

## CHOCTAW NATION ADOPTION CODE

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## **Article 1. Policy and General Definitions**

### **Section 1-1.1. Short title--Composition of Code**

A. This Act shall be known and may be cited as the “Choctaw Nation Adoption Code.”

B. The provisions of the Choctaw Nation Adoption Code shall not invalidate any adoption heretofore granted by any court.

### **Section 1-1.2. Purpose of 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. 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.

### **Section 1-1.3. Definitions**

As used in the Choctaw Nation Adoption Code:

1. "Abandonment" includes, but is not limited to, the following:

- a. the parent has left the minor alone or in the care of another who is not the parent of the minor without identifying the minor or furnishing a means of identification for the minor, the whereabouts of the parents are unknown, and the minor's identity cannot be ascertained by the exercise of reasonable diligence,

- b. the parent has voluntarily left the minor alone or in the care of another who is not the parent of the minor and expressed a willful intent by words, actions, or omissions not to return for the minor, or

- c. the parent fails to maintain a substantial and positive relationship with the minor for a period of six (6) consecutive months out of the last fourteen (14) months immediately preceding the filing of a petition for termination of parental rights. For purposes of this section, "establish and/or maintain a substantial, positive relationship" includes but is not limited to:

- (1) frequent and regular contact with the minor through frequent and regular visitation or frequent, regular communication to or with the minor, and

- (2) exercising parental rights and responsibilities. Incidental or token visits or communications shall not be sufficient to establish or maintain a substantial and positive relationship with the minor.

The term "abandonment" shall not include when a parent has relinquished a minor to or placed the minor in the custody of a licensed child-placing agency or other court-appointed individual;

2. "Adoptee" means an individual who is adopted or is to be adopted;

3. "Adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department, other relevant agencies, and the prospective adoptive parents of a minor child which at a minimum (A) specifies the nature and amount of any payments, services, and assistance to be provided under such agreement, and (B) stipulates that the agreement shall remain in effect, regardless of the location where the adoptive parents are residents at any given time. The agreement shall contain provisions for the protection of the interests of the child in cases where the adoptive parents and child move to outside the territorial boundaries of the Choctaw Nation of Oklahoma while the agreement is effective.

4. "Adoption assistance payments" means payments made for non-recurring adoption expenses incurred by or on behalf of the adoptive parents in connection with the adoption of a child with special needs, directly through the Department, in amounts determined through an agreement with the adoptive parents.

5. “Adult” means an individual who has attained eighteen (18) years of age;
6. “Child” or “Minor” means any person who has not attained the age of eighteen (18) years;
7. “Child-placing agency” means any child welfare agency authorized to place minors for adoption;
8. “Contested proceeding” means any proceeding pursuant to the Choctaw Nation Adoption Code in which an interested party enters an appearance to contest the petition;
9. “Department” means the Department of Children and Family Services, the agency designated to administer and/or supervise guardianships, foster care, and adoption processes on behalf of the Choctaw Nation of Oklahoma;
10. “Direct placement adoption” means any adoption in which the minor is not placed for adoption by the Department of Children and Family Services or a child-placing agency;
11. “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.
12. “Guardian” means an individual, other than a parent, appointed by a court to be the guardian of the person of a minor;
13. “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.
14. “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.
15. “Parent” means an individual who is the biological or adoptive parent of a child or who is legally recognized as a mother or father of a child. The term “parent” does not include an individual whose parental relationship to a child has been terminated;
16. “Permanent relinquishment” means the voluntary surrender of the rights of the parent or guardian with respect to a minor, including legal and physical custody of the minor, to a child-placing agency, Department of Children and Family Services or any person with the assent of the court, by a minor’s parent or guardian, for purposes of the minor’s adoption;
17. “Putative father” means the father of a minor born out of wedlock or a minor whose mother was married to another person at the time of the birth of the minor or within the ten (10) months prior to the birth of the minor and includes, but is not limited to, a man who has acknowledged or claims paternity of a minor, a man named by the mother of the minor to be the father of the minor, or any man who is alleged to have engaged in sexual intercourse with a woman during a possible time of conception;

18. “State” means any state, territory, or possession of the United States, the commonwealth of Puerto Rico, and the District of Columbia;

19. “Stepparent” means an individual who is the spouse or surviving spouse of a parent of a minor, but who is not a legal parent of the minor; and

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

21. “Tribe” means any Indian Tribe recognized by the government of the United States of America.

## **Article 2. Jurisdiction, Venue and Choice of Law**

### **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.

### **Section 2-1.2. Venue**

Proceedings for adoption may be heard by the courts of the Choctaw Nation anywhere within the territorial jurisdiction of the Choctaw Nation of Oklahoma or in any other place allowed by law.

### **Section 2-1.3. Jurisdiction**

A. Except as otherwise provided by this section, a proceeding to terminate parental rights pursuant to Article 5 of the Choctaw Nation Adoption Code shall be governed by the laws of the Choctaw Nation.

B. A permanent relinquishment of a minor for adoption or a consent to adoption, including, but not limited to, an extrajudicial consent signed by a putative father, will be recognized as valid and given effect in all proceedings brought pursuant to the Choctaw Nation Adoption Code in the courts of the Choctaw Nation, if the permanent relinquishment or consent was executed:

1. Before an appropriate official and in the manner prescribed by the Choctaw Nation Adoption Code; or

2. Except as otherwise provided in subsection I of Section 3-2.3 and subsection H of Section 3-2.4 of this title, before an appropriate official and in the manner prescribed by the law of the state, tribe, or country in which the permanent relinquishment or consent was executed.

C. The laws of the Choctaw Nation shall govern when and under what circumstances a permanent relinquishment of a child for adoption or consent to adoption, including, but not limited to, an extrajudicial consent signed by a putative father, may be revoked or set aside, if:

1. The permanent relinquishment or consent was executed in the Choctaw Nation; or

2. The permanent relinquishment or consent was executed outside of the Choctaw Nation before an appropriate official and in a manner in compliance with all of the requirements of the Choctaw Nation Adoption Code.

D. If a permanent relinquishment for adoption or consent to adoption, including, but not limited to, an extrajudicial consent signed by a putative father, is executed outside of the Choctaw Nation before an official or in a manner that is not in compliance with all of the requirements of the Choctaw Nation Adoption Code, the law of the state, tribe, or country in which the permanent relinquishment or consent was executed shall govern the circumstances under which the relinquishment or consent may be revoked or set aside.

### **Section 2-1.4. Adoptions Issued by Foreign Countries, States, or Other Tribes**

A. The courts of the Choctaw Nation shall recognize a decree, judgment, or final order creating the relationship of parent and child by adoption, issued by a court or other governmental authority with appropriate jurisdiction in a foreign country, in another state or territory of the United States, or in another Indian Tribe. The rights and obligations of the parties as to matters within the jurisdiction of the Choctaw Nation shall be determined as though the decree, judgment, or final order were issued by a court of the Choctaw Nation.

### **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:

1. The court makes a finding pursuant to 25 C.F.R. § 23.118 that there is good cause not to transfer the case; or
2. 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.

### **Article 3. Adoption of Minors**

#### **Section 3-1.1. Eligibility to Adopt**

The following persons are eligible to adopt a child:

1. A husband and wife jointly if both spouses are at least twenty-one (21) years of age;
2. Either the husband or wife if the other spouse is a parent of the child;
3. An unmarried person who is at least twenty-one (21) years of age; or
4. A married person at least twenty-one (21) years of age who is legally separated from the other spouse.

#### **Section 3-1.2. Written Adoption Full-Disclosure Statement--Signatures**

A. A written adoption full-disclosure statement shall be prepared by the attorneys of record for the petitioner and birth parents in a direct-placement adoption of a minor in the Choctaw Nation. Each statement shall include:

1. The name and address of the attorney;
2. A notice informing the petitioner that the possibility of criminal prosecution exists under federal, state and tribal laws if the petitioner has engaged in any act or scheme that relates to child trafficking;
3. A copy of Section 5-3.2 of this Title relating to allowable adoption-related costs and expenses;
4. The scope of services provided by the attorney to, or discussed by the attorney with, the client or clients of the attorney including, but not limited to, services, if rendered, that aid in:
  - a. coping with the particular behaviors and developmental history of the child,
  - b. understanding the psychological needs of the child that are related to the racial, ethnic, or cultural background of the child,
  - c. explaining how to help the child understand adoption,
  - d. understanding the perspective of the birth parent,
  - e. coping with the loss of the child by the birth parent,
  - f. understanding search and reunion issues,
  - g. information addressing open and closed adoptions, and
  - h. search and reunion resources;
5. A procedure for grievances; provided, that this may be a reference to a private program or procedure sponsored by a tribal or state bar association service or some other agency or service for addressing fee disputes or ethics complaints;
6. The manner by which the attorney charges fees for legal services for an adoption, the refund policy, if any, and other expected or anticipated related fees and expenses of the adoption;
7. A statement that customary risks associated with adoptions involve:
  - a. birth parents who choose not to relinquish parental rights or not to consent to the adoption,
  - b. birth parents who seek to withdraw a consent to adoption or oppose the adoption for other reasons,
  - c. uncertainty or inaccurate information regarding paternity,
  - d. the prenatal care or actions of the birth mother or care or health of the child, and

- e. discovery of the applicability of the federal Indian Child Welfare Act;
- 8. A provision informing persons that coercion of birth parents is prohibited;
- 9. A statement that an attorney in the Choctaw Nation shall not represent both a relinquishing or consenting parent and a prospective adoptive parent, except in a stepparent adoption;
- 10. A copy of Section 5-6.2. of this Title, specifying the statutory list of items required to be filed before the final hearing in an adoption;
- 11. The anticipated time frame for prosecuting a typical uncontested adoption; and
- 12. Copies of the federal Indian Child Welfare Act, found at 25 U.S.C., Sections 1901 through 1923.

B. Every adoptive parent and birth parent represented by legal counsel in a direct-placement adoption of a minor in the Choctaw Nation shall:

- 1. Be provided by their respective attorneys an adoption full-disclosure statement as provided for in subsection A of this section; and
- 2. Read and sign the adoption full-disclosure statement acknowledging that they have read and understand the statement.

C. The adoption full-disclosure statement signed by the petitioner or petitioners shall be attached to the petition for adoption filed with the court in each direct-placement adoption of a minor in the Choctaw Nation. As to birth parents, the signed adoption full-disclosure statement shall be attached to the first entry of appearance or pleading filed by counsel for said party. The information disclosed in paragraph 6 of subsection A of this section shall also be separately stated and attached as an addendum to the adoption full-disclosure statement and the addendum shall not disclose the caption of the proceeding, the identities of the parties, or attorney, or any other information identifying the parties or proceeding.

### **Section 3-2.1. Who May Consent**

A. A minor may be adopted when written consent to adoption has been filed or a permanent relinquishment for adoption executed by:

- 1. Both parents of the minor;
- 2. One parent of the minor alone, if:
  - a. the other parent is dead,
  - b. the parental rights of the other parent have been terminated, or
  - c. the consent of the other parent is otherwise not required pursuant to Section 5-4.2 of this Title.

3. The legal guardian of the person of the minor or the guardian ad litem of the minor if both parents are dead or if the rights of the parents have been terminated by judicial proceedings, or the consent of both parents is otherwise not required pursuant to Section 5-4.2 of this Title, and such guardian or guardian ad litem has authority by order of the court appointing the guardian to consent to the adoption;

4. The executive head of a licensed child-placing agency if:

a. the minor has been permanently relinquished to such agency by:

(1) both parents, or

(2) one parent alone if the other parent is dead, the parental rights of the other parent have been terminated, or the consent of the other parent is otherwise not required pursuant to Section 5-4.2 of this Title, or

b. the rights of both parents have been judicially terminated, and custody of the minor has been legally vested in such agency with authority to consent to adoption of the minor; or

5. Any person having legal custody of a minor by court order if:

a. the parental rights of both parents have been judicially terminated, and

b. the court that issued the custody order for the minor has consented to adoption, and a certified copy of its order containing its consent is filed before the final decree.

B. 1. A parent of a minor born in wedlock or a parent who is sixteen (16) years of age or older shall be deemed capable of giving consent to the adoption of a minor.

2. If the parent of a minor born out of wedlock is under sixteen (16) years of age, that parent's consent to the adoption shall be deemed sufficient when:

a. given by such minor parent before a judge of the district court, and

b. accompanied by the written consent of:

(1) the legal guardian of the minor parent,

(2) the parents of the minor parent,

(3) the parent having custody of the minor parent, if the other parent of the minor parent is deceased, or the parents of the minor parent are divorced, or

(4) the person having physical custody of the minor parent, if both parents of the minor parent are deceased, or

c. accompanied by a finding of the court issuing the decree of adoption, if consent cannot be secured from any individual whose consent is required by subparagraph b of this paragraph, that:

(1) either notice was given by mail by the court to such person directing the person to show cause at a time appointed by the court, which shall be not less than ten (10) days from the date of mailing, why the adoption should not be granted without the individual's consent, or that notice was waived by the personal appearance of the individual, and

(2) the individual did not appear to contest the adoption, or the consent of the individual is unreasonably withheld.

C. If a minor to be adopted is twelve (12) years of age or older, the consent of the minor to the adoption is required in addition to the consents required by subsections A and B of this section before a decree of adoption may be granted, unless the court makes a finding that it is not in the best interest of the minor to require the minor's consent. The consent of the minor must be given before the court in such form as the court shall direct.

D. 1. When consent for adoption is necessary for minors in the custody of the Department of Children and Family Services, the Director of the Department of Children and Family Services or the designee of the Director may designate, authorize, and direct in writing an employee of the Department to appear in court to give written consent for the adoption of such minor by the family whose application for adoption has been approved by the Department of Children and Family Services; or

2. The executive head of a licensed child-placing agency whose consent is required for the adoption of a minor who is in the custody of the licensed child-placing agency may designate, authorize and direct in writing an employee of the agency to appear in court or before anyone authorized by law to take acknowledgements and to give written consent for the adoption of the minor.

### **Section 3-2.2. When Consent May be Given**

A. The mother of a minor shall not execute a valid consent to the adoption of the minor or a permanent relinquishment of the minor prior to the birth of the minor.

B. The father of a minor born in wedlock shall not execute a valid consent to the adoption of the minor or a permanent relinquishment of the minor prior to the birth of the minor.

C. A putative father of a minor may execute a consent to the adoption of the minor, a permanent relinquishment of the minor, or an extrajudicial consent to the adoption of the minor before or after the birth of the minor.

D. A guardian, guardian ad litem or legal custodian of a child may execute a consent to the adoption of a minor or a permanent relinquishment at any time after being authorized by a court to do so.

E. A child-placing agency that places a child for adoption may execute its consent at any time at or before the hearing on the petition for adoption.

F. A minor twelve (12) years of age or older whose consent is required pursuant to Section 3-2.1. of this Title may execute a consent to adoption at any time at or before the hearing on the petition for adoption.

### Section 3-2.3. Permanent Relinquishments

A. A permanent relinquishment may be executed by a person whose consent to the adoption of a minor is required by Section 3-2.1 of this Title. The permanent relinquishment shall be in writing and shall relinquish all of that individual's rights with respect to the minor, including legal and physical custody and the right to consent to the minor's adoption.

B. Permanent relinquishments may be made only to:

1. The Department of Children and Family Services;
2. A child-placing agency; or
3. Any other person, with the written consent of the Department or court.

C. A permanent relinquishment shall be in writing, executed before a judge of the Choctaw Nation, recorded by a court reporter and contain:

1. The date, place, and time of the execution of the permanent relinquishment;
2. The name and date of birth of the person executing the permanent relinquishment;
3. The current mailing address, telephone number, and social security number of the person executing the permanent relinquishment;
4. Instructions that the permanent relinquishment is irrevocable, except upon the specific grounds specified in Section 3-2.7. of this Title, upon which the permanent relinquishment can be revoked and the manner in which a motion to set aside the permanent relinquishment must be filed; and
5. The name of the person or agency as described in subsection B of this section to whom the permanent relinquishment is being given and who shall have the right to give consent to the minor's adoption.

D. A permanent relinquishment must state:

1. That the person executing the document is voluntarily and unequivocally consenting to the adoption of the minor;
2. An understanding that after the permanent relinquishment is executed, it is final and, except for fraud or duress, may not be revoked or set aside for any reason except as otherwise authorized by the Choctaw Nation Adoption Code;
3. That the person executing the permanent relinquishment is represented by counsel or has waived any right to counsel;
4. That the execution of the permanent relinquishment does not terminate any duty of the person executing the permanent relinquishment to support the mother or the minor until the adoption is completed;
5. That the person executing the permanent relinquishment has not received or been promised any money or anything of value for the permanent relinquishment, except for payments authorized by law;

6. Whether the individual executing the permanent relinquishment is a member of an Indian tribe, and whether the minor is eligible for membership, or the minor is a member of an Indian tribe; and

7. That the person believes the adoption of the minor is in the minor's best interest.

E. When it appears to the court that the parent or guardian executing a permanent relinquishment desires counsel but cannot employ counsel because said person is indigent, the court shall appoint counsel.

F. The transcript of the court proceedings pursuant to this section shall be placed in the court record.

G. The verification of the court shall be in substantially the following form:

I, \_\_\_\_\_, a Judge of the Choctaw Nation of Oklahoma, a Court having original adoption jurisdiction, do hereby certify, that upon this day, \_\_\_\_\_ personally appeared in open court, before me, and orally and in writing executed the above and foregoing permanent relinquishment for adoption.

In executing this acknowledgement, I further certify that the said \_\_\_\_\_ acknowledged that the person executed said relinquishment to adoption freely and voluntarily, and that it was explained to such person by or before me, the undersigned Judge, that in executing the relinquishment, the person was surrendering all parental authority whatsoever over the minor; and that with such explanation made to the person relinquishing the minor by or before me, the undersigned Judge, the person executed the relinquishment, freely, voluntarily, and intelligently for all uses and purposes therein set forth.

I further certify that it was explained to the relinquishing person that this relinquishment is irrevocable and final, except for fraud or duress, and may not be revoked or set aside except and unless no Petition to Adopt is filed within nine (9) months after placement of the minor or if this or some other court decides not to terminate the rights of the other parent of the minor. I further certify that I am satisfied that the relinquishing person understands the consequences of an adoption; the relinquishing person has represented that such person has not received or been promised any money or anything of value for the giving of the permanent relinquishment except for those payments authorized by law; the relinquishing person has represented that such person is not under the influence of alcohol or medication or any other substance that affects the person's competence; the person fully understood the English language and communicated in the English language at all times during said hearing, or all information was translated into the relinquishing person's language, and was fully understood by the person; and if the relinquishing person was the biological parent, such parent was advised regarding the affidavit of nondisclosure.

H. A permanent relinquishment shall be signed before any judge of a court having probate or adoption jurisdiction in the Choctaw Nation or before any judge of a court having probate or adoption jurisdiction in the state of residence of the person executing the permanent relinquishment.

I. 1. a. If an individual permanently relinquishing the child resides in a country or place other than the United States of America, other than a member of the United States Armed

Services stationed abroad, the permanent relinquishment of the individual may be obtained by a written instrument signed by such person and acknowledged before an officer of the legal subdivision of the government of the place of such person's residence who is authorized to administer oaths under the laws of such country or place.

b. If the foreign country's government does not involve itself in adoption matters, the permanent relinquishment may be executed before an officer of the Judge Advocate General's Office of the United States Armed Services or before an officer of the United States Embassy located in that country, provided the execution of a permanent relinquishment is not a violation of the laws of the foreign country or a violation of international law or treaty between the foreign country's government and the United States. The permanent relinquishment shall reflect that the permanent relinquishment is not given or accepted in violation of the laws of the foreign country or in violation of international law or treaty between such foreign country's government and the United States.

2. If an individual permanently relinquishing the child is a member of the United States Armed Services stationed in a country or place other than the United States, the individual's permanent relinquishment may be acknowledged before an officer of the Judge Advocate General's Office or other legal officer possessing the authority to administer oaths.

J. If the written instrument containing a permanent relinquishment is written in a language other than the English language, the petitioner must have it translated into the English language by a person qualified to do so, and must file the original instrument together with the translation with the court. The translation must be sworn to as being a true and correct translation by the person translating the document.

K. Except as otherwise required by subsection I of this section, when the person permanently relinquishing the child for the purposes of adoption resides outside of Oklahoma, the permanent relinquishment by such person may be executed in that state or country in the manner set forth in the Choctaw Nation Adoption Code or in the manner prescribed by the laws of the state or country of such person's residence.

L. 1. A court before which a permanent relinquishment has been executed may enter an order terminating parental rights of the parent of a child if such parent has executed a permanent relinquishment for adoption pursuant to the Choctaw Nation Adoption Code.

2. Any order terminating parental rights of a parent pursuant to this subsection shall state that the termination of parental rights shall not terminate the duty of the parent to support the child of such parent. The duty of the parent to support the child shall not be terminated until such time as a final decree of adoption has been entered.

3. Any proceedings held pursuant to this subsection shall not require the tribe as a necessary party.

### **Section 3-2.4. Contents of Consent to Adoption**

A. Consent to an adoption of a minor shall be in writing, recorded by a court reporter, and executed before a judge of the Choctaw Nation and contain:

1. The date, place, and time of the execution of the consent;

2. The name and date of birth of the person executing the consent;

3. The current mailing address, telephone number, and social security number of the person executing the consent; and

4. Instructions that the consent is irrevocable, except upon the specific grounds specified in Section 3-2.7 of this Title, upon which the consent can be revoked and the manner in which a motion to set aside the consent must be filed.

B. Consent must state:

B. Consent must state:

1. That the person executing the document is voluntarily and unequivocally consenting to the adoption of the minor;

2. An understanding that after the consent is executed, it is final and, except for fraud or duress, may not be revoked or set aside for any reason except as otherwise authorized by the Choctaw Nation Adoption Code;

3. That the person executing the consent is represented by counsel or has waived any right to counsel;

4. That the execution of the consent does not terminate any duty of the person executing the consent to support the mother or the minor until the adoption is completed;

5. That the person executing the consent has not received or been promised any money or anything of value for the consent, except for payments authorized by law;

6. Whether the individual executing the consent is a member of an Indian tribe, and whether the minor is eligible for membership, or the child is a member of an Indian tribe; and

7. That the person believes the adoption of the minor is in the minor's best interest.

C. Before executing a consent, a minor twelve (12) years of age or older must have been informed by the court of the meaning and consequences of the adoption and the availability of social and medical history information, pursuant to Section 4-1.2. of this Title, when the minor turns eighteen (18) years of age.

D. When it appears to the court that the parent or guardian executing consent desires counsel but cannot employ counsel because said person is indigent, the court shall appoint counsel.

E. The transcript of the court proceedings pursuant to this section shall be placed in the court record.

F. Except as otherwise provided by subsection K of this section, verification of the court shall be in substantially the following form:

I, \_\_\_\_\_, a Judge of the Choctaw Nation of Oklahoma, a Court having original adoption jurisdiction, do hereby certify, that upon this day, \_\_\_\_\_ personally appeared in open Court, before me, and orally and in writing executed the above and foregoing Appearance and Consent to Adoption.

In executing this acknowledgement, I further certify that the said \_\_\_\_\_ acknowledged that the person executed said consent to adoption freely and voluntarily, and that it was explained to such person by or before me, the undersigned Judge, that in executing the consent the person was surrendering all parental authority whatsoever over the minor; and that with such explanation made to the consenting person by or before me, the undersigned Judge, the person executed the consent, freely, voluntarily, and intelligently for all uses and purposes therein set forth.

I further certify that it was explained to the consenting person that this consent is irrevocable and final, except for fraud or duress, and may not be revoked or set aside except and unless no Petition to Adopt is filed within nine (9) months after placement of the minor, or if this or some other court decides not to terminate the rights of the other parent of the minor. I further certify that I am satisfied that the consenting person understands the consequences of an adoption; the consenting person has represented that such person has not received or been promised any money or anything of value for the giving of consent except for those payments authorized by law; the consenting person has represented that such person is not under the influence of alcohol or medication or other substance that affects the person's competence; the parent fully understood the English language and communicated in the English language at all times during said hearing, or all information was translated into the consenting person's language, and was fully understood by the person; and if the consenting person was the biological parent, such parent was advised regarding the affidavit of nondisclosure.

G. Consent may be signed before any judge of a court having probate or adoption jurisdiction in the Choctaw Nation or in the state of residence of the person executing the consent.

H. 1. a. If an individual whose consent is necessary resides in a country or place other than the United States of America, other than a member of the United States Armed Services stationed abroad, the consent of the individual to the adoption may be obtained by a written instrument signed by such person and acknowledged before an officer of the legal subdivision of the government of the place of such person's residence who is authorized to administer oaths under the laws of such country or place.

b. if the foreign country's government does not involve itself in adoption matters, the consent may be executed before an officer of the Judge Advocate General's Office of the United States Armed Services or before an officer of the United States Embassy located in that country, provided the execution of such consent is not a violation of the laws of the foreign country, or a violation of international law or treaty between the foreign country's government and the United States. The consent shall reflect that the consent is not given or accepted in violation of the laws of the foreign country or in violation of international law or treaty between such foreign country's government and the United States.

2. If an individual whose consent is necessary is a member of the United States Armed Services stationed in a country or place other than the United States, the individual's consent may be acknowledged before an officer of the Judge Advocate General's Office or other legal officer possessing the authority to administer oaths.

I. If the written instrument containing a consent to adoption is written in a language other than the English language, the petitioner must have it translated into the English language by a qualified translator and must file the original instrument together with the translation with the court. The translation must be sworn to as being a true and correct translation by the person translating the document.

J. Except as otherwise required by subsection H of this section, when the person whose consent is, or may be required, resides outside of Oklahoma, the consent to adoption by such person may be executed in that state or country in the manner set forth in the Choctaw Nation Adoption Code or in the manner prescribed by the laws of the state or country of such person's residence.

K. 1. When the person whose consent is required is the Director or designee of the Department of Children and Family Services for minors in the custody of the Department of Children and Family Services, the contents of the consent need only contain the full name of the person executing the consent, that the person executing the consent is duly authorized by the Director to consent to the adoption, the full name of the child being adopted, and the names and addresses of adoptive petitioners.

2. The verification of the court shall be in substantially the following form:

I, \_\_\_\_\_, a Judge of the Choctaw Nation of Oklahoma, a Court having original adoption jurisdiction, do hereby certify, that upon this day, \_\_\_\_\_ personally appeared in open Court, before me, and orally and in writing executed the above and foregoing Appearance and Consent to Adoption.

### **Section 3-2.5. Acknowledgment of Consent to Adoption or Permanent Relinquishment Before Judge--Affidavit of Nondisclosure**

A. At the time that a written consent to adoption or permanent relinquishment is acknowledged by a biological parent before a judge of a court of the Choctaw Nation, the judge shall advise the biological parent:

1. That, if affidavits of nondisclosure have been filed by both biological parents and have not been revoked by either biological parent at the time that the request for the original birth certificate is made by the adult adopted person, the original birth certificate will not be released to the adult adopted person; and

2. That if an unrevoked affidavit of nondisclosure by only one biological parent is on file with the Choctaw Nation of Oklahoma at the time that the request for the original birth certificate is made by the adult adopted person, identifying information regarding the parent who filed the unrevoked affidavit of nondisclosure will be deleted from the original birth certificate before it is provided to the adult adopted person. The identity of the parent who does not have an unrevoked affidavit of nondisclosure on file, if it is contained in the original birth certificate, will be disclosed.

B. 1. The judge shall ascertain whether the biological parent wishes to execute an affidavit of nondisclosure. If so, an affidavit of nondisclosure form shall be made available to the biological parent by the court and may be executed in the presence of the judge at the time the written consent to adoption or relinquishment for adoption is acknowledged.

2. An affidavit of nondisclosure signed at the time a consent or relinquishment is acknowledged shall be filed in the adoption action with the consent or relinquishment for adoption.

3. Affidavit of nondisclosure forms shall also be available in the district court clerk's office and may be executed and filed by a biological parent in the court in which an adoption action is pending.

4. An affidavit of nondisclosure may be filed after a final decree of adoption has been entered.

C. A biological parent who has executed an affidavit of nondisclosure may revoke the affidavit of nondisclosure at any time by filing a notice of revocation. Upon receipt of a notice of revocation of an affidavit of nondisclosure, the court clerk shall attach the revocation to the affidavit of nondisclosure and file it with the original records of the adoption.

D. The failure to follow any provisions of this section shall not be grounds to challenge a decree of adoption.

### **Section 3-2.6. Extrajudicial Consent**

A. A man who is the legal husband of the mother of a minor may execute an extrajudicial consent before a notary public, the court clerk or a deputy thereof, in which he waives any legal interest in the minor, disclaims any legal rights with respect to the minor, and consents to the adoption of the minor. An extrajudicial consent may be executed by the father only after the birth of the minor.

B. The extrajudicial consent shall contain:

1. The date, place, and time of the execution of the consent;
2. The name, current mailing address, telephone number, date of birth, and social security number of the putative father executing the consent;
3. Instructions that the consent is revocable for any reason for fifteen (15) days after the execution of the consent, the manner in which it may be revoked, and that thereafter the consent is irrevocable, except upon the specific grounds specified in Section 3-2.7 of this Title;
4. A statement that the putative father is executing the document voluntarily and is unequivocally consenting to the adoption of the minor, and that the putative father understands that the consent is final, and, except for fraud or duress or the other grounds set forth in Section 3-2.7 of this Title, may not be revoked for any reason more than fifteen (15) days after execution of the document;
5. A statement that the putative father executing consent is represented by counsel or has waived the right to counsel;
6. A statement that the putative father understands that the execution of the extrajudicial consent does not terminate any duty of the person executing the extrajudicial consent to support the mother or the minor until the adoption is completed;
7. A statement that the putative father believes that the adoption of the minor is in the minor's best interests;

8. A statement that the putative father has not received or been promised any money or anything of value for the extrajudicial consent, except for payments authorized by law; and

9. A statement that the putative father is not under the influence of alcohol, medication, or any other substance that affects his competence at the time of the signing of the extrajudicial consent.

C. An extrajudicial consent shall be revocable for any reason for fifteen (15) calendar days after the execution of the consent before the notary public, the court clerk or a deputy thereof. To revoke the extrajudicial consent, the consenting person must file a notice of revocation and an intent to claim paternity, an acknowledgement of paternity, or a notice of his desire to receive notice of adoption proceedings or proceedings to terminate his parental rights, with Department of Children and Family Services pursuant to Section 6-1.1 of this Title, and must provide a copy of this notice to the birth mother at the time of filing the notice with the Department of Children and Family Services.

D. The execution of an extrajudicial consent does not extinguish any duty of the putative father to support the mother or the minor until the adoption is completed.

E. Where no notice of revocation is filed in the time period specified in subsection C of this section, the execution of the extrajudicial consent shall operate as a waiver of the consenting person's right to notice and participation in any adoption proceedings or termination of parental rights proceedings regarding the minor referenced in the extrajudicial consent.

### **Section 3-2.7. Setting aside permanent relinquishment or consent to adoption**

A. Except as otherwise provided in subsection B of this section and in Section 3-2.6 of this title, a permanent relinquishment or consent to adoption executed pursuant to the Choctaw Nation Adoption Code shall be irrevocable.

B. The court shall set aside a permanent relinquishment or consent to adoption or vacate an order terminating parental rights based upon the execution of a permanent relinquishment only if it would be in the best interests of the minor and if the individual who executed the permanent relinquishment or consent establishes:

1. By a preponderance of the evidence that without good cause shown, a petition to adopt was not filed within nine (9) months after the minor was placed for adoption;

2. By a preponderance of the evidence, that another consent or permanent relinquishment was not executed or that a court decided not to terminate another individual's parental relationship to the minor; or

3. By clear and convincing evidence, before a decree of adoption is issued, or within three (3) months of the discovery of the fraud, whichever is later, that the consent was obtained by fraud or duress.

C. Notice of the motion to set aside the consent or permanent relinquishment and hearing on the motion shall be provided to:

1. The person who filed for adoption of the minor;

2. The Department of Children and Family Services or any child-placing agency participating in the adoption; and

3. To any person or agency in whose favor the consent was given.

D. The court shall provide an opportunity to be heard to the person who has filed for adoption and to any agency participating in the adoption as to why the withdrawal of consent would not be in the best interest of the minor.

E. The court may enter such orders as justice requires regarding the costs and legal fees of the person who filed for adoption, the agency, the Department and the person seeking that the consent or permanent relinquishment be set aside.

### **Section 3-3.1. Notice of Plan for Adoption**

A. 1. Before or after the birth of a minor born out of wedlock, the Department of Children and Family Services, a licensed child-placing agency, or an attorney representing prospective adoptive parents of the minor may, by in-hand service to the putative father or certified mail to the putative father, to be signed by the putative father only, notify or cause to be notified a putative father of the minor that the mother of the child is considering an adoptive placement for the minor through a Notice of Plan for Adoption. If service of the Notice of Plan for Adoption is made by in-hand service, delivery of the Notice must be made by a person licensed to make service of process in civil cases. Residence service delivered to or signed by a person residing in the home of the putative father or any other forms of substitute service shall not be sufficient service pursuant to this subsection.

2. Service of a Notice of Plan for Adoption may be served in the manner permitted in this subsection upon a putative father within the Choctaw Nation or outside of the Choctaw Nation.

B. The Notice of Plan for Adoption shall include the following:

1. The identity of the mother, that she is pregnant and the estimated date of birth, that the notified person may be the father of the minor, and that a plan for the adoption of the minor is being considered by the mother;

2. A preaddressed form for filing by mail or in person with the Department of Children and Family Services and a copy to be returned to the attorney or agency who sent it. On this form, the recipient shall sign the form and indicate one of the following choices:

a. "I do not know if I am the father of this minor. I desire to receive notice of the adoption proceedings or the proceeding to terminate parental rights. I understand that this creates no evidence that could be introduced in court to prove paternity. Its only legal effect is to entitle me to notice, at the address listed on the form, of an adoption proceeding that may be filed after the birth of the minor."

b. "I hereby file my notice of intent to claim paternity. I understand that a notice of intent to claim paternity may be revoked at any time by filing a notice to disclaim with the Department of Children and Family Services. I also understand that an unrevoked notice of intent to claim paternity may be used as evidence in any future court proceeding in which it may be relevant, including a child support proceeding. I desire to receive notice of the adoption proceeding or the proceeding to terminate parental rights."

c. "I acknowledge paternity. I understand that this acknowledgement of paternity cannot be revoked and may be used as evidence in any future court proceeding in which it may be relevant, including a child support proceeding. I desire to receive notice of the adoption proceeding or the proceeding to terminate parental rights."

d. "I deny paternity. I am not the father of the minor and I do not want to receive notice of any adoption proceeding, or proceeding to terminate my parental rights regarding the minor. I understand that I am waiving and surrendering any parental rights in relation to the minor in connection with the adoption of the minor. I understand that my consent to the adoption will not be required."

e. "I may or may not be the father of the minor. I do not want to receive notice of any adoption proceeding, or proceeding to terminate my parental rights regarding the minor. I understand that I am waiving and surrendering any parental rights in relation to the minor in connection with the adoption of the minor. I understand that my consent to the adoption will not be required."

3. In addition, the Notice of Plan for Adoption shall inform the putative father that:

a. if the form is not received by the Department of Children and Family Services or the attorney or child-placing agency sending it within thirty (30) days from the date that the Notice of Plan for Adoption is served, the failure to file the form shall constitute:

(1) a waiver of the right to receive further notice of any adoption proceedings or proceedings to terminate parental rights, if any, that may be filed regarding the minor,

(2) a denial of interest in the minor, which denial shall result in the court's termination of the notified party's parental rights to the minor and approval of an adoption without his consent if an adoption proceeding is filed regarding the minor and the adoption is approved by the court,

b. if the form is received by the Department of Children and Family Services or the attorney or child-placing agency sending it within thirty (30) days of the date of service of the Notice of Plan for Adoption, and it indicates that any of the options specified in subparagraphs a, b and c of paragraph 2 of this subsection have been chosen, the notified person shall have a right to receive notice of any adoption proceedings or any termination of parental rights proceedings that may be filed regarding the minor, at the address given by the putative father on the form, or at an address later provided to Department of Children and Family Services. The return of the form to the Department of Children and Family Services or the attorney or child-placing agency sending the form is the only action by which the notified person will retain the right, if any, to notice of adoption or termination of parental rights proceedings regarding the minor,

c. the filing of the enclosed form shall not, by itself, constitute the bearing of parental responsibilities, and shall not, by itself, establish parental rights,

d. the filing of the enclosed form or the failure to file the enclosed form shall not affect the duty to support the mother or child during the pregnancy or after the delivery of the minor,

e. if a petition to adopt the minor is not filed within twelve (12) months of the placement of the minor for adoption, failure to mail the enclosed notice form shall not affect the notified person's parental rights and responsibilities,

f. the failure to give such notice shall not be grounds available to the father to establish that he was denied knowledge of the pregnancy, and

g. receipt by a putative father of a Notice of Plan for Adoption or return of the form does not obligate the mother of the minor to proceed with an adoptive placement of the minor.

C. If the form is not received by the Department of Children and Family Services, the attorney or child-placing agency within thirty (30) days from the date that the Notice of Plan for Adoption is served, the failure to file the form shall constitute:

1. A waiver of the right to receive further notice of any adoption proceedings or proceedings to terminate parental rights, if any, that may be filed regarding the minor; and

2. A denial of interest in the minor, which denial shall result in the court's termination of the notified party's parental rights to the minor and approval of an adoption without his consent if an adoption proceeding is filed regarding the minor and the adoption is approved by the court, the mother's parental rights are terminated, and the child is placed for adoption without the consent of the notified party.

D. If the form is received by the Department of Children and Family Services, or the attorney or child-placing agency within thirty (30) days of the date of service of the Notice of Plan for Adoption, and it indicates that any of the options specified in subparagraphs a, b and c of paragraph 2 of subsection B of this section have been chosen, the putative father shall have a right to receive notice of any adoption proceedings or any termination of parental rights proceedings that may be filed regarding the minor, at the address of the putative father given on the form or at an address later provided to the Department of Children and Family Services. The return of the form to the Department of Children and Family Services, or the attorney or child-placing agency sending the form within thirty (30) days is the only action by which the notified person will retain the right, if any, to notice of adoption or termination of parental rights proceedings regarding the minor.

E. The filing of the enclosed form shall not, by itself, constitute the bearing of parental responsibilities, and shall not, by itself, establish parental rights.

F. The filing of the enclosed form or the failure to file the enclosed form shall not affect the duty to support the mother or minor during the pregnancy or after the delivery of the minor.

G. If a petition to adopt the minor has not been filed within twelve (12) months of placement of the minor for adoption, failure to mail the enclosed notice form shall not affect the notified person's parental rights and responsibilities.

H. The failure to give such notice shall not be grounds available to the father to establish that he was denied knowledge of the pregnancy.

I. Receipt by a putative father of a Notice of Plan for Adoption or return of the form does not obligate the mother of the minor to proceed with an adoptive placement of the minor.

### **Section 3-3.2. Notice of Filing of Paternity Action by Putative Father**

A. 1. If a putative father files a paternity action after receiving notice of, or having knowledge of, a potential adoption, the putative father shall notify the attorney for the petitioner for adoption or the child-placing agency that is placing the minor for adoption that the paternity action has been filed, including, but not limited to:

- a. the name of the court,
- b. the case number, and
- c. the date of filing.

2. If the name or location of the attorney for the petitioner for adoption or the child-placing agency placing the minor for adoption cannot be ascertained by the putative father, the putative father shall notify the petitioner for adoption. If the petitioner for adoption is also unknown to the putative father, the putative father shall notify the Department of Children and Family Services.

B. Upon a motion of the prospective adoptive parent, the court having jurisdiction over the paternity action, if it is filed in a court of the Choctaw Nation, shall allow the prospective adoptive parent to intervene in the paternity action and have the opportunity to be heard and seek custody and/or visitation. If a proceeding for adoption or for termination of parental rights of the putative father and a paternity action by the putative father regarding the same minor are both pending in the courts of the Choctaw Nation, upon motion of any party, the court having jurisdiction over the paternity action shall transfer the paternity proceeding to the court in which the adoption or termination proceeding is pending, whereupon the two proceedings may be considered.

### **Section 3-4.1. Temporary Orders of Custody**

A. 1. If a mother of a minor born out of wedlock or a mother and father of a minor born in wedlock appear before a judge of the district court prior to the birth of the minor and request that the court issue a temporary order of custody effective after the birth of the minor to a child-placing agency licensed in Oklahoma, an attorney licensed in Oklahoma, or a prospective adoptive parent who has presented to the court a favorable pre-placement home study, the court may, following the birth of the minor but prior to the execution of a consent or permanent relinquishment by such parent or parents, issue an order of temporary custody to the agency or attorney so designated or, upon review by the judge of the pre-placement home study, to the prospective adoptive parent.

2. A pre-birth request by a mother of a minor born out of wedlock or of the mother and father of a child born in wedlock for an order of temporary custody shall not be construed to be consent to the adoption of the minor or a permanent relinquishment of the minor.

3. Until such time as consent or permanent relinquishment is signed by the mother of a minor born out of wedlock or by both parents of a minor born in wedlock, pursuant to the Choctaw Nation Adoption Code, the mother of the minor born out of wedlock or either parent of the minor born in wedlock may apply to the court at any time to vacate the order of temporary custody. Upon such application, the court shall set aside the temporary custody order and order that the minor be returned to the parent.

4. The temporary order of custody issued pursuant to this subsection shall, by its own terms, expire no later than ninety (90) days after it has been issued by the court. Provided, the court upon application may grant an extension if, prior to the application, the mother of a minor born out of wedlock or the mother and father of a minor born in wedlock have executed a consent or permanent relinquishment and if the court has jurisdiction to adjudicate termination of parental rights or adoption proceedings pursuant to Section 2-1.1 of this Title.

B. 1. After a birth mother of a minor born out of wedlock executes a consent to adoption or a permanent relinquishment pursuant to Section 3-2.3 or 3-2.4 of this Title, the court may issue an order granting temporary custody of the minor to a child-placing agency licensed in the Choctaw Nation, an attorney licensed in the Choctaw Nation or, upon review by the court of the pre-placement home study, to a prospective adoptive parent.

2. After the mother and father of a minor born in wedlock execute a consent to adoption or permanent relinquishment pursuant to Section 3-2.3 or 3-2.4 of this Title, the court may issue an order granting temporary custody of the minor to a child-placing agency licensed in the Choctaw Nation, an attorney licensed in the Choctaw Nation or, upon review by the court of the pre-placement home study, to a prospective adoptive parent.

3. The temporary order of custody issued pursuant to this subsection shall, by its own terms, expire no later than ninety (90) days after it has been issued by the court. Provided, the court upon application may grant an extension if the court has jurisdiction to adjudicate termination of parental rights or adoption proceedings pursuant to Section 2-1.1 of this Title.

## **Article 4. Medical and Social Histories**

### **Section 4-1.1. Medical and Social History Report**

A. 1. Except as otherwise provided by the Choctaw Nation Adoption Code, before placing a minor for adoption, the Department or a child-placing agency shall compile a written medical and social history report of the minor to be adopted, containing:

a. all of the information required in subsections B and C of this section that is reasonably available from each biological parent, from any person who has had legal or physical custody of the minor, and from any other relative, or other person or entity who can provide information that cannot otherwise reasonably be obtained from the biological parents or a person who has had legal or physical custody of the minor,

b. a copy of all medical, dental, and psychological records of the minor obtained from anyone who has provided medical, dental, or psychological services to the minor, and

c. a copy of all educational records of the minor.

2. If a minor is not being placed for adoption through the Department or a child-placing agency, the attorney representing the adoptive parent in the adoption proceedings shall compile the report. If the adoptive parent is not represented by an attorney in a direct placement adoption, the person placing the minor for adoption shall compile the report.

B. 1. The Department shall prescribe the form to be used to record the medical history of the minor and the minor's biological relatives. The Department shall furnish the forms to any

child-placing agency, and to any person who is authorized to place a minor for adoption or who provides services with respect to placements for adoption.

2. The medical history form shall include, but is not limited to:

a. a current medical and psychological history of the minor, including information concerning:

- (1) any prenatal, neonatal, medical, dental, psychiatric or psychological diagnoses, examinations or reports,
- (2) any diseases, illnesses, accidents, allergies, and congenital or birth defects,
- (3) a record of any immunization and other health care received,
- (4) the minor's developmental history, including the age at which the minor developed basic gross motor, fine motor, language, and cognitive skills,
- (5) any behavioral problems the minor has exhibited,
- (6) any physical, sexual, or emotional abuse suffered by the minor, and
- (7) any other information necessary to determine the child's eligibility for tribal, state, or federal benefits, including subsidies for adoption and other financial, medical, or similar assistance, and

b. relevant information concerning the medical and psychological history of the minor's biological parents and relatives, including information concerning:

- (1) the gynecologic and obstetric history of the biological mother,
- (2) the health of the biological mother during her pregnancy with the minor,
- (3) the consumption of drugs, medication, or alcohol by the biological father or the biological mother at the time of conception and by the biological mother during her pregnancy with the minor,
- (4) the exposure of the biological mother to toxic substances, fumes, or occupational hazards during her pregnancy that could affect the health of the minor,
- (5) whether the minor's biological mother and biological father are related to each other and to what degree,
- (6) any history of venereal disease afflicting either biological parent,
- (7) physical characteristics of the biological parents, other children of either biological parent, and the biological grandparents, including age at the time of the minor's birth, height, weight, color of eyes, hair, skin, and other information of a similar nature,

(8) unusual physical characteristics of any biological parent, other children of either biological parent, biological grandparents, and other biological relatives,

(9) potentially inheritable genetic, psychological, or physical diseases, disorders, traits, or tendencies of the biological parents, other children of either biological parent, the biological grandparents or other biological relatives,

(10) allergies, diseases, illnesses, and other medical history of biological parents, other children of either biological parent, biological grandparents, and other biological relatives, including, but not limited to, diabetes, high blood pressure, alcoholism, heart disease, cancer, and epilepsy or predisposition thereto,

(11) any addiction or predisposition to addiction to drugs or alcohol by the biological parents, other children of either biological parent, biological grandparents, or other biological relatives,

(12) if the death of either biological parent, other children of either biological parent, or a biological grandparent has occurred, the fact of the death, the age of the decedent at the time of death, and the cause, if known,

(13) the psychological history of the biological parents, other children of either biological parent, biological grandparents, and other biological relatives, including any psychiatric or psychological evaluations, the date of the evaluation, any diagnoses, and a summary of any psychiatric or psychological findings or treatment, and

(14) any other useful or unusual health-related information that the biological parents or relatives are willing to provide.

C. The social history report regarding the minor to be adopted, the biological parents, other children of either biological parent, and other biological relatives shall include, but is not limited to:

1. The educational history of the minor including, but not limited to, the minor's enrollment and performance in school, the results of educational testing, special educational needs of the minor, if any, and the number of years of school completed at the time of the adoption;

2. The age of the minor, the biological parents, other children of either biological parent, and the biological grandparents at the time of the adoption, and the gender of the other children of either biological parent;

3. The circumstances leading to the adoption;

4. The heritage of the minor including, but not limited to, the minor's nationality, ethnic background, tribal affiliation, if any, and race;

5. The occupation of the biological parents and the biological grandparents, but not specific titles or places of employment;

6. The talents, hobbies, and special interests of the minor, the biological parents, and the biological grandparents;

7. Non-identifying information about the extended family of the biological parents and biological grandparents;

8. The level of educational and vocational achievement of the minor's biological parents and relatives and any noteworthy accomplishments;

9. An account of the minor's past and existing relationship with any individual with whom the minor has regularly lived or visited;

10. A criminal conviction, judicial order terminating parental rights, or other proceeding in which a biological parent of the minor was alleged to have abused, neglected, abandoned, or otherwise mistreated the minor to be adopted, a sibling of the minor to be adopted, or the other biological parent; and

11. A criminal conviction or delinquency adjudication of the minor.

D. A report prepared pursuant to this section must indicate who prepared the report.

E. 1. Whenever it is feasible, biological parents, legal or physical custodians of the minor, and other biological relatives should be assisted in providing information for the medical and social history report by trained professionals employed by the Department or the licensed child-placing agency, by the attorney for the adoptive parents, or by trained professionals employed by the attorney for the adoptive parent.

2. The Department or agency, attorney for the adoptive parent, or person who prepares the medical and social history report shall advise the biological parents, any other persons who submitted information for the report, and the adoptive parent that additional information about the adopted person, the biological parents, and the adopted person's genetic history that becomes available, may be submitted to the Department, agency, attorney, or person who prepared the report, or if the location is known to them, to the clerk of the court that issues the decree of adoption. Nothing in this section shall require that the location of the court in which the adoption action is filed be revealed to the biological parents, biological relatives, or other persons who submitted information for the report, if the location is not otherwise known to them.

F. The court may request that a biological parent, a present or former legal or physical custodian of the minor, a biological relative, a school, or a medical, dental, or psychological care provider for the child supply the information or records required by this section.

G. Information contained in a medical and social history report compiled pursuant to this section shall not be used as evidence in any criminal proceeding against the individual who furnished the information. This is a use immunity and not a transactional immunity.

H. 1. If the petitioner for the adoption of a minor is a stepparent of the minor and the minor will remain in the custody of one biological parent and the stepparent following the adoption, only the medical and social history of the parent whose parental rights are sought to be terminated and that parent's biological relatives must be compiled in the medical and social history report.

2. If the petitioner for the adoption of a minor is related to the child, only the medical and social history of the parent who is not related to the petitioner and the biological relatives of such parent must be completed in the medical and social history report.

## Section 4-1.2. Disclosure

A. Whenever the disclosure of medical and social history is permitted under this section, all identifying information shall be deleted from the copy of the report or record that is disclosed, unless the court, Department, agency, attorney, or person authorized to disclose information by this section has been informed in writing by both a biological parent and an adoptive parent, or prospective adoptive parent, of their mutual agreement to share identifying information. When such an agreement has been made, identifying information shall be released only to the extent specifically permitted by the written agreement. When a minor is in the legal custody of the Department, medical and social history may be disclosed to the prospective adoptive parent without any agreement and without redacting identifying information when the prospective adoptive parent is a kinship or relative caregiver for the minor, or the minor has lived in the prospective adoptive parent's home for two (2) or more years, unless the Department determines redaction of such information is in the best interest of the child.

B. As early as practicable before the first meeting of the prospective adoptive parent with a minor and before the prospective adoptive parent accepts physical custody of the minor, the Department or child-placing agency that is placing the minor for adoption, or the attorney for the adoptive parent in a direct placement adoption, or the person who is placing the minor for adoption in a direct placement adoption in which the adoptive parent is not represented by an attorney, shall furnish to the prospective adoptive parent a copy of the medical and social history report, containing all of the medical and social history information and records regarding the minor reasonably available at that time. If placement of the minor with the prospective adoptive parent does not subsequently occur, the prospective adoptive parent shall return the medical and social history report to the Department, agency, attorney, or other person who furnished it to the prospective adoptive parent.

C. Before a hearing on the petition for adoption, the Department or child-placing agency that placed the minor for adoption, or the attorney for the adoptive parent in a direct placement adoption, or the person who placed the minor for adoption in a direct placement adoption in which the adoptive parent is unrepresented, shall furnish to the adoptive parent a supplemental written report containing information or records required by Section 5-1.1 of this Title, which was unavailable before the minor was placed for adoption, but which becomes reasonably available to the Department, agency, attorney, or person who placed the minor after the placement.

D. A petition for adoption may not be granted until a copy of the medical and social history report is filed with the court. If the court finds that information or records required by Section 5-1.1 of this Title cannot be obtained by the reasonable efforts of the Department or child-placing agency placing the minor, or by the attorney for the adoptive parent in a direct placement adoption, or by the person who placed the minor for adoption in a direct placement adoption in which the adopted parent is unrepresented, the court may accept the report and proceed with the adoption.

E. 1. Any additional information about an adopted person, the adopted person's biological parents, or the adopted person's genetic history that is submitted to the clerk of the district court that issues the final decree of adoption, before or after the final decree of adoption is issued, shall be made a part of the court's permanent record of the adoption, pursuant to Section 5-1.1 of this title. No filing fee shall be charged for filing this supplemental information with the court clerk.

2. An adoptive parent, a biological parent, or an adult adopted person may file with the clerk of the district court that issued the final decree of adoption a notice of the individual's current mailing address. A legal guardian of an adopted minor may file with the clerk of the district court that issued the final decree of adoption a notice of the guardian's current mailing address and proof of legal guardianship. No filing fee shall be charged for filing this notification of address or guardianship with the court clerk.

3. Upon filing with the court clerk, supplemental information concerning the biological parents or the adopted person's genetic history, the court clerk shall send notice by ordinary mail, at the most recent address, if any, listed in the court records, to the adoptive parent or legal guardian of a minor adopted person or to the adult adopted person. The notice shall state that supplemental information has been received and is available from the court clerk upon request.

4. Upon filing with the court clerk, supplemental information concerning the adopted person that may be genetically significant for a biological parent or biological relative, the court clerk shall send notice by ordinary mail, at the most recent address, if any, listed in the court records, to the biological parent. The notice shall state that supplemental information has been received and is available from the court clerk upon request.

F. If any additional information about an adopted person, the adopted person's biological parents, or the adopted person's genetic history is submitted to the Department, agency, attorney, or person who prepared the original report, the Department, agency, attorney, or person shall:

1. Retain this supplemental information with their other records of the adoption for as long as these records are maintained;

2. File a copy of the supplemental information with the clerk of the court that issued the decree of adoption, to be made a part of the court's permanent record of the adoption pursuant to subsection E of this section; and

3. Furnish a copy of the supplemental information to:

3. Furnish a copy of the supplemental information to:

- a. the adoptive parent or current legal guardian of the child, if the adopted person is under the age of eighteen (18), or the adult adopted person, if the location of the adoptive parent, guardian or adult adopted person is known to the Department, agency, attorney, or person, or

- b. the biological parents, if the supplemental information is submitted by an adoptive parent or adopted person and concerns genetically significant information about the adopted person that is relevant to the health or childbearing decisions of the biological parents or other biological relatives, if the location of the biological parents is known to the Department, agency, attorney, or person.

G. 1. The clerk of the district court that issues the final adoption decree or the Department, agency, attorney, or person who prepared the medical and social history report shall provide a copy of the medical and social history report and any additional medical and social history information in its possession to the following persons upon request:

- a. the adoptive parent or legal guardian of a minor adopted person,

- b. an adopted person who has attained eighteen (18) years of age, and

c. an adult whose biological mother's and biological father's parental rights were terminated and who was never adopted.

2. The clerk of the district court that issues the final adoption decree or the Department, agency, attorney, or person who prepared the medical and social history report shall provide a copy of the medical report and any additional medical information in its possession to the following persons upon request:

a. an adult direct descendant of a deceased adopted person or of a deceased person whose biological mothers and biological father's parental rights were terminated and who was never adopted, and

b. the parent or guardian of a minor direct descendant of a deceased adopted person or of a deceased person whose biological mothers and biological father's rights were terminated and who was never adopted.

3. The clerk of the District Court that issues the final adoption decree or the Department, child-placing agency, attorney, or person who prepared the medical and social history report shall provide to the following persons upon request, a copy of genetically significant supplemental information about an adopted person, or about a person whose parents' parental rights were terminated, which became available subsequent to the issuance of the decree of adoption or termination order:

a. a biological parent or biological relative of an adopted person, and

b. a biological parent or biological relative of a person whose biological mothers and biological father's rights were terminated and who was never adopted.

4. The clerk of the district court that issues the final adoption decree shall provide a copy of any medical and social history information contained in the court records to the Department, or child-placing agency that placed the minor for adoption or to the attorney representing the adoptive parent upon request.

5. A copy of the report and supplemental medical and social history information may not be furnished under this subsection to a person who cannot furnish satisfactory proof of identity and legal entitlement to receive a copy.

6. A person requesting a copy of a report or other medical and social history information under this subsection shall pay only the actual and reasonable costs of providing the copy.

H. The Department, a child-placing agency, or an attorney for an adoptive parent who facilitated or participated in an adoption proceeding prior to the effective date of this act shall be subject to the same requirements and duties set forth in subsections F and G of this section that are required in those subsections for the Department, agency, or attorney who prepared the medical or social history.

## **Article 5. Adoption Proceedings**

### **Section 5-1.1. Confidential Character of Hearings and Records – Release – Exceptions - Misdemeanor**

A. Unless otherwise ordered by the district court exercising jurisdiction over the adoption proceeding, all hearings held in proceedings pursuant to the Choctaw Nation Adoption Code shall be confidential and shall be held in closed court without admittance of any person other than interested parties and their counsel.

B. All papers, records, and books of proceedings in adoption cases and any papers, records, and books relating to such proceedings:

1. Shall be kept as a permanent record of the court and maintained in a separate file by the court clerk; and

2. Shall be confidential and shall not be open to inspection or copy except as authorized in Sections 4-1.2, 5-6.6, 8-1.2 and 8-1.3 of this Title or upon order of a court of record for good cause shown.

C. Upon application and notice to the person or agency in whose possession the records being sought are held, and for good cause being shown, any court of record may, by written order reciting its findings, permit the necessary information to be released or may restrict the purposes for which it shall be used. The findings shall include the reasons the information being sought cannot be obtained through the methods authorized by Sections 4-1.2, 5-6.6, 8-1.2 and 8-1.3 of this Title.

D. The provisions of this section shall not prohibit persons employed by the court, the Department of Children and Family Services, a child-placing agency, an attorney participating or assisting in a direct placement adoption or any physician, minister, or other person or entity assisting or participating in an adoption from providing partial or complete identifying information between a biological parent and prospective adoptive or adoptive parent if a biological parent and a prospective adoptive or adoptive parent mutually agree to share specific identifying information and each gives written, signed notice of their agreement to the court, the Department of Children and Family Services, the child-placing agency, or any attorney participating or assisting in the direct placement adoption pursuant to the Choctaw Nation Adoption Code.

E. Any person in charge of adoption records or having access to adoption records or information who discloses any information, including, but not limited to, all records and reports relevant to the case and any records and reports of examination of the minor's parent or other custodian pertaining to an adoption proceeding, contrary to the provisions of this section, upon conviction thereof, shall be guilty of a misdemeanor.

### **Section 5-1.2. Appointment of Attorney and Guardian Ad Litem**

A. 1. In a proceeding pursuant to the Choctaw Nation Adoption Code, the court shall appoint an attorney for a minor in a contested proceeding pursuant to the Choctaw Nation Adoption Code and may appoint an attorney for a child in an uncontested proceeding or appoint an attorney for the child to examine all expenses and attorney fees presented to the court for approval.

2. The attorney shall be charged with the representation of the child. To that end, the attorney shall make such further investigation as the attorney deems necessary to ascertain

the facts, to interview witnesses, examine and cross-examine witnesses at the preliminary hearing and trial, make recommendations to the court, and participate further in the proceedings to the degree appropriate for adequately representing the child.

3. The attorney shall be given access to all reports relevant to the case and to any reports of examination of the child's parents or other custodian made pursuant to this section.

4. Upon approval of the court, the attorney may be allowed a reasonable fee for services provided by this section.

B. 1. The court may appoint a separate guardian ad litem for the minor in a contested proceeding and shall appoint a separate guardian ad litem upon the request of a party, the minor, the attorney of the minor, prospective adoptive parent, or a person or agency having physical or legal custody of the child.

2. The guardian ad litem shall not be a tribal prosecutor, an employee of the office of the tribal prosecutor, an employee of the court, or an employee of any tribal agency having duties or responsibilities towards the minor.

3. The guardian ad litem shall be appointed to objectively advocate on behalf of the minor and act as an officer of the court to investigate all matters concerning the best interests of the minor. In addition to other duties required by the court and as specified by the court, a guardian ad litem shall have the following responsibilities:

- a. review relevant documents, reports and other information,
- b. meet with and/or observe the child,
- c. consider the child's wishes, as appropriate,
- d. interview parents, caregivers, and others with knowledge relevant to the case,
- e. advocate for the minor's best interests by participating in appropriate aspects of the case and advocating for appropriate community and other services when necessary,
- f. maintain the confidentiality of information related to the case,
- g. monitor the minor's best interests throughout any judicial proceeding, and
- h. advise the court of his or her findings and recommendations, if any, and the facts upon which they are based.

4. The guardian ad litem shall be given access to the court file and access to all records and reports relevant to the case and to any records and reports of examination of the minor's parent or other custodian, as specified by the court, subject to such protective orders regarding identifying information as the court deems advisable.

5. Any person participating in a judicial proceeding as a guardian ad litem shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any civil liability that otherwise might be incurred or imposed.

### **Section 5-1.3. Court Clerk or Deputy May Affix Signature of Judge to Order and Notice of Hearing**

Whenever the Choctaw Nation Adoption Code requires that an order setting the date of hearing and giving notice thereof be signed by a judge, the judge may, by judicial order, provide that such order or notice may be signed by the court clerk or the deputy of the court clerk affixing the signature of the court clerk or deputy beneath the place where the judge's name appears followed with the word "by:" and then followed with the signing officer's title.

### **Section 5-1.4. Priority on Docket--Proceedings to be Expedited**

Any petitions filed with the court pursuant to the Choctaw Nation Adoption Code when docketed shall have priority over all cases pending on said docket. Any other proceedings concerning the adoption of a child shall be expedited by the court.

### **Section 5-1.5. Visitation Agreements Between Child, Adoptive Parents and Birth Relative**

A. If a child has resided with a birth relative before being adopted, the adoptive parents and that birth relative may enter into an agreement pursuant to the provisions of this section regarding communication with, visitation of or contact between the child, adoptive parents and the birth relative after or during pendency of the adoption proceedings.

B. For purposes of this section, "birth relative" means a parent, stepparent, grandparent, great grandparent, brother, sister, uncle, aunt, brother-in-law or sister-in-law, niece, nephew, first or second cousins of a minor adoptee. This relationship may be by blood or marriage.

C. 1. An agreement regarding communication with, visitation of, or contact between the child, adoptive parents and a birth relative is not legally enforceable unless the terms of the agreement are contained in a written court order entered in accordance with this section.

2. An order must be sought and shall be filed in the adoption action.

3. The court shall not enter a proposed order unless the terms of the order have been approved in writing by the prospective adoptive parents and the birth relative who desires to be a party to the agreement.

D. The court shall not enter a proposed order unless the court finds that the communication, visitation or contact between the child, the adoptive parents and the birth relative as agreed upon and contained in the proposed order would be in the child's best interests and poses no threat to the safety of the child or integrity of the adoptive placement.

E. Failure to comply with the terms of an agreed order regarding communication, visitation or contact that has been entered by the court pursuant to this section shall not be grounds for:

1. Setting aside an adoption decree; or

2. Revocation of a written consent to an adoption after that consent has become irrevocable.

F. 1. An agreed order entered pursuant to the provisions of this section may be enforced or modified by filing a petition or motion with the court that includes a certified copy of the order

granting the communication, contact, or visitation, but only if the petition or motion is accompanied by an affidavit with supporting documentation that the parties have mediated or attempted to mediate any dispute under the agreement or that the parties agree to a proposed modification.

2. The prevailing party may be awarded reasonable attorney fees and costs.

3. The court shall not modify an agreed order pursuant to this section unless it finds that the modification is necessary to serve the best interests of the child, and:

a. the modification is agreed to by the adoptive parent and the birth relative, or

b. exceptional circumstances have arisen since the agreed order was entered that justify modification of the order.

### **Section 5-2.1. Pre-Adoption Termination of Parental Rights**

A. 1. Prior to the filing of a petition for adoption, a child-placing agency, attorney, or prospective adoptive parent to whom a parent having legal custody has executed a consent to adoption or has permanently relinquished a minor born out of wedlock may file a petition with the district court for the termination of the parental rights of a putative father or a parent of the child.

2. The affidavit of expenses required by subsection A of Section 5-3.2 of this Title is not required to be attached to a petition filed pursuant to this section, nor must it be filed prior to issuance of an order terminating parental rights entered in a proceeding brought under this section.

B. 1. Notice of the hearing on the petition to terminate parental rights and a copy of the petition shall be served upon such putative father or a parent in the same manner as summons is served in civil cases, not less than fifteen (15) days prior to the hearing.

2. The notice shall contain the name of the putative father or parent, or if unknown, the name of the minor, the date of birth of the minor, the date of the hearing, and the ground or grounds for which termination of parental rights is sought. The notice shall apprise the putative father or parent of his or her legal rights and shall include a clear statement that failure to appear at the hearing shall constitute a denial of interest in the minor which denial may result, without further notice of this proceeding or any subsequent proceeding, in the termination of his or her parental rights and the transfer of the care, custody or guardianship of the minor or in the adoption of the minor.

3. If the identity or whereabouts of a putative father or parent is unknown, the court must determine whether the putative father or parent can be identified or located. Following an inquiry pursuant to Section 5-4.3 of this Title, if the court finds that the identity or whereabouts of the putative father or parent cannot be ascertained, and this fact is attested to by affidavit of the consenting or permanently relinquishing person or the legal custodian or guardian of the child, it shall order that notice be given by publication and, if the identity is known, that a copy be mailed to the last-known address of the putative father or parent. The notice shall be published once pursuant to the laws relating to service of notice by publication and the hearing shall not be held for at least fifteen (15) days after publication of the notice. When notice is given by publication,

the order terminating parental rights shall not become final for a period of fifteen (15) days from the date of the order.

4. A putative father or parent may waive the right to notice pursuant to this section. The waiver shall be in writing and shall include a statement affirming that the person signing the waiver understands that the waiver shall constitute grounds for the termination of the parental rights of such person pursuant to the provisions of this section and Section 5-4.2 of this Title. A putative father or legal or biological father may also waive his right to notice pursuant to this section, by signing an extrajudicial consent pursuant to Section 3-2. 6 of this Title, or by waiving notice on a form filed with the Department of Children and Family Services, or by failing to register with the Department of Children and Family Services after receiving a Notice of Plan for Adoption pursuant to Section 3-3.1 of this Title.

C. When a putative father or parent appears at the hearing and desires counsel but is indigent and cannot for that reason employ counsel, the court shall appoint counsel.

D. At the hearing on the petition to terminate parental rights brought pursuant to this section, the court may, if it is in the best interest of the minor:

1. Accept a permanent relinquishment or consent to adoption executed by the putative father or parent of the minor pursuant to Sections 3-2.1, 3-2.3 and 3-2.4 of this title; or

2. Terminate any parental rights which the putative father or parent may have upon any of the grounds provided in Section 5-4.2 of this Title for declaring consent unnecessary.

E. 1. If the court at the hearing determines that the putative father is the biological father of the minor, that the adoption requires the consent of the putative father, that the putative father will not consent, and the court does not terminate the parental rights of the putative father or does not terminate the rights of the other parents, then the court shall schedule a separate hearing to issue an appropriate order for the legal and physical custody of the minor according to the best interests of the minor if the court has jurisdiction to issue a custody order. Provided, no such hearing shall be scheduled if a preexisting custody order remains in effect.

2. The court shall certify that the child-placing agency or the attorney who filed the petition to terminate parental rights, the putative father, the parent, and any prospective adoptive parents have received notice of the date of the custody hearing at least fifteen (15) days prior to the date of the hearing. A parent having legal custody who has signed a consent or permanent relinquishment must be served with notice of the date of the custody hearing, by the party who filed the petition for termination, in the same manner as summons is served in civil cases at least fifteen (15) days prior to the date of the hearing.

3. Upon motion to intervene, the court shall join any person or entity who has standing and is entitled to notice under paragraph 2 of this subsection who is not already a party to the proceeding.

4. At the hearing, the court may award custody to the biological mother, the biological father, the biological parents, if they are married, a parent, the prospective adoptive parent, or the Department of Children and Family Services or other licensed child-placing agency if the Department or agency had legal custody when the petition was filed, according to Section 21.1 of this Title, in the best interests of the child.

5. The child shall be represented at this hearing by an attorney pursuant to Section 5-1.2 of this Title.

F. The court shall terminate the rights of a putative father or parent if the person fails to appear at the hearing on the petition to terminate parental rights or if a waiver of notice pursuant to paragraph 4 of subsection B of this section has been filed with the court.

G. No order of the court shall be vacated, set aside, or annulled upon the application of any person who was properly served with notice in accordance with this section but failed to appear unless the applicant can establish by clear and convincing evidence that such failure to appear was due to unavoidable circumstances. Such application must be filed within ten (10) days of the date of the hearing at which the applicant failed to appear. No order of the court shall be vacated, set aside, or annulled upon the application of any person who waived notice pursuant to paragraph 4 of subsection B of this section.

H. A proceeding pursuant to this section for termination of parental rights shall be heard by the court without a jury.

I. An appeal may be taken from any final order, judgment, or decree rendered pursuant to this section to the Court of Appeals by any person aggrieved thereby, in the manner provided for appeals from the court as provided in this subsection.

1. In an appeal concerning the termination of parental rights pursuant to this section, the designation of record by the appellant shall be filed in the trial court within ten (10) days after the date of the judgment. The counter designation of record by the appellee shall be filed in the trial court ten (10) days after designation of record by the appellant is filed in the trial court.

2. All appeals of cases concerning the termination of parental rights pursuant to this section shall be initiated by filing a petition in error in the Court of Appeals within thirty (30) days of the filing of the order, judgment, or decree appealed from. The record on appeal shall be completed within thirty (30) days from the filing of the petition in error. Any response to the petition in error shall be filed within twenty (20) days from the filing of the petition in error.

3. The briefing schedule is established as follows:

a. the brief in chief of the appellant shall be filed twenty (20) days after the trial court clerk notifies all parties that the record is complete and such notice has been filed in the office of the Clerk of the Court of Appeals,

b. an answer brief of the appellee shall be filed fifteen (15) days after the brief in chief of the appellant is filed, and

c. a reply brief of the appellant may be filed within ten (10) days after the answer brief of the appellee is filed.

answer brief of the appellee of the appellant may be filed within ten (10) days after the

J. The pendency of an appeal shall not suspend the order of the district court regarding a minor, nor shall it remove the minor from the custody of that court or of the person, institution, or agency to whose care such minor has been committed, unless the Court of Appeals shall so order.

K. Any appeal when docketed should have priority over all cases pending on said docket. Adjudication of the appeals and in any other proceedings concerning the relinquishment of the

child or the termination of parental rights pursuant to this section shall be expedited by the Court of Appeals.

L. 1. The pre-adoption termination of parental rights pursuant to this section terminates the parent-child relationship, including the right of the parent to the custody of the child and the right of the parent to visit the child, the right of the parent to control the training and education of the child, the necessity for the parent to consent to the adoption of the child, the right of the parent to the earnings of the child, and the right of the parent to inherit from or through the child., provided that this subsection shall not in any way affect the right of the child to inherit from the parent.

2. Termination of parental rights shall not terminate the duty of the putative father or parent whose rights have been terminated to support the child unless the court determines the person is not the parent. The duty of a putative father or parent to support the minor child shall not be terminated until such time as a final decree of adoption has been entered.

### **Section 5-3.1. Contents**

A. A petition for adoption shall be verified by the petitioner, and shall specify:

1. The full names, ages, and places of residence of the petitioner or petitioners and, if married, the place and date of the marriage;

2. When the petitioner acquired or intends to acquire custody of the minor and from what person or agency custody is to be acquired;

3. The date, place of birth, gender, and race of the minor;

4. The name used for the minor in the proceeding and, if a change in name is desired, the new name requested;

5. That it is the desire of the petitioner that the relationship of parent and child be established between the petitioner and the minor;

6. A full description and statement of value of all property owned or possessed by the minor, if any;

7. The name or relationship of the minor to any individual who has executed a consent, extrajudicial consent for adoption, or a permanent relinquishment to the adoption, and the name or relationship to the minor of any individual whose consent, extrajudicial consent for adoption or permanent relinquishment may be required, and any fact or circumstance that may excuse the lack of consent;

8. That a previous petition by the petitioner to adopt has or has not been made in any court, and its disposition;

9. That a copy of the pre-placement home study completed pursuant to subsection A of Sections 5-5.1 and 5-5.3 of this Title is attached to or filed with the petition. If the pre-placement home study has not been completed, the petition shall specify that a waiver has been signed by a court pursuant to subsection B of Section 5-5.1 of this title, and that a copy of the waiver is attached to or filed with the petition; or shall include a statement regarding why the

pre-placement home study is not required pursuant to subsection C of Section 5-5.1 of this title; or shall specify that the minor is not yet in the physical custody of the petitioner;

10. Whether any other home study or professional custody evaluation has been conducted regarding one or both of the petitioners, whether performed for this adoption or for any other purpose. If such a study or evaluation has been completed, a copy of the study or evaluation shall be attached to the petition, if reasonably available;

11. A description of any previous court order, litigation, or pending proceeding known to the petitioner concerning custody of, or visitation with the minor or adoption of the minor, and any other fact known to the petitioner and needed to establish the jurisdiction of the court;

12. The county in which the minor is currently residing, the places where the minor has lived within the last five (5) years, and the name and present addresses, if known, of the persons with whom the minor has lived during that period, and the name of any person, if known, not a party to the proceeding who has physical custody of the minor or claims to have custody or visitation rights with respect to the minor; and

13. A statement that to the best of the petitioner's actual knowledge and belief, as of the date of filing, the minor is or is not an Indian child and identification of the minor's known or suspected Indian tribe, if any.

B. Any written consent, extrajudicial consent for adoption or permanent relinquishment required by the Choctaw Nation Adoption Code may be attached to the petition, or may be filed after the filing of the petition.

### **Section 5-3.2. Costs, Funds or Monies Expended by Adoptive Family--Disclosure Statement**

A. 1. An affidavit shall be attached to the petition for adoption, or may be filed after the filing of the petition for adoption, but prior to the final decree of adoption, which discloses to the court all of the costs, funds, or monies expended by the adoptive family or expected to be expended in connection with the adoption of a minor.

2. No final decree of adoption shall be entered until the court is satisfied that all costs and expenses have been disclosed, are reasonable, and that the costs and expenses do not violate the provisions of subsection B of this Section. Upon its review of the affidavit of monies expended, the court shall in writing disapprove any expenditure that the court deems unreasonable or in violation of any tribal or federal child trafficking statutes and, to the extent necessary to comply with tribal and federal law, shall order reimbursement of any consideration given in violation of any tribal or federal child trafficking statutes. Payments made pursuant to this section shall not be a violation of tribal or federal child trafficking statutes.

B. 1. Except as otherwise specifically provided by law, the following list of adoption-related costs and expenses specified in this paragraph may be deemed proper items for a person to pay in connection with an adoption:

a. reasonable attorney fees and court costs,

b. reasonable medical expenses for birth mother and minor to be adopted,

c. reasonable adoption counseling expenses for birth parents before and after the birth of the minor, not to exceed six (6) months from placement of the minor,

d. reasonable fees of a licensed child-placement agency,

e. reasonable living expenses for housing, food, clothing, utilities, and other necessities of the birth mother that are incurred during the adoption planning process or during the pregnancy, not to exceed two (2) months after the birth of the minor or after the consent or relinquishment of the birth mother,

f. reasonable costs for travel or transportation of the birth mother or minor as same is incurred for medical or adoption placement needs,

g. reasonable expenses for a home study, and

h. reasonable expenses legally required by any governmental entity related to the adoption of a minor.

2. In addition, all expenses approved by the court should be commensurate with other customary fees for similar services by persons of equivalent experience and training where the services are performed. Any services provided outside the Choctaw Nation shall be allowed in an amount as if the services had been performed within the Choctaw Nation of Oklahoma.

3. The provisions of this subsection shall apply to living and transportation expenses incurred after the biological mother of the minor contacts the child-placing agency or attorney for adoption services.

4. The provisions of this subsection shall not prohibit a court from extending any time period, or including any additional costs and expenses in connection with an adoption other than those specified in this subsection based on unusual circumstances or need.

5. Except as otherwise ordered by the court, except for good cause shown, all payments made pursuant to this section shall be paid directly to the third-party provider of services or goods.

C. Any person desiring to pay living and transportation expenses to or on behalf of a birth parent is authorized to expend an initial amount not to exceed Five Hundred Dollars (\$500.00) for such costs and expenses without first obtaining court approval as required by paragraph 1 of subsection D of this section. Any such costs and expenses shall be disclosed as is otherwise required by the Choctaw Nation Adoption Code.

C. 1. Except for the amount authorized by subsection C of this section, the payment of any living or transportation expenses for benefit of the birth mother as authorized in subparagraphs e and f of paragraph 1 of subsection B of this Title shall be approved in advance by the court.

2. The person, attorney, or licensed child-placing agency desiring to pay living or transportation expenses on behalf of a birth mother which exceed the amount in subsection C of this section shall file a petition for an order approving payment of adoption-related expenses.

3. The petition for an order approving payment of adoption-related expenses shall be filed in the district court, as provided in Section 2-1.2 of this Title.

4. The petition shall be captioned: “In the matter of Baby (name).” The petition shall include a listing of all anticipated living or transportation expenses to be paid on behalf of the birth mother for which court approval is being sought. If additional expenditures not previously authorized by the court are needed on behalf of the birth mother, an amended petition may be filed with the court.

5. The petition shall be heard by the court within ten (10) days of filing. The court clerk shall charge the same cost for a petition for payment of expenses as is charged for the filing of an adoption petition. In the event an adoption petition is later filed in the district court, the adoption petition shall be filed as an amended petition within the same case in which payment for expenses was approved and no additional court costs shall be required. In the event a petition for pre-adoption termination of parental rights is later filed in the district court, the court clerk shall not assess an additional filing fee and may use the same case number as for the petition for adoption.

6. Any order authorizing payment shall be attached to a petition for adoption. If no adoption petition is filed, the court shall retain jurisdiction to enter any orders deemed appropriate regarding the reimbursement of costs and expenses paid. If the child is placed for adoption outside the Choctaw Nation of Oklahoma, any such order shall be submitted to the Interstate Compact of the Placement of Children and to the court in the other tribe or state where the petition for adoption is to be filed.

D. 1. In addition to the adoptive family affidavit requirement of subsection A of this section, a Disclosure Statement of Adoption-related Costs and Expenditures shall be prepared in writing by the person, attorney, or child-placing agency in a direct placement adoption. The Disclosure Statement of Adoption-related Costs and Expenditures shall include a declaration of all fees, expenses, and costs charged or expected to be charged for the adoption including, but not limited to, the following:

- a. retainer fees, the hourly rate, and the number of hours billed for the adoption,
- b. any fee charged for pre-placement or other home studies of any prospective birth parents, regardless of whether the home study was performed by an outside agency,
- c. any costs, fees, or expenses, or any other thing of value paid to or on behalf of the birth parents related to the adoption of a minor by any party other than the adoptive parents, and
- d. any other fees and expenses related to the adoption not otherwise specifically listed in this section.

2. The Disclosure Statement of Adoption-related Costs and Expenditures containing true and accurate information shall be filed before the final decree of adoption is ordered in each adoption of a minor in the Choctaw Nation. The statement shall be a public record; provided, that any information identifying the person, attorney, or child-placing agency in the direct adoption shall not be made public. In addition, the identity of the child, the adoptive parents, and the birth parents shall not be made public.

#### **Section 5-4.1. Application – Notice – Hearing – Order - Appeal**

A. If a consent to adoption or permanent relinquishment for adoption has not been obtained from both parents of a minor who is the subject of a petition for adoption, and the rights of the non-consenting parent or parents have not previously been terminated, the petitioner for adoption, a consenting parent, or a legal guardian or legal custodian of the minor to be adopted must file an application to the court stating the reason that the consent or relinquishment of the parent or parents is not necessary. In the alternative, if the non-consenting parent is a putative father of a minor born out of wedlock, the petitioner for adoption, a consenting parent, or a legal guardian or legal custodian of the minor may file an application to terminate the parental rights of the putative father. The grounds for terminating a putative father pursuant to this section shall be identical to the grounds for permitting an adoption without the consent of a parent, pursuant to Section 5-4.2 of this Title.

B. A hearing on an application for adoption without consent or an application to terminate parental rights cannot be combined with the hearing on the application for a final decree of adoption. For good cause shown, a hearing on the application for a final decree of adoption may be heard as early as the same day as a hearing on an application to terminate parental rights, without prejudice to the rights of any parties to appeal from the order terminating parental rights.

~~Section 5-4.3. The court shall give notice of the hearing on the application for adoption without consent or the application to terminate parental rights to the parent or putative father of the child to be adopted.~~

2. The notice shall contain the name of the parent, putative father, or if the father is unknown, the name of the child, date of birth of the child, the date of the hearing, and the ground or grounds for which application for adoption without consent or relinquishment or termination of parental rights is sought. The notice shall apprise the parent or putative father of the parent's legal rights and shall include a clear statement that failure to appear at the hearing shall constitute a denial of interest in the child, which denial may result, without further notice of this proceeding or any subsequent proceeding, in the granting of the application for adoption without consent or permanent relinquishment or in the termination of the putative father's parental rights and in the child's adoption.

3. If the identity or whereabouts of a parent or putative father are unknown, the court must determine whether the parent or putative father can be identified or located. Following an inquiry pursuant to Section 5-4.3. of this Title, if the court finds that the identity or whereabouts of the putative father cannot be ascertained, and this fact is attested to by affidavit of the consenting parent, legal guardian or legal custodian of the minor, it shall order that notice be given by publication and, if the identity is known, that a copy be mailed to the last-known address of the parent or putative father. The notice shall be published once pursuant to the laws relating to the service of notice by publication in the county in which the petition to adopt is filed, and the hearing shall not be held for at least fifteen (15) days after publication of the notice. When notice is given by publication, an order terminating parental rights shall not become final for a period of fifteen (15) days from the date of the order.

4. A parent or putative father may waive such person's right to notice pursuant to this section. The waiver, signed by the parent or putative father, shall include a statement affirming that the person signing the waiver understands that the waiver shall constitute grounds for ordering adoption without consent of the parent or for the termination of the parental rights of a putative father pursuant to the provisions of this section and Section 5-4.2 of this Title. A putative father may waive his right to notice under this section, by signing an extrajudicial consent pursuant to Section 3-2.6. of this Title, or by waiving notice on a form filed with the Department of Children and Family Services, or by failing to register with the Department of Children and Family Services after receiving a Notice of Plan for Adoption pursuant to Section 3-3.1 of this Title.

D. When a parent or putative father appears at the hearing and desires counsel but is indigent and cannot for that reason employ counsel, the court shall appoint counsel.

E. At the hearing on an application to permit adoption without the consent or relinquishment of a parent, the court may determine whether the minor is eligible for adoption pursuant to Section 5-4.2. of this Title. At the hearing on an application to terminate the parental rights of a putative father, the court may, if it is in the best interests of the minor, determine that the consent of the putative father to the adoption of the minor is not required and terminate any parental rights which the putative father may have, as provided in Section 5-4.2. of this Title.

F. The court shall terminate the parental rights of a putative father if he fails to appear at the hearing on the application to terminate his parental rights or if he has waived notice pursuant to paragraph 4 of subsection C of this section.

G. A proceeding pursuant to this section for determination of necessity of parental consent or for termination of parental rights shall be heard by the court without a jury.

H. No order of the court shall be vacated, set aside, or annulled upon the application of any person who was properly served with notice in accordance with this section but failed to appear, unless the applicant has established by clear and convincing evidence that such failure to appear was due to unavoidable circumstances. Such application must be filed within ten (10) days of the date of the hearing at which the applicant failed to appear. No order of the court shall be vacated, set aside, or annulled upon the application of any person who waived notice pursuant to paragraph 4 of subsection C of this section.

I. 1. a. An appeal may be taken from any final order, judgment, or decree terminating parental rights rendered pursuant to this section to the Court of Appeals by any person aggrieved thereby, in the manner provided for appeals from the court as provided in this subsection.

b. An appeal from an order determining a child eligible for adoption which does not terminate parental rights may be taken in the same manner provided for appeals from the court as provided in this subsection. The failure of a parent to appeal from an order declaring a child eligible for adoption without consent of the parent which does not terminate parental rights shall not preclude such parent from asserting error in the order after the final decree is rendered.

2. In an appeal concerning the termination of parental rights for purposes of adoption pursuant to this section or from an order determining a child eligible for adoption which does not terminate parental rights pursuant to this section, the appellant's designation of record shall be filed in the trial court within ten (10) days after the date of the judgment or order. Appellee's counter designation of record shall be filed in the trial court ten (10) days after appellant's designation of record is filed in the trial court.

3. All appeals of cases concerning the termination of parental rights for purposes of adoption or an order determining a child eligible for adoption which does not terminate parental rights pursuant to this section shall be initiated by filing a petition in error in the Court of Appeals within thirty (30) days of the filing of the order, judgment, or decree appealed from. The record on appeal shall be completed within thirty (30) days from the filing of the petition in error. Any response to the petition in error shall be filed within twenty (20) days from the filing of the petition in error.

4. The briefing schedule is established as follows:

- a. appellant's brief in chief shall be filed twenty (20) days after the trial court clerk notifies all parties that the record is complete and such notice has been filed in the office of the Clerk of the Court of Appeals,
- b. appellee's answer brief shall be filed fifteen (15) days after the appellant's brief in chief is filed, and
- c. appellant's reply brief may be filed within ten (10) days after the appellee's answer brief is filed.

J. Any appeal when docketed should have priority over all cases pending on said docket. Adjudication of appeals and any other proceedings concerning the termination of parental rights or the determination that a child is eligible for adoption without consent which does not terminate parental rights pursuant to this section shall be expedited by the Court of Appeals.

K. The pendency of an appeal shall not suspend the order of the district court regarding a minor, nor shall it remove the minor from the custody of that court or of the person, institution, or agency to whose care such minor has been committed, unless the Court of Appeals shall so order.

L. 1. The termination of parental rights terminates the parent-child relationship, including the parent's right to the custody of the child and the parent's right to visit the child, the parent's right to control the child's training and education, the necessity for the parent to consent to the adoption of the child, the parent's right to the earnings of the child, and the parent's right to inherit from or through the child provided that this subsection shall not in any way affect the right of the child to inherit from the parent.

2. Termination of parental rights pursuant to this section shall not terminate the duty of either parent to support the minor child of such parent. The duty of the parent to support the minor child shall not be terminated until such time as a final decree of adoption has been entered.

3. A determination that the consent to adoption is not required from the parent of a minor shall not, by itself, act to relieve such parent of the obligation to provide for the support of the minor as otherwise required by law. The duty of the parent to support the minor child shall not be terminated until such time as a final decree of adoption has been entered.

#### **Section 5-4.2. Exceptions to Requirement of Parental Consent**

A. Consent to adoption is not required from a putative father of a minor who, at the hearing provided for in Section 5-2.1 or 5-4.1 of this Title, fails to prove he is the father of the child.

B. Consent to adoption is not required from a parent who, for a period of twelve (12) consecutive months out of the last fourteen (14) months immediately preceding the filing of a petition for adoption of a child or a petition to terminate parental rights pursuant to Section 5-2.1 of this Title, has willfully failed, refused, or neglected to contribute to the support of such minor:

1. In substantial compliance with an order entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support; or

2. According to such parent's financial ability to contribute to such minor's support if no provision for support is provided in an order. For the purposes of this section, support for the minor shall benefit the minor by providing a necessity. Payments that shall not be considered support shall include, but are not limited to:

- a. genetic and drug testing,
- b. supervised visitation,
- c. counseling for any person other than the minor,
- d. court fees and costs,
- e. restitution payments, and
- f. transportation costs for any person other than the minor, unless such transportation expenses are specifically ordered in lieu of support in a court order.

The incarceration of a parent in and of itself shall not prevent the adoption of a minor without consent.

C. Consent to adoption is not required from a father or putative father of a minor born out of wedlock if:

1. The minor is placed for adoption within ninety (90) days of birth, and the father or putative father fails to show he has exercised parental rights or duties towards the minor, including, but not limited to, failure to contribute to the support of the mother of the child to the extent of his financial ability during her term of pregnancy; or

2. The minor is placed for adoption within fourteen (14) months of birth, and the father or putative father fails to show that he has exercised parental rights or duties towards the minor, including, but not limited to, failure to contribute to the support of the minor to the extent of his financial ability, which may include consideration of his failure to contribute to the support of the mother of the child to the extent of his financial ability during her term of pregnancy. Failure to contribute to the support of the mother during her term of pregnancy shall not in and of itself be grounds for finding the minor eligible for adoption without such father's consent.

The incarceration of a parent in and of itself shall not prevent the adoption of a minor without consent.

D. In any case where a father or putative father of a minor born out of wedlock claims that, prior to the receipt of notice of the hearing provided for in Sections 5-2.1 and 5-4.1 of this Title, he had been specifically denied knowledge of the minor or denied the opportunity to exercise parental rights and duties toward the minor, such father or putative father must prove to the satisfaction of the court that he made sufficient attempts to discover if he had fathered a minor or made sufficient attempts to exercise parental rights and duties toward the minor prior to the receipt of notice.

E. Consent to adoption is not required from a parent or putative father who waives in writing his right to notice of the hearing provided for in Section 5-2.1 or 5-4.1 of this Title.

F. Consent to adoption is not required from a parent or putative father who fails to appear at the hearing provided for in Section 5-2.1 or 5-4.1 of this title if all notice requirements contained in or pursuant to such sections have been met.

G. Consent to adoption is not required from a parent who is entitled to custody of a minor and has abandoned the minor.

H. 1. Consent to adoption is not required from a parent who fails to establish and/or maintain a substantial and positive relationship with a minor for a period of twelve (12) consecutive months out of the last fourteen (14) months immediately preceding the filing of a petition for adoption of the child.

2. In any case where a parent of a minor claims that prior to the receipt of notice of the hearing provided for in Sections 5-2.1 and 5-4.1. of this Title, such parent had been denied the opportunity to establish and/or maintain a substantial and positive relationship with the minor by the custodian of the minor, such parent shall prove to the satisfaction of the court that he or she has taken sufficient legal action to establish and/or maintain a substantial and positive relationship with the minor prior to the receipt of such notice.

3. For purposes of this subsection, “fails to establish and/or maintain a substantial and positive relationship” means the parent:

a. has not maintained frequent and regular contact with the minor through frequent and regular visitation or frequent and regular communication to or with the minor, or

b. has not exercised parental rights and responsibilities.

I. Consent to adoption is not required from a parent who has been convicted in any criminal action involving the rape, molestation, physical or sexual abuse, or consent to the participation of the minor in any obscene or pornographic picture, depiction and/or recording, or any similar crime where the minor was the victim, or who has either:

1. Physically or sexually abused the minor or a sibling of such minor or failed to protect the minor or a sibling of such minor from physical or sexual abuse that is heinous or shocking to the court or that the minor or sibling of such minor has suffered severe harm or injury as a result of such physical or sexual abuse; or

2. Physically or sexually abused the minor or a sibling of such minor or failed to protect the minor or a sibling of such minor from physical or sexual abuse subsequent to a previous finding that such parent has physically or sexually abused the minor or a sibling of such minor or failed to protect the minor or a sibling of such minor from physical or sexual abuse.

J. Consent to adoption is not required from a parent who has been convicted in a criminal action of having caused the death of a sibling of the minor as a result of the physical or sexual abuse or chronic neglect of such sibling.

K. Consent to adoption is not required from a parent if the parent has been sentenced to a period of incarceration of not less than ten (10) years and the continuation of parental rights would result in harm to the minor based on consideration of the following factors, among others: the duration of incarceration and its detrimental effect on the parent/child relationship; any

previous incarcerations; any history of criminal behavior, including crimes against children; the age of the minor; the evidence of abuse or neglect of the minor or siblings of the minor by the parent; and the current relationship between the parent and the minor and the manner in which the parent has exercised parental rights and duties in the past.

L. Consent to adoption is not required from:

1. A parent who has a mental illness or mental deficiency, which renders the parent incapable of adequately and appropriately exercising parental rights, duties, and responsibilities;

a. “Mental illness” shall mean mental disease to such extent that a person so afflicted requires care and treatment for the welfare of the person, or the welfare of others, or of the community.

b. “Mental deficiency” shall mean mental deficiency as defined by appropriate clinical authorities to such extent that persons so afflicted are incapable of managing themselves and their affairs, but shall not include mental illness as defined herein.

2. The continuation of parental rights would result in harm or threatened harm to the minor; and

3. The mental illness or mental deficiency of the parent is such that it will not respond to treatment, therapy or medication and, based upon competent medical opinion, the condition will not substantially improve.

M. Consent to adoption is not required from a putative father who has been served with a Notice of Plan for Adoption pursuant to Section 3-3.1 of this Title and who returns the form to the Department of Children and Family Services or agency or attorney who served him explicitly waiving a right to notice and legal rights to the minor or who fails to return the form pursuant to Section 3-3.1 of this Title in time for the form to be received by the Department of Children and Family Services or the agency or attorney who served him within thirty (30) days from the date the Notice of Plan for Adoption was served upon the putative father.

N. Consent to adoption is not required from:

O. Consent to adoption is not required from:

1. An individual who has permanently relinquished parental rights and responsibilities to the minor pursuant to the Choctaw Nation Adoption Code;

2. An individual whose parental relationship to a minor has been legally terminated or legally determined not to exist; or

3. The personal representative of a deceased parent’s estate.

O. Consent to adoption is not required from a parent who has voluntarily placed a minor child in the care of a licensed child care institution or child-placing agency, if the minor has remained in out-of-home care for eighteen (18) months or more, and the parent has willfully failed to substantially comply for twelve (12) consecutive months out of the fourteen-month (14) period immediately preceding the filing of the petition for adoption with a reasonable written plan of care. Provided, the willful failure to comply with the written plan of care may not be a ground for adoption without consent unless the plan of care, at the time it was initially

executed by the parent, contained notice that failure to substantially comply constitutes grounds for adoption without consent. The reasonableness of the plan shall be a question of fact to be determined by the court.

### **Section 5-4.3. Inquiry to Identify Unknown or Putative Father**

A. If, at any time in a proceeding for adoption or for termination of a relationship of parent and child pursuant to the Choctaw Nation Adoption Code, the court finds that an unknown father or putative father of the child may not have received notice, the court shall determine whether he can be identified. The determination must be based on evidence that includes inquiry of appropriate persons in an effort to identify an unknown father or putative father for the purpose of providing notice.

B. The inquiry required by subsection A of this section must include whether:

1. The woman who gave birth to the child was married at the probable time of conception of the child, or at a later time;
2. The woman was cohabiting with a man at the probable time of conception of the child;
3. The woman has received payments or promises of support, other than from a governmental agency, with respect to the child or because of her pregnancy;
4. The woman has named any individual as the father on the birth certificate of the child or in connection with applying for or receiving public assistance; and
5. Any individual has formally or informally acknowledged or claimed paternity of the child in a jurisdiction in which the woman resided during or since her pregnancy, or in which the child has resided or resides, at the time of the inquiry.

C. If inquiry pursuant to subsection B of this section identifies as the father or putative father of the child an individual who has not received notice of the proceeding, the court shall require notice to be served upon him pursuant to Section 5-2.1 or 5-4.1 of this Title.

D. If, in an inquiry pursuant to this section, the woman who gave birth to the child fails to disclose the identity of a possible father or reveal his whereabouts, she must be advised that the lack of information about the father's medical and genetic history may be detrimental to the child. She should also be advised that any false statement that she might make under oath or affirmation at a hearing or trial before the court regarding her knowledge of the identity or whereabouts of a possible father, if she knows or believes that the statement is not true or intends thereby to obstruct the ascertainment of the truth, could constitute grounds for a criminal prosecution for perjury.

### **Section 5-5.1. Favorable Pre-Placement Home Study Required -Waiver-Exception - Placement not Approved in Certain Circumstances**

A. Except as otherwise provided in this section, only a person for whom a favorable written pre-placement home study has been prepared may accept custody of a minor for purposes of adoption. A pre-placement home study is favorable if it contains a finding that the person is suited to be an adoptive parent, either in general or for a particular minor, and it is completed or

brought current within twelve (12) months next preceding a placement of a minor with the person for adoption.

B. A pre-placement home study is not required if a parent or guardian places a minor directly with a relative of the minor for purposes of adoption, or if the minor has been residing with a birth parent's spouse for not less than one (1) year as of the date the petition for adoption is filed, but a home study of the relative or stepparent is required during the pendency of a proceeding for adoption.

C. A prospective adoptive parent shall not be approved for placement of a child if the petitioners or any other person residing in the home of the petitioners has been convicted of any of the following felony offenses:

1. Within the five-year period preceding the date of the petition, physical assault, domestic abuse, battery, or a drug-related offense;
2. Child abuse or neglect;
3. A crime against a child, including, but not limited to, child pornography; and
4. A crime involving violence, including, but not limited to, rape, sexual assault, or homicide, but excluding those crimes specified in paragraph 1 of this subsection.

D. Under no circumstances shall a child be placed in the custody of an individual who is required to register as a sex offender or an individual who is married to or living with an individual who is required to register as a sex offender.

### **Section 5-5.2. Subsequent Home Study - Waiver**

A. If a pre-placement home study is waived by the court for good cause shown or is not required by Section 5-5.1 of this Act, the court, upon the filing of a petition for adoption, shall order that a home study be made and filed with the court by the designated investigator within the time fixed by the court, and in no event more than sixty (60) days from the issuance of the order for the home study, unless the time therefor is extended by the court.

B. If the child to be adopted is the biological or adopted child of either of the petitioners or of the spouse of the petitioner, then the court by order may waive the requirement in subsection A of this section that a home study report be made, and the requirement for a supplemental report set forth in subsection C of Section 5-5.3 of this Act, if the court makes the following findings:

1. That waiver of the home study requirement is in the best interest of the child;
2. That the parent of the child and the stepparent of the child who are petitioning for adoption have been married for at least one (1) year with the child who is to be adopted living in their home; and
3. That the stepparent who is petitioning for adoption has no record of conviction of a felony or conviction or adjudication in juvenile court for child abuse or neglect or domestic violence, and there is no record of a protective order or orders issued against the stepparent.

In all other adoptions, including foster, relative, and stepparent adoptions, a home study and report shall be made pursuant to this section or Section 5-5.1 of this act.

### **Section 5-5.3. Contents of Home Study**

A. A home study satisfying Section 5-5.1 or 5-5.2 of this Title must include at a minimum the following:

1. An appropriate inquiry to determine whether the proposed home is a suitable one for the minor; and any other circumstances and conditions which may have a bearing on the adoption and of which the court should have knowledge; and in this entire matter of investigation, the court is specifically authorized to exercise judicial knowledge and discretion;

2. Documentation of at least one individual interview with each parent, each school-age child and any other household member, one joint interview, a home visit, and three written references;

3. Verification that the home is a healthy, safe environment in which to raise a minor, as well as verification of marital status, employment, income, access to medical care, physical health and history; and

4. A review of a criminal background check and a child abuse and neglect information system check.

a. a background check shall be required for adoptive parents and all other household members eighteen (18) years of age and older, consisting of a review of a national fingerprint-based criminal background check, a search of the available records and files of all tribes, states and the United States to determine if any household member is required to register as a sex offender, and a search of the child abuse and neglect information system maintained by the State of Oklahoma, if available, and a search of the records of the Department of Children and Family Services.

b. For each adoptive parent or other household member eighteen (18) years of age or older who has not maintained continuous residency in the Choctaw Nation for five (5) years prior to the home study or home study update, a child abuse registry check shall be required from every state in which the prospective adoptive parent or other adult household member has resided during such five-year period.

c. Each prospective adoptive parent or other household member eighteen (18) years of age or older shall be required to cooperate with the requirements of the Department of Children and Family Services and all law enforcement agencies with regard to the criminal background check and child abuse check, including but not limited to signing a release of information allowing the release of the results of any search to the agency or person conducting the home study or home study update.

d. Upon completion of the criminal record checks and child abuse and neglect checks, the Department of Children and Family Services and the law enforcement agency shall forward all information obtained to the agency or other person authorized in Section 5-5.4 of this title to conduct home study investigations who has requested the background searches.

B. A home study which is being updated or brought current in accordance with subsection A of Section 5-5.1 of this Title shall document appropriate inquiry into changes in the family situation since the last home study, a home visit, at least one joint interview, information on any children added to the family, experiences, if any, of the adoptive parents as parents since the last study, verification of current physical health, and three current letters of reference.

C. An updated home study as described in subsection B of this section shall include a review of criminal background checks and child abuse and neglect checks as described in subsection A of this section. However, when a national fingerprint background check has been done within the five (5) years previous to the completion of the updated home study and the results are available for review by the home study investigator, then a name-based search of the records of the Oklahoma State Bureau of Investigation on the adoptive parents and other household residents over the age of eighteen (18) for whom the fingerprint background check has been performed shall satisfy the requirements for a criminal background check for purposes of a home study update.

D. The report of such home study or home study update shall become a part of the files in the case and shall contain a definite recommendation for or against the proposed adoption and the reasons therefor.

F. Following issuance of an interlocutory decree of adoption, or if the interlocutory decree is waived, prior to issuance of a final decree, the investigator conducting the home study or another investigator who meets the qualifications specified in Section 5-5.4 of this Title, shall observe the minor in the proposed adoptive home and report in writing to the court on any circumstances or conditions which may have a bearing on the granting of a final adoption decree. If the interlocutory decree was not waived, the investigator must certify that the final examination described in this subsection has been made since the granting of the interlocutory order. This supplemental report shall include a determination as to the legal availability or status of the minor for adoption and shall be filed prior to the final decree of adoption.

#### **Section 5-5.4. Persons or Agencies Authorized to Conduct Home Studies**

A. Home studies satisfying Sections 5-5.1, 5-5.2 and 5-5.3 of this Title must be conducted and the reports prepared only by the following persons or agencies:

1. The agency having custody or legal guardianship of the child;
2. The Department of Children and Family Services;
3. A licensed child-placing agency;
4. A person designated by the court who meets one of the following qualifications:
  - a. a master's degree in social work and one (1) year of experience in children's services,
  - b. a member of the Academy of Certified Social Workers (ACSW) and one (1) year of experience in children's services,
  - c. a master's degree in a behavioral or social science and two (2) years' experience in children's services,

d. a doctorate in a behavioral or social science and one (1) year of experience in children's services, or

e. is a member of the clergy with two (2) years of experience in family counseling; or

5. A person who is supervised by a person described in paragraph 4 of this subsection, and who meets one of the following qualifications:

a. a bachelor's degree in social work, or

b. a bachelor's degree in behavioral or social science and one (1) year of experience in children's or family services.

B. Persons satisfying the qualifications listed in paragraphs 4 and 5 of subsection A of this section shall attend and satisfactorily complete at least once every three (3) years a minimum of a three-hour course in home study preparation and adoption trends taught by a licensed child-placing agency, by the Department of Children and Family Services, by a college or university, or by some similar organization, agency, or entity of any tribe, state, or of the United States. Documentation of having met this educational requirement shall be provided by the person to the court or others upon request.

C. The Department of Children and Family Services shall not be required by the court to make a home study and report to the court on adoptive placements made by private adoption agencies or persons providing private adoption services.

### **Section 5-6.1. Interlocutory Decree**

Upon examination of the report required in Section 5-5.1 or 5-5.2 of this Act, and after hearing, the court may issue an interlocutory decree giving the care and custody of a minor to the petitioners, pending the further order of the court.

### **Section 5-6.2. Filings Required Prior to Final Hearing**

A. Before the final hearing on the petition for adoption, the following must be filed in the proceeding when available:

1. A certified copy of the birth certificate or other record of the date and place of birth of the minor;

2. Any consent, extra judicial consent, or permanent relinquishment, with respect to the minor that has been executed, and any written verifications required by the Choctaw Nation Adoption Code from the individual before whom a consent, extra judicial consent, or permanent relinquishment was executed;

3. A certified copy of any court order terminating the parental rights of the minor's parents or guardian;

4. A certified copy of any existing court order or the petition in any pending proceeding concerning custody of or visitation with the minor;

5. A copy of any home study performed on the petitioners, including the home studies required by Sections 5-5.1, 5-5.2 and 5-5.3 of this Title;
6. In an adoptive placement in which the adoptive parents or birth parents were not both legal residents of the Choctaw Nation of Oklahoma prior to the initiation of the adoption process and the parties are not otherwise exempt from the Interstate Compact for the Placement of Children, a copy of the approval by both the sending state and receiving state pursuant to the Interstate Compact for the Placement of Children;
7. A copy of any agreement with a public agency to provide a subsidy for the benefit of a minor with a special need;
8. A verified document by the Department, or child-placing agency that placed the minor for adoption, or the attorney for the adoptive parent in direct placement adoption, or the person who is placing the minor for adoption in a direct placement adoption in which the adoptive parent is not represented by an attorney, stating that the petitioner for adoption has been furnished a copy of the medical and social history report, pursuant to Section 4-1.2 of this Title;
9. The name and address, if known, of any person who is entitled to receive notice of the proceeding for adoption;
10. The affidavit of expenditures;
11. A copy of the medical and social history report, as required by subsection D of Section 4-1.2 of this Title, including the initial report and all supplemental reports, if any, prepared pursuant to subsection C of Section 4-1.2 of this Title;
12. Affidavits of nondisclosure, if any, signed by a biological parent;
13. An affidavit stating that the adoptive parents are aware that a child who is in foster care under the responsibility of the Department is potentially eligible for a Federal tax credit under section 23 of the Internal Revenue Code of 1986.
14.
  - a. a copy of the state criminal background check, national fingerprint-based criminal background check, if required by the provisions of the Choctaw Nation Adoption Code, a search of the available records and files of all tribes, states and the United States to determine if any household member is required to register as a sex offender, and a search of the child abuse and neglect information system maintained by the State of Oklahoma, if available, and a search of the records of the Department of Children and Family Services; or
  - b. if the adoptive petitioners are not legal residents of Choctaw Nation of Oklahoma and the sending state has comparable and accessible checks and searches as specified by subparagraph a of this paragraph, a copy of the approval of both the sending state and receiving state pursuant to the Interstate Compact for the Placement of Children or verification that this adoptive placement is otherwise exempt from the Interstate Compact for the Placement of Children; and
15. Any such other document or information required by the court.

B. If an item required by subsection A of this section is not available, the person responsible for furnishing the item shall file an affidavit explaining its absence.

### **Section 5-6.3. Application for Final Decree - Waiver of Interlocutory Decree and Waiting Period - Notice of hearing – Appearance - Entry of Final Decree**

A. After six (6) months from the date of the interlocutory decree unless the court waived all or part of the waiting period, the petitioners may apply to the court for a final decree of adoption. The court shall thereupon set a time and place for final hearing.

B. If the minor is related by blood to one of the petitioners, or is a stepchild of the petitioner, or the court finds that the best interests of the child will be furthered thereby, the court, after examination of the home study reports required by Section 5-5.1 or 5-5.2 of this title, may waive the entry of an interlocutory decree and the waiting period of six (6) months or the balance of the waiting period provided in this section.

C. Notice of the time and date of the hearing shall be served at least ten (10) days prior to the hearing upon any parent whose parental rights have not been terminated, unless that parent has properly executed a consent to the adoption or a permanent relinquishment pursuant to Sections 3-2.3, 3-2.4 and 3-2.6 of this Title or has waived the right to notice pursuant to Section 3-3.1 of this Title. Notice of the hearing shall also be served on the child-placing agency or the Department of Children and Family Services in those cases where the child-placing agency or Department has original custody, or performed a home study.

D. The petitioners and child shall appear at the hearing on the application for final decree, unless the presence of the child is waived by the court.

E. The final hearing is not required to be recorded by a court reporter. Upon the request of any party, the court shall direct that the hearing be recorded by the court reporter, or the court may order on its own initiative that the hearing be recorded.

F. The court may enter a final decree of adoption, if the court is satisfied that the adoption is in the best interests of the child.

### **Section 5-6.4. Denial of Petition for Adoption**

A. If the court denies a petition for adoption or vacates a decree of adoption, it shall dismiss the proceeding. If no preexisting custody order remains in effect, the court shall issue an appropriate order for the legal and physical custody of the minor according to the best interests of the minor if the court has jurisdiction to issue a custody order.

B. 1. If the court has jurisdiction to issue a custody order, the court shall schedule a separate hearing to determine custody of the minor. The court shall certify that the petitioner for adoption and each parent of the minor has received notice of the date of the custody hearing at least fifteen (15) days prior to the date of the hearing and that each biological parent who has signed a consent or permanent relinquishment has been served in the same manner as summons is served in civil cases at least fifteen (15) days prior to the date of the hearing. The petitioner for adoption shall be responsible for serving any parent who has not entered an appearance in the adoption proceeding. If the Department of Children and Family Services or any licensed child-placing agency had legal custody at the time the petition was filed, the petitioner shall notify the Department or agency of the date of the custody hearing.

2. Upon motion to intervene, the court shall join any person entitled to notice under this subsection who is not already a party to the proceeding.

2. Upon motion to intervene, the court shall join any person entitled to notice under this subsection who is not already a party to the proceeding.

3. At the hearing, the court may award custody to the biological mother, the biological father, the biological parents, if they are married, the prospective adoptive parents, or the Department or other licensed child-placing agency if the Department or agency had legal custody of the child at the time that the petition was filed, pursuant to Section 21.1 of this title, in the best interests of the child.

4. The child shall be represented at this hearing pursuant to Section 5-1.2 of this Title.

### **Section 5-6.5. Effect of Final Decree--Grandparental Rights**

A. After the final decree of adoption is entered, the relation of parent and child and all the rights, duties, and other legal consequences of the natural relation of child and parent shall thereafter exist between the adopted child and the adoptive parents of the child and the kindred of the adoptive parents. From the date of the final decree of adoption, the child shall be entitled to inherit real and personal property from and through the adoptive parents by descent and distribution. The adoptive parents shall be entitled to inherit real and personal property from and through the child in a like manner.

B. After a final decree of adoption is entered, the biological parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent, shall be relieved of all parental responsibilities for said child and shall have no rights over the adopted child or to the property of the child by descent and distribution.

C. A grandparent, who is the parent of the minor's biological parents, may be given reasonable rights of visitation to the child, only to the extent permitted by the provisions of Section 5 of this Title.

D. A decree of adoption does not affect any property right or benefit vested in the child before the decree becomes final.

### **Section 5-6.6. Certificate of Adoption - Supplementary Birth Certificate - Sealed Records - Disclosure of Original Records**

A. 1. For each adoption or annulment of adoption, the attorney or child-placing agency handling the adoption or annulment of adoption shall prepare and the clerk of the court shall certify, within thirty (30) days after the decree becomes final, a certificate of such decree on a form furnished by the registrar of vital statistics of the state or other jurisdiction that issued the original birth certificate of said child and shall attach thereto a certified copy of the petition and decree of adoption and any other information that may be required.

2. Before the fifteenth (15) day of each calendar month, the attorney or child-placing agency handling the adoption or annulment of adoption shall forward to the registrar of vital statistics of the state or other jurisdiction the certificates prepared by the attorney or agency handling the adoption or annulment of adoption during the preceding calendar month. If a biological parent has filed an affidavit of nondisclosure pursuant to Section 3-2.5 of this Title, the attorney or agency handling the adoption shall attach the affidavit of nondisclosure to the certificate of such decree and forward it with the certificate to the registrar.

B. One (1) certified copy of the form, certificate, petition, and decree of adoption shall be forwarded to the Secretary of the Interior. The material forwarded to the Secretary shall also contain a certificate from a judge showing:

1. The original and adoptive name and tribal affiliation of the child;
2. The names, addresses, tribal affiliation and degree of blood when known of the biological parents;
3. The names and addresses of the adoptive parents;
4. The identity of any agency having files or information relating to the adoptive placement; and
5. Any affidavit of nondisclosure pursuant to Section 3-2.5 of this title that has been completed by the biological parent or parents.

### **Section 5-7.1. Appeals**

A. An appeal may be taken from any final order, judgment, decree, or any order determining a minor eligible for adoption without terminating parental rights rendered pursuant to the Choctaw Nation Adoption Code to the Court of Appeals by any person aggrieved thereby, in the manner provided for appeals from the court as provided in this section.

B. In an appeal concerning the adoption of a minor or the termination of parental rights for adoption purposes, or any order determining a minor eligible for adoption without terminating parental rights, the appellant's designation of record shall be filed in the trial court within ten (10) days after the date of the judgment or order. Appellee's counter designation of record shall be filed in the trial court ten (10) days after appellant's designation of record is filed in the trial court.

C. All appeals of cases concerning the adoption of a minor or the termination of parental rights for adoption purposes, or an order determining that a minor is eligible for adoption which does not terminate parental rights, shall be initiated by filing a petition in error in the Court of Appeals within thirty (30) days of the filing of the order, judgment, or decree appealed from. The record on appeal shall be completed within thirty (30) days from the filing of the petition in error. Any response to the petition in error shall be filed within twenty (20) days from the filing of the petition in error.

D. The briefing schedule is established as follows:

1. Appellant's brief in chief shall be filed twenty (20) days after the clerk of the trial court notifies all parties that the record is complete and such notice has been filed in the office of the Clerk of the Court of Appeals;
2. Appellee's answer brief shall be filed fifteen (15) days after the appellant's brief in chief is filed; and
3. Appellant's reply brief may be filed within ten (10) days after the appellee's answer brief is filed.

E. Any appeal when docketed should have priority over all cases pending on said docket. Adjudication of appeals and any other proceedings concerning the adoption of the minor described in this section shall be expedited by the Court of Appeals.

F. The pendency of an appeal shall not suspend the order of the district court regarding a minor, nor shall it remove the minor from the custody of that court or of the person, institution, or agency to whose care such minor has been committed, unless the Court of Appeals shall so order.

### **Section 5-7.2. Limitations on Challenge to Adoption or Termination of Parental Rights - Effect of Appeal--Best Interests of Child**

A. Except as otherwise provided by paragraph 3 of subsection B of Section 3-2.7 of this title:

1. When an interlocutory or final decree of adoption has been rendered, a decree terminating parental rights cannot be challenged on any ground, either by a direct or a collateral attack, more than three (3) months after its rendition. The minority of the natural parent shall not operate to prevent this time limit from running; and

2. No adoption may be challenged on any ground either by a direct or collateral attack more than three (3) months after the entry of the final adoption decree regardless of whether the decree is void or voidable, and the minority or incompetence of the natural parent shall not operate to prevent this time limit from running.

B. In any challenge on any ground either by a direct or collateral attack, the court shall not enter a decision which is contrary to the best interests of the adopted minor.

### **Section 5-8.1. Adoption Dissolution Statistics to be Published**

A. Whenever the Department of Children and Family Services publishes statistics on successful adoptions, the Department shall also include statistics on adoption dissolutions, including the average number of months between the finalization of adoptions and the effective date of dissolutions.

B. For purposes of this section, “adoption dissolutions” means adoptions which dissolve after the adoption is finalized and prior to the time the adopted child reaches eighteen (18) years of age.

## **Article 6. Paternity Registry**

### **Section 6-1.1. Paternity Registry**

A. The Department of Children and Family Services shall establish a centralized paternity registry. The purpose of the registry is to:

1. Protect the parental rights of a putative father who may wish to affirmatively assume responsibility for children he may have fathered; and

2. Expedite adoptions of children whose biological fathers are unwilling to assume responsibility for their children by registering with the registry or otherwise acknowledging their children.

B. The father or putative father of a child born out of wedlock may file:

1. A notice of desire to receive notification of an adoption proceeding concerning the minor pursuant to Section 3-3.1 of this Title;
2. A notice of intent to claim paternity of the child pursuant to this section or Section 3-3.1 of this Title;
3. An instrument acknowledging paternity of the child as provided in Section 3-3.1 of this Title, or this Section;
4. A waiver of interest pursuant to Section 3-3.1 of this Title; or
5. Any other claim for acknowledging or denial of paternity authorized by law.

C. The paternity registry shall also be available to any person who:

1. Has been adjudicated by a court of another tribe, or any state or territory of the United States to be the father of a minor by filing a certified copy of the court order with the registry; or
2. Has been adjudicated by a court of the Choctaw Nation to be the father of a minor born out of wedlock.

D. The Department shall maintain the following information in the registry:

1. The putative father's:
  - a. name,
  - b. address at which the putative father may be served with notice of an adoption,
  - c. Social Security number,
  - d. date of birth, and
  - e. tribal affiliation, if any;
2. The mother's:
  - a. name, including all other names known to the putative father that the mother uses;

and

  - b. address, Social Security number, and date of birth, if known;
3. The minor's name, date, and place of birth, if known, or the probable month and year of the expected birth of the minor;
4. The date that the Department receives a putative father's registration;

a. name of an attorney or child-placing agency that requests the Department to search the registry to determine whether a putative father is registered in relation to a mother whose minor is or may be the subject of an adoption, and

b. date that the attorney or agency submits a request as provided under this paragraph;

5. If the registration is based upon an adjudication by a court of this or any other state, the case number, court, date of order, judgment or decree, and a copy of the decree; and

6. Any other information that the Department determines is necessary to access the information in the registry.

E. The Department shall store the registry's data in a manner so that the data is accessible under the following:

1. The putative father's name;
2. The mother's name; and
3. The minor's name, if known.

F. A putative father who registers under this section shall provide to the Department:

1. The putative father's:

- a. name,
- b. address at which the putative father may be served with notice of an adoption,
- c. Social Security number,
- d. date of birth, and
- e. tribal affiliation, if any;

2. The mother's name, including all other names known to the putative father that the mother uses;

3. If the registration is based upon an adjudication by a court of this or any other state, the case number, court, date of order, judgment or decree, and a copy of the decree; and

4. Any other information described under subsection D of this section that is known to the putative father.

G. 1. A person filing a notice of desire to receive notification of an adoption proceeding concerning the minor, a notice of intent to claim paternity of a minor or an acknowledgment of paternity shall include therein his current address and shall notify the registry of any change of address pursuant to procedures prescribed by rules of the Department.

2. If a putative father does not have an address where the putative father is able to receive notice of an adoption, the putative father may designate another person as an agent for the

purpose of receiving notice of adoption. The putative father must provide the Department with the agent's name and the address at which the agent may be served.

3. Service of notice upon the agent constitutes service of notice upon the putative father. If the agent cannot be served at the address provided by the putative father, as provided in this subsection, and if the putative father cannot be served because his whereabouts are unknown, the putative father can be served by publication pursuant to paragraph 3 of subsection B of Section 5-2.1 or paragraph 3 of subsection C of Section 5-4.1 of this Title.

H. An unrevoked notice of intent to claim paternity of a minor or an instrument acknowledging paternity may be introduced in evidence by any party in any proceeding in which such fact may be relevant.

I. The Department, upon request, shall provide the names and addresses of persons listed with the registry to any court or authorized agency, and such other persons deemed necessary to receive such information by the Department. The information shall not be divulged to any other person except upon order of a court for good cause shown.

J. The Department shall:

1. Provide the forms necessary for filing with the paternity registry established by this section and shall make said forms available to any father or putative father of a minor born out of wedlock who wishes to file with the registry; and

2. Provide, from any available funds, for the publication and statewide distribution to the public of information as to the existence of the paternity registry, the procedures for entry into the registry, and the consequences of failure to register.

### **Section 6-1.2. Revocation of notice of intent to claim paternity - Removal of registrant's name from registry**

A. A putative father may revoke a notice of intent to claim paternity at any time by submitting a signed, notarized statement revoking the notice of intent to claim paternity.

B. If a court determines that the registrant is not the father of the child, the court shall order that the Department remove the registrant's name from the registry. On receipt of an order providing for the removal of the registrant's name, the Department shall remove the name from the registry.

## **Article 7. Adult Adoptions**

### **Section 7-1.1. Adult Adoptions**

An adult person may be adopted by any other adult person, with the consent of the person to be adopted or his guardian, if the court shall approve of an adoptive parent, filed in writing with the court. The provisions of Sections 3-2.2 through 5-6.4 of this Act shall not apply to the adoption of a competent adult person. A petition therefor shall be filed with the district court. After a hearing on the petition and after such investigation as the court deems advisable, if the court finds that it is to the best interests of the people involved, a decree of adoption may be entered which shall have the legal consequences stated in Section 5-6.5 of this act.

## **Article 8. Records Retention**

### **Section 8-1.1. Records Retention**

A. All records of any adoption finalized in the Choctaw Nation shall be maintained for twenty-two (22) years by the child-placing agency, entity, organization or person arranging or facilitating the adoption.

B. Child-placing agencies, attorneys, or other entities that facilitate adoptions who cease to operate or to practice in the Choctaw Nation shall transfer their adoption records to the Department of Children and Family Services, Adoption Division, or, after giving notice to the Department of Children and Family Services, to a transferee agency that is assuming responsibility for the preservation of the agency's adoption records.

## **Article 9. General Provisions**

### **Section 9-1.1. Conditions for Discharges of Infants from Medical Facilities**

A. It is the public policy of the Choctaw Nation of Oklahoma that when an infant will be placed for adoption, a discharge of the infant from a medical facility shall be made as soon after birth as is medically prudent to facilitate the placement that has been arranged.

B. It shall be unlawful for any physician, hospital, or any other person or entity to condition discharge of an infant from a medical facility on the payment of any expense or to require a temporary order from a court before discharging an infant. Upon receipt of a written authorization of the birth mother, a medical facility shall release an infant to the person or agency designated in the written authorization.

C. Any physician, hospital, or any other person or entity that violates the provisions of subsection B of this section shall be liable in a civil action for compensatory and punitive damages, shall be subject to injunctive remedies and a judgment for the payment of an aggrieved person's attorney fees and court costs.

### **Section 9-1.2. Confidential Index of Birth and Adoptive Names**

In order to facilitate the updating of medical and social information received pursuant to the Choctaw Nation Adoption Act and for the operation of the mutual consent voluntary registry and the confidential intermediary search programs, the office of the court clerk in each county of the Choctaw Nation shall create a confidential index that cross-references an adoption of a child by both the child's birth name and adoptive name.

## **Article 10. Adoption Exchange**

### **Section 10-1.1. Department of Children and Family Services to Contract or Join with Adoption Exchange--Information to be Provided - Definitions**

A. The Department of Children and Family Services, as funds become available for such purposes, shall contract with or join the Oklahoma Children's Adoption Resources Exchange or any other adoption exchange for purposes of increasing and promoting the placement and

adoption of children who are in the custody of the Department of Children and Family Services and in child-placing agencies.

B. Upon contracting with or joining the Oklahoma Children’s Adoption Resources Exchange or any other adoption exchange, the Department and all child-placing agencies shall be required to provide certain information to the adoption exchange program as specified by the policies of the Department.

C. For purposes of the section:

1. “Adoption exchange” shall include only those exchanges which provide a monthly updated system, containing a photograph or description of each child whose parental rights have been terminated and is legally available for adoption; and

2. “Oklahoma Children’s Adoption Resource Exchange” is a private non-profit corporation incorporated in the State of Oklahoma whose membership is composed of child-placing agencies which operate under the direction of a board of directors selected in accordance with the bylaws of the corporation.

### **Section 10-1.2. Photograph and Description of Child to be Provided to Exchange**

The Department of Children and Family Services and all child-placing agencies shall be required to provide to the adoption exchange specified by the Department, a recent photograph and description of each child who is legally available for adoption and for whom no adoptive home has been found. Requirements of this section must be completed within ninety (90) days of the date a child has become legally available for adoption or as otherwise required by the adoption exchange.

### **Section 10-1.3. Exemptions**

The following persons are exempt from the provisions of Sections 10-1.1 through 10-1.5 of this Title:

1. Children age twelve (12) years or older who do not choose to be adopted pursuant to the Choctaw Nation Adoption Act;

2. Children for whom permanent placement plans have been made that do not include adoption; for example, permanent placement with relatives or long-term foster care;

3. Children who, because of medical or psychological reasons as determined by a licensed psychiatrist, psychologist or physician, are not ready for adoption;

4. Children who are runaways and whose present location is unknown; and

5. Children who are currently in an adoptive placement.

### **Section 10-1.4. Change in Status of Child Listed by Exchange**

Any change in the status of a child listed by the adoption exchange as specified by the Department shall be reported by the Department of Children and Family Services or the child-placing agency having legal custody of that child to the Oklahoma Children’s Adoption

Resource Exchange or any other adoption exchange specified by the Department. The report shall be completed within twenty (20) working days after the change occurs.

### **Section 10-2.5. Withdrawal of Child from Register**

A child registered with the Oklahoma Children's Adoption Resource Exchange or any other adoption exchange as legally adoptable shall be withdrawn from the register when the exchange receives written notification from the agency having legal custody that the child has been placed in an adoptive home.

## **Article 11. Interstate Placement of Children**

### **Section 11-1.1 Interstate Compact for the Placement of Children**

The Choctaw Nation of Oklahoma is not yet eligible to be a member state of the Interstate Compact for the Placement of Children; however, it is the intent of the Choctaw Nation Tribal Council to cooperate with the states of the United States and with other Indian tribes for the placement of children. The Choctaw Nation accepts the terms and conditions of the Interstate Compact for the Placement of Children as defined within this act and agrees to abide by those terms and conditions. The provisions of the Interstate Compact for the Placement of Children are as follows:

#### **ARTICLE I. PURPOSE**

The purpose of this compact is to:

1. Provide a process through which children subject to this compact are placed in safe and suitable homes in a timely manner;
2. Facilitate ongoing supervision of a placement, the delivery of services, and communication between the states and Indian tribes;
3. Provide operating procedures that will ensure that children are placed in safe and suitable homes in a timely manner;
4. Provide for the promulgation and enforcement of administrative rules implementing the provisions of this compact and regulating the covered activities of the member states and Indian tribes;
5. Provide for uniform data collection and information sharing between member states and Indian tribes under this compact;
6. Promote coordination between this compact, the Interstate Compact for Juveniles, the Interstate Compact on Adoption and Medical Assistance and other compacts affecting the placement of and which provide services to children otherwise subject to this compact;
7. Provide for continuing legal jurisdiction and responsibility for placement and care of a child that the state or tribe would have had if the placement were intrastate; and

8. Provide for the promulgation of guidelines, in collaboration with Indian tribes, for interstate cases involving Indian children as is or may be permitted by federal law.

## **ARTICLE II. DEFINITIONS**

As used in this compact:

1. “Approved placement” means the public child-placing agency in the receiving state has determined that the placement is both safe and suitable for the child;

2. “Assessment” means an evaluation of a prospective placement by a public child-placing agency in the receiving state to determine if the placement meets the individualized needs of the child, including but not limited, to the child’s safety and stability, health and well-being, and mental, emotional, and physical development. An assessment is only applicable to a placement by a public child-placing agency;

3. “Child” means an individual who has not attained the age of eighteen (18);

4. “Certification” means to attest, declare, or swear to before a judge or notary public;

5. “Default” means the failure of a member state or tribe to perform the obligations or responsibilities imposed upon it by this compact, or the bylaws or rules of the Interstate Commission;

6. “Home study” means an evaluation of a home environment conducted in accordance with the applicable requirements of the state or tribe in which the home is located, and documenting the preparation and suitability of the placement resource for placement of a child in accordance with the laws and requirements of the state or tribe in which the home is located;

7. “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaskan native village as defined in Section 3(c) of the Alaska Native Claims Settlement Act at *43 U.S.C., Section 1602(c)*;

8. “Interstate Commission for the Placement of Children” means the commission that is created under Article VIII of this compact and which is generally referred to as the Interstate Commission;

9. “Jurisdiction” means the power and authority of a court to hear and decide matters;

10. “Legal risk placement” or “legal risk adoption” means a placement made preliminary to an adoption where the prospective adoptive parents acknowledge in writing that a child may be ordered returned to the sending state or the state of residence of the birth mother, if different from the sending state, and a final decree of adoption shall not be entered in any jurisdiction until all required consents are obtained or are dispensed with in accordance with applicable law;

11. “Member state” means a state or Indian tribe that has enacted this compact;

12. “Noncustodial parent” means a person who, at the time of commencement of court proceedings in the sending state, does not have sole legal custody of the child or has joint legal custody of a child, and who is not the subject of allegations or findings of child abuse or neglect;

13. “Nonmember state” means a state which has not enacted this compact;
14. “Notice of residential placement” means information regarding a placement into a residential facility provided to the receiving state including, but not limited to, the name, date, and place of birth of the child, the identity and address of the parent or legal guardian, evidence of authority to make the placement, and the name and address of the facility in which the child will be placed. Notice of residential placement shall also include information regarding a discharge and any unauthorized absence from the facility;
15. “Placement” means the act by a public or private child-placing agency intended to arrange for the care or custody of a child in another state;
16. “Private child-placing agency” means any private corporation, agency, foundation, institution, or charitable organization, or any private person or attorney that facilitates, causes, or is involved in the placement of a child from one state to another and that is not an instrumentality of the state or acting under color of state law;
17. “Provisional placement” means a determination made by the public child-placing agency in the receiving state that the proposed placement is safe and suitable, and, to the extent allowable, the receiving state has temporarily waived its standards or requirements otherwise applicable to prospective foster or adoptive parents so as not to delay the placement. Completion of the receiving state requirements regarding training for prospective foster or adoptive parents shall not delay an otherwise safe and suitable placement;
18. “Public child-placing agency” means any government child welfare agency or child protection agency or a private entity under contract with such an agency, regardless of whether they act on behalf of a state, county, municipality, tribe, or other governmental unit and which facilitates, causes, or is involved in the placement of a child from one state to another;
19. “Receiving state” means the state or Indian tribe to which a child is sent, brought, or caused to be sent or brought;
20. “Relative” means someone who is related to the child as a parent, stepparent, sibling by half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin or a nonrelative with such significant ties to the child that they may be regarded as relatives as determined by the court in the sending state;
21. “Residential facility” means a facility providing a level of care that is sufficient to substitute for parental responsibility or foster care and is beyond what is needed for assessment or treatment of an acute condition. For purposes of the compact, residential facilities do not include institutions primarily educational in character, hospitals, or other medical facilities;
22. “Rule” means a written directive, mandate, standard, or principle issued by the Interstate Commission promulgated pursuant to Article XI of this compact that is of general applicability and that implements, interprets, or prescribes a policy or provision of the compact. A rule has the force and effect of an administrative rule in a member state and includes the amendment, repeal, or suspension of an existing rule;
23. “Sending state” means the state or Indian tribe from which the placement of a child is initiated;

24. “Service member’s permanent duty station” means the military installation where an active duty Armed Services member is currently assigned and is physically located under competent orders that do not specify the duty as temporary;

25. “Service member’s state of legal residence” means the state in which the active duty Armed Services member is considered a resident for tax and voting purposes;

26. “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other territory of the United States; and any Indian tribe;

27. “State court” means a judicial body of a state or Indian tribe that is vested by law with responsibility for adjudicating cases involving abuse, neglect, deprivation, delinquency, or status offenses of individuals who have not attained the age of eighteen (18); and

28. “Supervision” means monitoring provided by the receiving state once a child has been placed in a receiving state pursuant to this compact.

### **ARTICLE III. APPLICABILITY**

A. Except as otherwise provided in Article III, subsection B, this compact shall apply to:

1. The interstate placement of a child subject to ongoing court jurisdiction in the sending state, due to allegations or findings that the child has been abused, neglected, or deprived as defined by the laws of the sending state; provided, however, that the placement of such a child into a residential facility shall only require notice of residential placement to the receiving state prior to placement;

2. The interstate placement of a child adjudicated delinquent or unmanageable based on the laws of the sending state and subject to ongoing court jurisdiction of the sending state if:

a. the child is being placed in a residential facility in another member state and is not  
b. the child is being placed in another member state and the determination of safety and suitability of the placement and services required is not provided through another compact; and

3. The interstate placement of any child by a public child-placing agency or private child-placing agency as defined in this compact as a preliminary step to a possible adoption.

B. The provisions of this compact shall not apply to:

1. The interstate placement of a child in a custody proceeding in which a public child-placing agency is not a party, provided the placement is not intended to effectuate an adoption;

2. The interstate placement of a child with a nonrelative in a receiving state by a parent with the legal authority to make such a placement, provided the placement is not intended to effectuate an adoption;

3. The interstate placement of a child by one relative with the lawful authority to make such a placement directly with a relative in a receiving state;

4. The placement of a child, not subject to Article III, subsection A, into a residential facility by the child's parent;
5. The placement of a child with a noncustodial parent provided that:
  - a. the noncustodial parent proves to the satisfaction of a court in the sending state a substantial relationship with the child,
  - b. the court in the sending state makes a written finding that placement with the noncustodial parent is in the best interests of the child, and
  - c. the court in the sending state dismisses its jurisdiction over the child's case;
6. A child entering the United States from a foreign country for the purpose of adoption or leaving the United States to go to a foreign country for the purpose of adoption in that country;
7. Cases in which a U.S. citizen child living overseas with the child's family, at least one of whom is in the U.S. Armed Services, and who is stationed overseas, is removed and placed in a state; or
8. The sending of a child by a public child-placing agency or a private child-placing agency for a visit as defined by the rules of the Interstate Commission.

C. For purposes of determining the applicability of this compact to the placement of a child with a family in the Armed Services, the public child-placing agency or private child-placing agency may choose the state of the service member's permanent duty station or the service member's declared legal residence.

D. Nothing in this compact shall be construed to prohibit the concurrent application of the provisions of this compact with other applicable interstate compacts including the Interstate Compact for Juveniles and the Interstate Compact on Adoption and Medical Assistance. The Interstate Commission may in cooperation with other interstate compact commissions having responsibility for the interstate movement, placement, or transfer of children, promulgate like rules to ensure the coordination of services, timely placement of children, and the reduction of unnecessary or duplicative administrative or procedural requirements.

#### **ARTICLE IV. JURISDICTION**

A. Except as provided in Article IV, subsection G and Article V, subsection B, paragraphs 2 and 3 concerning private and independent adoption and in interstate placements in which the public child-placing agency is not a party to a custody proceeding, the sending state shall retain jurisdiction over a child with respect to all matters of custody and disposition of the child which it would have had if the child had remained in the sending state. Such jurisdiction shall also include the power to order the return of the child to the sending state.

B. When an issue of child protection or custody is brought before a court in the receiving state, such court shall confer with the court of the sending state to determine the most appropriate forum for adjudication.

C. In accordance with its own laws, the court in the sending state shall have authority to terminate its jurisdiction if:

1. The child is reunified with the parent in the receiving state who is the subject of allegations or findings of abuse or neglect, only with the concurrence of the public child-placing agency in the receiving state;
2. The child is adopted;
3. The child reaches the age of majority under the laws of the sending state;
4. The child achieves legal independence pursuant to the laws of the sending state;
5. A guardianship is created by a court in the receiving state with the concurrence of the court in the sending state;
6. An Indian tribe has petitioned for, and received, jurisdiction from the court in the sending state; or
7. The public child-placing agency of the sending state requests termination and has obtained the concurrence of the public child-placing agency in the receiving state.

D. When a sending state court terminates its jurisdiction, the receiving state child-placing agency shall be notified.

E. Nothing in this article shall defeat a claim of jurisdiction by a receiving state court sufficient to deal with an act of truancy, delinquency, crime, or behavior involving a child as defined by the laws of the receiving state committed by the child in the receiving state which would be a violation of its laws.

F. Nothing in this article shall limit the receiving state's ability to take emergency jurisdiction for the protection of the child.

G. The substantive laws of the state in which an adoption will be finalized shall solely govern all issues relating to the adoption of the child and the court in which the adoption proceeding is filed shall have subject matter jurisdiction regarding all substantive issues relating to the adoption except:

1. When the child is a ward of another court that established jurisdiction over the child prior to the placement;
2. When the child is in the legal custody of a public agency in the sending state; or
3. When a court in the sending state has otherwise appropriately assumed jurisdiction over the child, prior to the submission of the request for approval of placement.

H. A final decree of adoption shall not be entered in any jurisdiction until the placement is authorized as an "approved placement" by the public child-placing agency in the receiving state.

## **ARTICLE V. PLACEMENT EVALUATION**

A. Prior to sending, bringing, or causing a child to be sent or brought into a receiving state, the public child-placing agency shall provide a written request for assessment to the receiving state.

B. For placements by a private child-placing agency, a child may be sent or brought, or caused to be sent or brought, into a receiving state, upon receipt and immediate review of the required content in a request for approval of a placement in both the sending and receiving state public child-placing agency. The required content to accompany a request for approval shall include the following:

1. A request for approval identifying the child, birth parent(s), the prospective adoptive parent(s), and the supervising agency, signed by the person requesting approval;

2. The appropriate consents or relinquishments signed by the birth parents in accordance with the laws of the sending state, or where permitted the laws of the state where the adoption will be finalized;

3. Certification by a licensed attorney or authorized agent of a private adoption agency that the consent or relinquishment is in compliance with the applicable laws of the sending state, or where permitted, the laws of the state where finalization of the adoption will occur;

4. A home study; and

5. An acknowledgment of legal risk signed by the prospective adoptive parents.

C. The sending state and the receiving state may request additional information or documents prior to finalization of an approved placement, but they may not delay travel by the prospective adoptive parents with the child if the required content for approval has been submitted, received, and reviewed by the public child-placing agency in both the sending state and the receiving state.

D. Approval from the public child-placing agency in the receiving state for a provisional or approved placement is required as provided for in the rules of the Interstate Commission.

E. The procedures for making and the request for an assessment shall contain all information and be in such form as provided for in the rules of the Interstate Commission.

F. Upon receipt of a request from the public child-placing agency of the sending state, the receiving state shall initiate an assessment of the proposed placement to determine its safety and suitability. If the proposed placement is a placement with a relative, the public child-placing agency of the sending state may request a determination for a provisional placement.

G. The public child-placing agency in the receiving state may request from the public child-placing agency or the private child-placing agency in the sending state, and shall be entitled to receive supporting or additional information necessary to complete the assessment or approve the placement.

- H. The public child-placing agency in the receiving state shall approve a provisional placement and complete or arrange for the completion of the assessment within the time frames established by the rules of the Interstate Commission.
- I. For a placement by a private child-placing agency, the sending state shall not impose any additional requirements to complete the home study that are not required by the receiving state, unless the adoption is finalized in the sending state.
- J. The Interstate Commission may develop uniform standards for the assessment of the safety and suitability of interstate placements.

## **ARTICLE VI. PLACEMENT AUTHORITY**

A. Except as provided in this compact, no child subject to this compact shall be placed into a receiving state until approval for the placement is obtained.

B. If the public child-placing agency in the receiving state does not approve the proposed placement then the child shall not be placed. The receiving state shall provide written documentation of any such determination in accordance with the rules promulgated by the Interstate Commission. Such determination is not subject to judicial review in the sending state.

C. If the proposed placement is not approved, any interested party shall have standing to seek an administrative review of the receiving state's determination.

1. The administrative review and any further judicial review associated with the determination shall be conducted in the receiving state pursuant to its applicable administrative procedures.
2. If a determination not to approve the placement of a child in the receiving state is overturned upon review, the placement shall be deemed approved; provided, however, that all administrative or judicial remedies have been exhausted or the time for such remedies has passed.

## **ARTICLE VII. PLACING AGENCY RESPONSIBILITY**

A. For the interstate placement of a child made by a public child-placing agency or state court:

1. The public child-placing agency in the sending state shall have financial responsibility for:
  - a. the ongoing support and maintenance for the child during the period of the placement, unless otherwise provided for in the receiving state, and
  - b. as determined by the public child-placing agency in the sending state, services for the child beyond the public services for which the child is eligible in the receiving state;
2. The receiving state shall only have financial responsibility for:
  - a. any assessment conducted by the receiving state, and

- b. supervision conducted by the receiving state at the level necessary to support the placement as agreed upon by the public child-placing agencies of the receiving and sending state; and
- 3. Nothing in this provision shall prohibit public child-placing agencies in the sending state from entering into agreements with licensed agencies or persons in the receiving state to conduct assessments and provide supervision.
  - B. For the placement of a child by a private child-placing agency preliminary to a possible adoption, the private child-placing agency shall be:
    - 1. Legally responsible for the child during the period of placement as provided for in the law of the sending state until the finalization of the adoption; and
    - 2. Financially responsible for the child absent a contractual agreement to the contrary.
- C. The public child-placing agency in the receiving state shall provide timely assessments, as provided for in the rules of the Interstate Commission.
- D. The public child-placing agency in the receiving state shall provide, or arrange for the provision of, supervision and services for the child, including timely reports, during the period of the placement.
- E. Nothing in this compact shall be construed as to limit the authority of the public child-placing agency in the receiving state from contracting with a licensed agency or person in the receiving state for an assessment or the provision of supervision or services for the child or otherwise authorizing the provision of supervision or services by a licensed agency during the period of placement.
- F. Each member state shall provide for coordination among its branches of government concerning the state's participation in, and compliance with, the compact and Interstate Commission activities, through the creation of an advisory council or use of an existing body or board.
- G. Each member state shall establish a central state compact office, which shall be responsible for state compliance with the compact and the rules of the Interstate Commission.
- H. The public child-placing agency in the sending state shall oversee compliance with the provisions of the Indian Child Welfare Act, 25 U.S.C., Section 1901 et seq., for placements subject to the provisions of this compact, prior to placement.
- I. With the consent of the Interstate Commission, states may enter into limited agreements that facilitate the timely assessment and provision of services and supervision of placements under this compact.

## **ARTICLE VIII. INTERSTATE COMMISSION FOR THE PLACEMENT OF CHILDREN**

Reserved.

**ARTICLE IX. POWERS AND DUTIES OF THE INTERSTATE COMMISSION**

Reserved.

**ARTICLE X. ORGANIZATION AND OPERATION AND OPERATION OF THE INTERSTATE COMMISSION**

Reserved.

**ARTICLE XI. RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION**

Reserved.

**ARTICLE XII. OVERSIGHT, DISPUTE RESOLUTION, ENFORCEMENT**

Reserved.

**ARTICLE XIII. FINANCING OF THE COMMISSION**

Reserved.

**ARTICLE XIV. MEMBER STATES, EFFECTIVE DATE AND AMENDMENT**

Reserved.

**ARTICLE XV. WITHDRAWAL AND DISSOLUTION**

Reserved.

**ARTICLE XVI. SEVERABILITY AND CONSTRUCTION**

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

C. Nothing in this compact shall be construed to prohibit the concurrent applicability of other interstate compacts to which the states are members.

**ARTICLE XVII. BINDING EFFECT OF COMPACT AND OTHER LAWS**

Reserved.

**ARTICLE XVIII. INDIAN TRIBES**

Notwithstanding any other provision in this compact, the Interstate Commission may promulgate guidelines to permit Indian tribes to utilize the compact to achieve any or all of the purposes of the compact as specified in Article I. The Interstate Commission shall make reasonable efforts to

consult with Indian tribes in promulgating guidelines to reflect the diverse circumstances of the various Indian tribes.

### **ARTICLE 11-1.2 Adoptions beyond Territorial Boundaries**

The Department will not:

- A. Deny or delay the placement of a child for adoption when an approved family is available outside of the jurisdiction with responsibility for handling the case of the child; or
- B. Fail to grant an opportunity for a fair hearing to an individual whose allegation of a violation of part (1) of this subsection is denied by the Department or not acted upon by the Department with reasonable promptness.

### **Article 12. Adoption Assistance Agreements**

#### **Section 12-1.1 Adoption Assistance Agreements**

The Department shall enter into adoption assistance agreements with the adoptive parent(s) of a child with special needs that shall:

- A. Be signed by the adoptive parents and a representative of the Department and is in effect before adoption assistance payments, but no later than the finalization of the adoption,
- B. Specify the duration of the agreement,
- C. Stipulate the amount of the adoption assistance payments (if any) and the nature and amount of any other payments, services and assistance to be provided (including non-recurring adoption expenses in agreements for expenditures incurred by the parents),
- D. Specify the child's eligibility for title XIX and title XX,
- E. Provide notice that the agreement remains in effect regardless of residence of the adoptive parents,
- F. Require express consent to the jurisdiction of Choctaw Nation of Oklahoma,
- G. Contain provisions for the protection of the interests of the child in case the adoptive parents and child should move out of the Tribal service area while the agreement is in effect, and
- H. Note that if a needed service specified in the agreement is not available outside the Tribal service area of residence, the Department will still provide financial assistance for the specified service(s).

#### **Section 12-1.2 Child with Special Needs**

A child is only a child with special needs when the Department determines:

- A. The child cannot or should not be returned to the home of his/her parents;
- B. The child presents characteristics of special needs by:
  1. Demonstrating a specific factor or condition (such as ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions

or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that the child cannot be placed with adoptive parents without providing adoption assistance, or

2. Meeting all medical or disability requirements of title XVI with respect to eligibility for supplemental security income benefits; and

C. Except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of the parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance.

### **Section 12-1.3 Adoption Assistance Payments - Eligibility**

A. The adoptive parents of a child with special needs are eligible for adoption assistance payments if the child:

1. at the time of initiation of adoption proceedings was in the care of a public or licensed private child placement agency or the Department pursuant to:

a. an involuntary removal of the child from the home in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child, or

b. a voluntary placement agreement or voluntary relinquishment; or

2. Meets all medical or disability requirements of title XVI with respect to eligibility for supplemental security income benefits; or

3. Was residing in a foster family home or child care institution with the child's minor parent, and the child's minor parent was in such foster family home or child care institution pursuant to:

a. an involuntary removal of the child from the home in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child, or

b. a voluntary placement agreement or voluntary relinquishment.

B. The adoptive parents are required to inform the Department of circumstances that would make them ineligible for adoption assistance payments or eligible for adoption assistance payments in a different amount; failure to do so may result in criminal charges.

C. The adoptive parents of a child with special needs are ineligible for adoption assistance payments if the child:

1. Is not a citizen or resident of the United States, and

2. Was adopted outside of the United States or was brought into the United States for the purpose of being adopted, but

3. A child that is not a citizen or resident of the United States and was adopted outside of the United States or brought into the United States for the purpose of being adopted may be

eligible for adoption assistance payments if the initial adoption of the child by parents is a failure and the child is subsequently placed into foster care.

#### **Section 12-1.4 Adoption Assistance Payments--Amount**

Adoption assistance payments (1) will take into consideration the circumstances of the adopting parents and the needs of the child being adopted, (2) may be adjusted periodically with the concurrence of the adoptive parents to reflect changing circumstances, and (3) may not exceed the foster care maintenance payment which would have been paid during the period if the child with respect to whom the adoption assistance payment is made had been in a foster family home.

#### **Section 12-1.5 Adoption Assistance Payments—Termination**

Adoption assistance payments shall terminate when the Department determines that:

- A. The child has attained the age of 18,
- B. The child has attained twenty-one years of age, if the Department determines that the child has a mental or physical disability which warrants the continuation of assistance to age twenty-one,
- C. The parents are no longer legally responsible for the support of the child who has not yet attained eighteen years of age; or
- D. The adoptive parents are no longer providing any support to the child.

#### **Section 12-2.1 Insurance Required**

A. The Department will ensure that a child has health insurance coverage, with the same type and kind of benefits as those which would be provided for children under title XIX, or a comparable medical plan, when the child has been determined to be a child with special needs, for whom there is in effect an adoption assistance agreement between the Department and an adoptive parent or parents, and who the Department has determined cannot be placed with an adoptive parent or parents without medical assistance due to special needs for medical, mental health, or rehabilitative care.

B. In the event that the State/Tribe provides such coverage through a State/Tribe medical assistance program other than the program under title XIX, and the State/Tribe exceeds its funding for services under such other program, any such child is deemed to be receiving aid or assistance under the State/Tribal agency plan under this part for purposes of section 1902(a)(10)(a)(i)(1); and in determining cost-sharing requirements, the State/Tribal agency will take into consideration the circumstances of the adopting parent or parents and the needs of the child being adopted to the extent coverage is provided through a State/Tribal medical assistance program, consistent with the rules under such program.

#### **Section 12-2.2. Previously Adopted Children**

Nothing in this Section shall prevent the adoptive parent(s) of a child that was previously adopted by different parents from being eligible for adoption assistance payments where the child:

- A. Meets the eligibility requirements of § 12-1.3 of this Section,
- B. Would have been eligible for adoption assistance payments in the previous adoption, and
- C. Is available for adoption because the prior adoption has been dissolved and the parental rights of the adoptive parents have been terminated or because the child's adoptive parents have died.

### **Section 12-2.3. Kinship Guardianship Assistance**

In determining the eligibility for adoption assistance payments of a child in a legal guardianship arrangement, the placement of the child with the relative guardian involved and any kinship guardianship assistance payments made on behalf of the child shall be considered never to have been made.