

TO APPROVE AMENDMENTS TO THE CHOCTAW NATION OF OKLAHOMA ADOPTION CODE

IN THE TRIBAL COUNCIL OF THE CHOCTAW NATION

RONALD PERRY INTRODUCED THE FOLLOWING COUNCIL BILL

A COUNCIL BILL

TO APPROVE amendments to the Choctaw Nation of Oklahoma Adoption Code.

WHEREAS, Article IX, Section 4 of the Constitution of the Choctaw Nation of Oklahoma (the "Nation") provides that the Tribal Council (the "Council") shall enact legislation, rules and regulations not inconsistent with the Constitution for the general good of the Choctaw Nation and for the administration and regulation of the affairs of the Choctaw Nation;

WHEREAS, Article XIII, Section 2 of the Constitution of the Nation states that the Council shall prescribe the rules of procedure of the Tribal Court and insure members have due process of law; and

WHEREAS, the Council finds it is in the best interest of the Nation to amend the Adoption Code of the Choctaw Nation of Oklahoma so that the Choctaw Nation tribal courts can adjudicate matters involving tribal members from all over the U.S.

THEREFORE, BE IT ENACTED by the Council that this Bill be cited as approval to amend the Choctaw Nation of Oklahoma Adoption Code by striking the following language from Section 1-1.2:

Section 1-1.2. Purpose of the Code

A. The Tribal Council of the Choctaw Nation of Oklahoma believes that every child should be raised in a secure, loving home and finds that adoption is the best way to provide a permanent family for a child whose biological parents are not able or willing to provide for the child's care or whose parents believe the child's best interest will be best served through adoption. The purpose of the Choctaw Nation Adoption Code is to:

~~1. Ensure and promote the best interests of the child in adoptions and to establish an orderly and expeditious process for movement of adoption matters through the courts;~~

~~2. Affirm that the parent-child relationship is fundamental and that all adoption laws should be fair to the child and to each parent of the child;~~

~~3. Affirm the duty of the biological parents to provide appropriately for the care of the child unless custody of the child has been transferred either voluntarily or involuntarily;~~

~~4. Affirm the duty of a noncustodial parent to:~~

~~a. provide financial support for the parent's biological child and otherwise exercise parental responsibilities;~~

~~b. maintain a parent-child relationship, regardless of the absence of any court order to that effect, and~~

~~c. provide for the appropriate financial support of the mother of the child during her term of pregnancy;~~

~~5. Affirm the duty of a male person who has sexual relations with a female person outside of marriage to be aware that a pregnancy might occur;~~

~~6. Affirm the duty of the biological father of a child who is to be born or who is born outside of marriage to exercise his parental responsibilities for the child. This includes the duty to inform himself about the existence and needs of any such child and to exercise parental responsibilities toward that child even before birth;~~

~~7. Encourage pre-birth planning for adoption as a means of facilitating adoption of a child into a permanent family as soon as possible. To that end, the Choctaw Nation Adoption Code provides for a pre-birth notice of a plan for adoption and for procedures by which a putative father may give his consent or otherwise respond to the notice;~~

~~8. Ensure that children placed for adoption will be raised in a stable, permanent loving family whose qualifications for adoption have been properly evaluated in light of each child's needs;~~

~~9. Promote and strengthen the integrity and finality of adoptions by limiting the time and circumstances for a consent to be withdrawn or a challenge to the adoption filed; and~~

~~10. Recognize the right of all children who have been adopted to have access to information about their social and medical history;~~

~~B. It is the intent of the Tribal Council to balance the privacy rights of all parties to an adoption while clarifying when and to whom information may be released. The Tribal Council seeks to promote voluntary reunions, provide for confidential intermediaries, and collect and maintain social and medical information relating to the adoption in the recognition that all children should have access to knowledge about their heritage.~~

~~C. After adoption, a formal and legal family relationship shall exist as if the parties were born into the adoptive relationship by blood. Adoptions pursuant to this Chapter shall be so recognized by every agency and level of the government, except for:~~

- ~~1. eligibility for enrollment determinations, which shall continue to be based upon biological parentage; and~~
- ~~2. probate of decedents' estates.~~

~~D. This Code shall be construed so as to protect and ensure the political integrity, the economic security, and the health and welfare of the tribe.~~

And inserting the following language after the sentence "The purpose of the Choctaw Nation Adoption Code is to:" under Section 1-1.2. **Purpose of the Code:**

1. To ensure and promote the best interests of the child;

2. To ensure that children placed for adoption will be raised in a stable, permanent loving family;

3. To place siblings together in an adoptive home, when possible. When placement together is not possible, to preserve the relationships through visitation and other methods of communication; and

4. To protect the interest of Choctaw Nation in preserving and promoting the heritage, culture, tradition and values of Choctaw Nation for its children.

B. After adoption, a formal and legal family relationship shall exist as if the parties had been born into the adoptive relationship by blood. Adoptions pursuant to this Chapter shall be so recognized by every agency and level of the government, except for:

1. Eligibility for enrollment determinations, which shall continue to be based upon Article II of the Constitution of the Choctaw Nation; and

2. Transfers of restricted Indian property, including but not limited to probate actions.

C. This Code shall be construed to protect and ensure the political integrity, the economic security, and the health and welfare of the tribe.

D. None of the provisions herein shall alter the application and/or implementation of the federal Indian Child Welfare Act, or any of its state counterparts, in proceedings in state courts.

E. It is the intent of the Tribal Council that the Choctaw Nation's placement preferences be followed in any adoptive placements, absent good cause to the contrary as determined under 25 C.F.R. § 23.132. Preference shall be given as follows:

1. a member of the child's extended family; or
2. other members of the child's tribe; or
3. members of another federally recognized tribe.

BE IT FURTHER ENACTED by the Council that this Bill be cited as approval to amend the Choctaw Nation Adoption Code by striking the following language from **Section 2-1.1. Jurisdiction**

~~A. The courts of the Choctaw Nation shall have concurrent jurisdiction with the courts of any other tribe or of a state having lawful authority regarding the adoption of any adult Indian who lives within the territorial jurisdiction of the Choctaw Nation of Oklahoma.~~

~~B. The courts of the Choctaw Nation shall have concurrent jurisdiction with the courts of any other tribe or of a state having lawful authority regarding proceedings to terminate parental rights and proceedings for the adoption of a minor who lives within the territorial jurisdiction of the Choctaw Nation, is unmarried, not emancipated, and either:~~

- ~~1. a member of an Indian tribe;~~
- ~~2. eligible for membership in an Indian tribe, and is the biological child of a member of an Indian tribe; or~~
- ~~3. whose case has been transferred to the courts of the Choctaw Nation from the courts of another tribe or from a state, which has assumed jurisdiction over said child.~~

~~C. The courts of the Choctaw Nation shall have exclusive jurisdiction regarding the adoption by or of any minor or adult who lives within the territorial jurisdiction of the Choctaw Nation of Oklahoma who is a member of the Choctaw Nation or is eligible for membership in the Choctaw Nation unless the Director of the Department of Children and Family Services or his or her designee waives the exclusive jurisdiction of the Choctaw Nation in writing.~~

~~1. The written waiver shall specify the reason for the waiver, which may be at the request of the biological parent or parents, or any other reason as specified by the director.~~

~~2. The director shall cause the waiver to be filed with the clerk of the District Court of the Choctaw Nation. A filing fee shall not be charged by the court clerk to file the waiver of exclusive jurisdiction.~~

and inserting the following language to Section 2-1.1. Jurisdiction:

A. The Choctaw Nation shall have exclusive jurisdiction over any the following:

1. any Choctaw Child or other Indian Child who resides or is Domiciled in Indian Country within the Territorial Boundaries of the Choctaw Nation; or,

2. any Choctaw Child or other Indian Child in the legal custody of the Choctaw Nation, regardless of the child's residence, Domicile, or physical placement.

B. The Choctaw Nation shall have concurrent jurisdiction over the following:

1. any Choctaw Person or Choctaw Child, regardless of residence or domicile; or,

2. any Indian Person or Indian Child who resides or is Domiciled within the Territorial Boundaries of the Choctaw Nation.

C. As used in this section:

1. "Choctaw Person" means any person over the age of eighteen who is a member of the Choctaw Nation pursuant to Article II of the Constitution of the Choctaw Nation.

2. “Choctaw Child” means an unmarried child who is a member of, or eligible for membership in the Choctaw Nation pursuant to Article II of the Constitution of the Choctaw Nation.
3. “Indian Child” means an unmarried child who is either a) a member of a federally recognized Indian tribe or b) is eligible for membership in a federally recognized Indian tribe and is the biological child of a citizen of an Indian tribe.
4. “Indian Person” means any person over the age of eighteen who is a member of a federally recognized Indian tribe.

BE IT FURTHER ENACTED by the Council that this Bill be cited as approval to amend the Choctaw Nation Adoption Code by adding the following language:

Section 2-1.5 – Transfer

- A. The District Court of the Choctaw Nation shall accept transfer any actions for pre-adoptive placement, termination of parental rights, or adoption, involving an unmarried minor child under the age of eighteen (18) who is a member of, or eligible for membership in the Choctaw Nation pursuant to Article II of the Constitution of the Choctaw Nation, to the District Court of the Choctaw Nation, unless:
 - a. The court makes a finding pursuant to 25 C.F.R. § 23.118 that there is good cause not to transfer the case; or
 - b. The transfer is not in the best interests of the child.
- B. In all pre-adoptive placement, termination of parental rights, or adoption proceedings wherein the Choctaw Nation is a party in the court of original jurisdiction, the Choctaw Nation shall remain a party to the action in Choctaw Nation District Court.
- C. Immediately upon the entry of an order from the District Court setting a transfer hearing, the District Court Clerk of the Choctaw Nation shall serve proper notice of the entry to the Choctaw Nation and all other parties or their attorneys.
- D. Notice shall be served upon all parties not less than fifteen (15) days prior to the hearing.
- E. In cases originating in the Choctaw Nation District Court wherein another court may exercise concurrent jurisdiction, the courts of the Choctaw Nation are authorized to transfer that case to such court of concurrent jurisdiction. In making such transfers the court must consider the best interest of the child.
- F. Upon entering an order transferring a case as provided in this section, the court of original jurisdiction shall serve a certified copy of the order of transfer, the legal case file, and any other records to the court clerk of the receiving jurisdiction by certified mail, return receipt requested. The court of original jurisdiction shall retain its jurisdiction over the child pending an order or notice of acceptance from the receiving jurisdiction, and upon receiving such order or notice, may close the case file and dismiss the case subject to any necessary order for the protection of the child until completion of physical transfer of the child to the receiving jurisdiction.

BE IT FURTHER ENACTED by the Council that this Bill be cited as approval to amend Section 1-1.3. Definitions of the Choctaw Nation of Oklahoma Adoption Code by inserting the following definitions:

“Domicile” means the place at which a person has been physically present and regards as home; a person's true, fixed, principal, and permanent home, to which that person intends to return and remain indefinitely, even though the person may be currently residing elsewhere. The Domicile of a minor child shall be the Domicile of the biological parent.

“Extended Family Member” means a person at least eighteen years of age and who is related to the child by either blood or marriage and is the child’s grandparent, aunt or uncle, brother or sister, niece or nephew, or cousin. This may extend beyond first-degree relatives and may include traditional custodians.

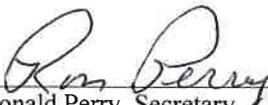
“Indian Country” means the land within the Choctaw Nation boundaries as defined in 18 U.S.C. Section 1151, including those lands held in trust by the United States for the benefit of the Choctaw Nation.

“Territorial Boundaries of the Choctaw Nation” means those lands described in the Constitution of the Choctaw Nation, Article I, Section 2.

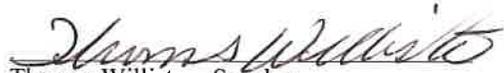
BE IT FURTHER ENACTED that these amendments to the Choctaw Nation of Oklahoma Adoption Code shall be applicable immediately and apply to all future and pending matters.

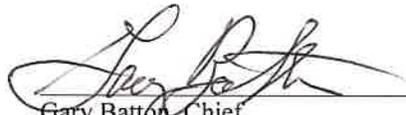
CERTIFICATION

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 eleven (11) members answered roll call and that a quorum was present at the Regular Session of the Tribal Council at Tuskahoma, Oklahoma on December 14, 2019. I further certify that the foregoing Council Bill CB- 38 -20 was adopted at such meeting by the affirmative vote of eleven (11) members, zero (0) negative votes, and zero (0) abstaining.



Ronald Perry, Secretary
Choctaw Nation Tribal Council


Thomas Williston, Speaker
Choctaw Nation Tribal Council



Gary Batton, Chief
Choctaw Nation of Oklahoma

Date 12-19-19

Purpose/Need of Council Bill: To amend the Choctaw Nation of Oklahoma Adoption Code to fix language that limits the jurisdiction of the Nation. Presently the Adoption Code only applies to those within the jurisdictional boundaries of the Nation. Federal law allows for the Nation to intervene in matters throughout the U.S. This fix will allow the courts to hear matters involving adoptions of any tribal member in Choctaw Nation Tribal Court.

Title of Council Bill: To approve an amendment to the Choctaw Nation of Oklahoma Adoption Code.

Agency: Legal & Compliance

Budget: NA

Match Required: NA.

Request by Project Director: Brad Mallett, SEO of Legal & Compliance