CNCA § 1115.2

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

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.

Historical Data

LA 10–90, eff. November 13, 1990.