

TO APPROVE AND ENACT THE CHOCTAW NATION OF OKLAHOMA TRIBAL PROSECUTION CODE

IN THE TRIBAL COUNCIL OF THE CHOCTAW NATION

RONALD PERRY INTRODUCED THE FOLLOWING COUNCIL BILL

A COUNCIL BILL

TO APPROVE and enact the Choctaw Nation of Oklahoma Tribal Prosecution Code.

WHEREAS, in accordance with Article IX, Section 4 of the Constitution of the Choctaw Nation of Oklahoma, the Tribal Council (the "Council") shall enact legislation, rules and regulations consistent with the Constitution for the general good of the Choctaw Nation of Oklahoma (the "Nation");

WHEREAS, in accordance with Article VII, Section 1 of the Constitution of the Choctaw Nation of Oklahoma, the Chief shall sign official papers on behalf of the Nation and shall take care that the laws be faithfully executed;

WHEREAS, the Nation, as a sovereign nation, possesses the right to prosecute crimes committed within the Nation, subject to federal limitations;

WHEREAS, the Council recognizes the need to create the Office of the Tribal Prosecutor (the "Office") and to vest authority in the Office to prosecute any and all actions necessary for the enforcement of the Constitution of the Choctaw Nation of Oklahoma, the Choctaw Nation of Oklahoma Codes, the U.S. Constitution, and other applicable laws;

WHEREAS, the Office shall ensure that those found guilty of crimes are held accountable, that the innocent are protected from unwarranted harm or neglect, and that the rights of all participants, particularly victims of crime, are respected; and

WHEREAS, the Council finds it is in the best interest of the Nation to enact the Choctaw Nation of Oklahoma Tribal Prosecutors Code in order to create the Choctaw Nation of Oklahoma Office of the Tribal Prosecutor and to provide authorization and guidance for its operation. See Exhibit A.

THEREFORE BE IT ENACTED, by the Tribal Council of the Choctaw Nation of Oklahoma, that this Act be cited approval of the adoption of the Choctaw Nation of Oklahoma Tribal Prosecution Code, attached. See Exhibit A.

BE IT FURTHER ENACTED, by the Tribal Council of the Choctaw Nation of Oklahoma, that the Choctaw Nation of Oklahoma Tribal Prosecution Code shall be effective immediately.

CERTIFICATION

I, the undersigned, as speaker of the Tribal Council of the Choctaw Nation of Oklahoma, do hereby certify that the Tribal Council is composed of twelve (12) seats. Eight (8) members must be present to constitute a quorum. I further certify that ten (10) members answered roll call and that a quorum was present at the Special Session of the Tribal Council at Tuskahoma, Oklahoma on October 10, 2020. I further certify that the foregoing Council Bill CB-06 -21 was adopted at such meeting by the affirmative vote of ten (10) members, zero (0) negative votes, and zero (0) abstaining.

Ronald Perry, Secretary
Choctaw Nation Tribal Council

Thomas Williston, Speaker
Choctaw Nation Tribal Council

Gary Battor, Chief
Choctaw Nation of Oklahoma

Date 10-14-20

EXHIBIT A

CHOCTAW NATION OF OKLAHOMA
TRIBAL PROSECUTION CODE

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TRIBAL PROSECUTION CODE

AN ACT ESTABLISHING THE OFFICE OF THE TRIBAL PROSECUTOR

Section 1 – Purpose of Act

- A. The purpose of this Act is to establish the Choctaw Nation of Oklahoma Office of the Tribal Prosecutor and to provide authorization and guidance for its operation.
- B. Nothing in this Act effects, abrogates, or waives the Nation’s sovereign immunity.

Section 2 – Establishment of the Office of the Tribal Prosecutor

- A. The organizational division to be known as the Choctaw Nation of Oklahoma Office of the Tribal Prosecutor is hereby created as a department in the Executive Branch of the Choctaw Nation Government.
- B. If any section or part of this Chapter is later determined to be void or unenforceable, the remainder of this Chapter shall nevertheless remain in full force and effect, unless this Chapter, without said void or unenforceable section or part, fails in its purpose.

Section 3 – Purpose of the Department

- A. The purpose of the Choctaw Nation of Oklahoma Office of the Tribal Prosecutor is to be vested with the discretionary authority to prosecute in the name of the Choctaw Nation, all actions necessary to enforce the provisions of the Choctaw Nation Constitution, Choctaw Nation Tribal Code, United States Constitution and other applicable laws. The Office of the Tribal Prosecutor shall seek justice by the fair representation and presentation of the facts. This responsibility includes, but is not limited to, ensuring that the guilty are held accountable, that the innocent are protected from unwarranted harm or neglect, and that the rights of all participants, particularly victims of crime, are respected.
- B. The Office of the Tribal Prosecutor is to prosecute to completion all cases involving alleged violations of the Choctaw Nation Code, to conduct investigations and other activities necessary for the conduct of its affairs, and to assume certain responsibilities with respect to civil matters, including extradition and exclusion proceedings.

Section 4 – Powers and Duties

- A. The Choctaw Nation Office of the Tribal Prosecutor is the public prosecutor of the Choctaw Nation of Oklahoma and shall have the authority to:
 - 1. Attend Tribal Court, Appellate Court, and other authorized courts, on behalf of the Tribe, in all prosecutions for public offenses.
 - 2. Appear in civil matters where permitted and delegated by the Choctaw Nation Senior Executive Officer of Legal and Compliance.

3. Institute proceedings before authorized judges and/or authorized magistrates for the arrest of persons charged with or reasonably suspected of public offenses when the Office of the Tribal Prosecutor has information that the offenses have been committed within the jurisdictional boundaries of the Choctaw Nation of Oklahoma.
 4. Draw complaints, informations, indictments, and/or other charging documents, prosecute actions to recover recognizances forfeited in courts of record and actions for recovery of debts, fines, penalties, and forfeitures accruing to the Tribe.
- B. The Office of the Tribal Prosecutor shall operate in conformity with, and licensed attorneys shall be bound by, the Choctaw Nation Rules of Professional Conduct as promulgated by the Choctaw Nation Bar Association.

Section 5 – Tribal Prosecutor

- A. The Office of the Prosecutor, as established by this article, shall be headed by the Tribal Prosecutor, who shall be the Director of the Choctaw Nation Office of the Prosecutor.
- B. The Tribal Prosecutor shall be appointed by and serve at the pleasure of the Senior Executive Officer of Legal and Compliance. The Tribal Prosecutor will be subject to periodic performance reviews by the Senior Executive Officer of Legal and Compliance.
- C. The Tribal Prosecutor will be a full-time employee of the Tribe and will be paid compensation commensurate with his or her skills, education, experience, and responsibilities within the standards of compensation, if any, established by the Tribe.
- D. The Tribal Prosecutor shall not be deemed to be a “tribal officer” as defined in Article V of the Constitution of the Choctaw Nation of Oklahoma.
- E. Any attorney/advocate positions within the Office of the Tribal Prosecutor, other than the Tribal Prosecutor's position, shall be appointed by the Tribal Prosecutor and shall serve at the pleasure of the Tribal Prosecutor. All other personnel shall be hired and compensated pursuant to Choctaw Nation Personnel Policies and Procedures.

Section 6 – Duties, Responsibilities, and Authority of Tribal Prosecutor

The Tribal Prosecutor shall:

- A. Be an attorney licensed to practice law in any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.
- B. Report to the Senior Executive Officer of Legal and Compliance with respect to all activities of the office and be responsible to him or her for all administrative and

operational matters not relating to the investigation and prosecution of suspects, criminal defendants and cases.

- C. Investigate, prosecute and dispose of all cases within the jurisdictional boundaries of the Choctaw Nation of Oklahoma, acting independently and upon his or her own authority within the guidance of law and professional ethics in the performance of his or her duties.
- D. Formulate overall administrative and operating policies of the Office of the Tribal Prosecutor and take action as he or she shall deem necessary for the accomplishment and enforcement thereof.
- E. Administer, supervise, and direct the activities of the Office of the Prosecutor.
- F. Represent the Office of the Tribal Prosecutor in executive level planning.
- G. Represent the Choctaw Nation government, within the areas of the Prosecutor's responsibility as authorized by the Senior Executive Officer of Legal and Compliance.
- H. Plan and participate with other areas of law enforcement toward full realization of benefits from federal and state programs for technical and financial assistance.
- I. Develop programs and budgets for the Office of the Prosecutor, conduct periodic reviews of program and budget executions of the Office of the Tribal Prosecutor and participate in overall program and budget review.
- J. Delegate authority to members of the staff.
- K. Conduct special programs or projects as may be assigned by the Senior Executive Officer of Legal and Compliance not inconsistent with the duties and responsibilities contained herein.

Section 7 – Supervisory Duties of Tribal Prosecutor

The Tribal Prosecutor has the authority to:

- A. Select, appoint, and hire employees necessary to carry out the laws, regulations, policies and programs adopted by the Tribal Council including, but not limited to:
 - 1. Hiring authority, subject to the policies and procedures of the Choctaw Nation of Oklahoma;
 - 2. Termination authority, subject to the policies and procedures of the Choctaw Nation of Oklahoma;
 - 3. Personnel discipline;

4. Personnel performance review;
 5. Personnel job assignments;
- B. Delegate any function, powers, and authorities to other employees of the Office of the Prosecutor, except as may be prohibited by Tribal law.
 - C. Create a budget for the Office of the Prosecutor.
 - D. Develop and implement internal policies for the efficient and effective administration of the Office of the Prosecutor.
 - E. To sign and bind the Office of the Prosecutor, except as may be permissibly delegated.

Section 8 – Organization

- A. The Office of the Tribal Prosecutor consists of a Tribal Prosecutor and such other divisions and offices necessary for the execution of its mission, performance of its mandated functions, and to achieve its long and short term goals and objectives.
- B. The Office of the Tribal Prosecutor may employ staff professionals, support personnel, and/or contract with professional service firms as the Tribal Prosecutor determines, consistent with the laws of the Tribe and approved budgetary authority.
- C. The Office of the Tribal Prosecutor must maintain a current organizational chart. The organizational chart must accompany its annual budget submission and any budget modification requests during the fiscal year, in accordance with Choctaw Nation of Oklahoma policies and procedures.

Section 9 – Authorized Programs and Limitations of Authority

The Office of the Tribal Prosecutor will have the following authorized programs, and such other programs as the Tribal Council or the Senior Executive Officer may assign.

- A. Criminal Prosecution Division: responsible for the initiation and resolution of Felony, Misdemeanor, Appellate, and Traffic prosecution(s) for violations of tribal law and/or collateral matters, or where otherwise permitted under Tribal, State and/or Federal law.
- B. Civil Division: responsible for the initiation and resolution of civil causes of action that are in the interests of the community as permitted under Tribal, State and/or Federal law as described in Section 12 – Civil Actions of this Code.
- C. Administrative Support Division: responsible for providing administrative, investigative, and technical support to attorneys and advocates by receiving, preparing and processing

documents, maintaining databases, files and records, and communication on behalf of the Office of the Prosecutor.

- D. Victim/Witness Service Program(s): responsible for victim notification and compliance with the Victims' Rights Ordinance in conjunction with any other Victims Service agency. There shall be a designated Victim Advocate(s) authorized to serve as liaison to counseling or other supportive assistance to crime victims.
- E. Community Outreach and Education/Training Program(s): tasked with participating in the education of the community and tribal government on the criminal justice system as necessary and where funds are allocated.
- F. Grant-funded programs, where available.
- G. Federal Special Assistant United States Attorney (SAUSA): the office shall be committed to its partnership with the United States Attorney's Office and shall appoint attorney(s) to serve as SAUSAs.

Section 10 – Assistance of, and coordination with, other agencies

- A. The Office of the Tribal Prosecutor shall have the authority to call upon the Choctaw Nation Tribal Police or any of its personnel for information, records, reports, etc., and to conduct investigations for the Office of the Prosecutor.
- B. The Office of the Tribal Prosecutor shall have the authority to call upon all Choctaw Nation divisions, enterprises, departments and commissions for assistance in carrying out its work. Such divisions, enterprises, departments and commissions shall provide the Office of the Tribal Prosecutor such information and assistance as is necessary to permit the Office of the Tribal Prosecutor to carry out its responsibilities and duties under law.
- C. The Office of the Tribal Prosecutor shall have the authority to call upon United States Governmental Offices serving the Choctaw Nation in the name of the Choctaw Nation for assistance in carrying out its work.

Section 11 – Investigations

The Office of the Tribal Prosecutor shall have complete authority to initiate and conduct investigations into any alleged violations of the Choctaw Nation Code and for the security of the Choctaw Nation government, the Choctaw Nation Officers, the Choctaw Nation Courts, and any other department, enterprise and entity of the Choctaw Nation government.

Section 12 – Civil Actions

- A. The Office of the Tribal Prosecutor shall have the authority to initiate civil actions on behalf of the Choctaw Nation of Oklahoma in the Courts of the Choctaw Nation, against individuals who violate the laws of the Choctaw Nation, which includes seeking restitution on behalf of the Choctaw Nation against individuals who have caused damage to Choctaw

Nation property or who have deprived the Choctaw Nation of any property belonging to said government.

- B. Before initiating any civil action, the Office of the Tribal Prosecutor shall receive approval from the Senior Executive Officer of Legal and Compliance, except for actions concerning asset forfeiture, civil regulatory enforcement, and child welfare.

Section 13 – Intervention in Indian Child Welfare Cases

- A. The Office of the Tribal Prosecutor shall have the authority to represent the Choctaw Nation’s interest in minor children who are members of the Choctaw Nation of Oklahoma, including but not limited to the following:
 - 1. intervening as the attorney of record for the Choctaw Nation of Oklahoma in any state court foster care or termination proceedings;
 - 2. filing documents or providing witnesses to educate state courts of tribal cultural and social standards thereby allowing a court to make culturally informed decisions;
 - 3. ensuring that state courts adhere to the letter and intent of the Indian Child Welfare Act, and filing any pleadings to that effect;
 - 4. making motions to transfer cases to the Choctaw Nation District Court; and,
 - 5. filing any petitions, motions, documents, or other papers in the Courts of the Choctaw Nation to provide for the protection, welfare, and best interest of children within the Choctaw Nation of Oklahoma’s reservation, including but not limited to initiating juvenile deprived/neglected, adoption, and/or parental termination proceedings.
- B. The Office of the Tribal Prosecutor shall have the responsibility to make all legal strategy decisions on behalf of the Choctaw Nation of Oklahoma in these cases.

Section 14 – Authority to Subpoena Witnesses and Documents

The Office of the Tribal Prosecutor shall have the authority to require the production of books, papers and other documents and may issue subpoenas to compel the attendance and testimony of witnesses. If any person shall refuse to obey any subpoena as issued or shall refuse to testify or produce any books, papers or other documents required by the subpoena, the Office of the Tribal Prosecutor may seek any available remedy under the Choctaw Nation civil or criminal codes.

Section 15 – Criminal Investigation Equipment

Consistent with applicable federal law and regulations and the duly approved budget of the Office of the Prosecutor, the Tribal Prosecutor is authorized to acquire such criminal investigation equipment as he/she deems appropriate. The Tribal Prosecutor is further authorized, consistent

with applicable federal law and regulations, to permit his/her staff to utilize such equipment in carrying out their duties and responsibilities. The Tribal Prosecutor and his/her assistants may carry firearms for their own protection while on official duty, provided however, that no employee of the Office of the Tribal Prosecutor shall carry a firearm unless such employee has first received instruction and Certification in the use of the firearm by the Division of Public Safety.

Section 16 – Authority of Tribal Prosecutor and Assistant Tribal Prosecutor to Carry Firearm for Personal Protection

- A. A Tribal Prosecutor or former Tribal Prosecutor may carry a firearm on his or her person anywhere within the jurisdictional boundaries of the Choctaw Nation of Oklahoma to use only for personal protection if the person has successfully completed a handgun qualification course for court officials developed by the Choctaw Nation Public Safety Department. Choctaw Nation Public Safety may provide for an identification card to be issued to the Tribal Prosecutor or former Tribal Prosecutor and may provide application forms. If the person issued an identification card is no longer eligible, that person shall immediately return the identification card to the Choctaw Nation Public Safety Department.

- B. At the discretion of the Tribal Prosecutor, the Tribal Prosecutor may allow an Assistant Tribal Prosecutor to carry a firearm on his or her person anywhere within the jurisdictional boundaries of the Choctaw Nation of Oklahoma to use only for personal protection if the person has successfully completed a handgun qualification course for court officials developed by the Choctaw Nation. The Choctaw Nation may provide for an identification card to be issued to the Assistant Tribal Prosecutor and may provide application forms. If an Assistant Tribal Prosecutor ends his or her employment, the Assistant Tribal Prosecutor shall immediately return the identification card to the Choctaw Nation Public Safety Department. If the person issued an identification card is no longer eligible, that person shall immediately return the identification card to the Choctaw Nation Public Safety Department.

Section 17 – Prohibiting Interference

The Office of the Tribal Prosecutor has an independent responsibility to enforce appropriate provisions of the Choctaw Nation Code. No employees, including Executive Branch personnel, shall intercede, interfere, or attempt to intercede or interfere in the legal functions of the Office of the Tribal Prosecutor. No appointed or elected officials, including the Chief, Assistant Chief, or Tribal Council members of the Choctaw Nation of Oklahoma shall intercede, interfere, or attempt to intercede or interfere in the legal functions of the Office of the Prosecutor. All inquiries concerning the status of a particular case or policy shall be in writing; additionally, all responses shall be in writing.

Section 18 – Central Records System

The Office of the Tribal Prosecutor shall establish a Central Records Keeping System. The system shall include the date and agency to whom the referral is made, the prosecutor to whom the case

is assigned, case status, presiding judge, previous criminal history, title of investigation and case disposition.

Section 19 – Case Dismissal Log and Reporting

The Office of the Tribal Prosecutor shall maintain a log of all cases dismissed. The log shall contain the case number or docket number, case title, individual's name, date dismissed, and explanation of dismissal. Copies of each district case dismissal log shall be submitted to the Senior Executive Officer of Legal and Compliance monthly.

Section 20 – Program Evaluation and Reporting

- A. The Tribal Prosecutor must conduct ongoing evaluation of all programs under his or her control.
- B. The Tribal Prosecutor must monitor all programs under his or her control on a regular basis.
- C. In the event the Tribal Prosecutor discovers any substantive irregularity in a program under his or her control, he or she must report that irregularity to the Senior Executive Officer of Legal and Compliance.

Section 21 – Reporting

The Tribal Prosecutor will provide reports and meet with the Senior Executive Officer of Legal and Compliance and/or Tribal Council Member(s) on the Prosecutor's Office operations and significant activities on a monthly basis, or as otherwise directed by the Senior Executive Officer of Legal and Compliance.