

TO APPROVE A COUNCIL BILL ADOPTING THE CHOCTAW NATION CRIMINAL CODE

IN THE TRIBAL COUNCIL OF THE CHOCTAW NATION

RONALD PERRY INTRODUCED THE FOLLOWING COUNCIL BILL

A COUNCIL BILL

TO APPROVE a Council Bill adopting certain codes for use in the Court of General Jurisdiction of the Choctaw Nation of Oklahoma.

WHEREAS, this Council created the Court of General Jurisdiction of the Choctaw Nation of Oklahoma with Council Bill 65-2009; and

WHEREAS, the new Court system was approved by the U.S. Department of Interior on October 8, 2009; and

WHEREAS, in accordance with CB-65-2009, the new Court was activated and the CFR Court of Indian Offenses of the Choctaw Nation abolished by the Chief on February 4, 2010; and

WHEREAS, the Court of General Jurisdiction has provided for adoption by this Council certain Judicial Codes, Rules and Regulations which replaced all or a portion of the Rules for the CFR Court of Indian Offenses of the Choctaw Nation; and


WHEREAS, this Council Bill shall adopt the Criminal Code of the Choctaw Nation of Oklahoma, as attached, and shall rescind the Choctaw Nation of Oklahoma Criminal Code as enacted on the 5th day of May, 2015, via Council Bill CB-86-15.

THEREFORE BE IT ENACTED, by the Tribal Council of the Choctaw Nation of Oklahoma, that this Bill be cited as rescission of CB-86-15, and the code attached thereto, and approval of the adoption of the Criminal Code of the Choctaw Nation of Oklahoma, as attached, under the condition described herein.

CERTIFICATION

I, the undersigned, as speaker of the Tribal Council of the Choctaw Nation of Oklahoma, do hereby certify that the Tribal Council is composed of twelve (12) seats. Eight (8) members must be present to constitute a quorum. I further certify that twelve (12) members answered roll call and that a quorum was present at the Regular Session of the Tribal Council at Tuskahoma, Oklahoma on October 13, 2018. I further certify that the foregoing Council Bill CB- 01 -19 was adopted at such meeting by the affirmative vote of twelve (12) members, zero (0) negative votes, and zero (0) abstaining.


Ronald Perry, Secretary
Choctaw Nation Tribal Council


Delton Cox, Speaker
Choctaw Nation Tribal Council


Gary Batton, Chief
Choctaw Nation of Oklahoma

Date 10-17-18

SUMMARY OF THE CHANGES MADE IN THE CHOCTAW NATION OF OKLAHOMA'S CRIMINAL CODE

General changes made throughout the code:

- Changed “title” to “code” throughout.
- Changed certain wording and phrases that were used for the Oklahoma criminal code. This type of language was not optimal for the Choctaw Nation in criminal matters.
- Made changes to the penalties of several felony and misdemeanor offenses. The changes were made to allow the prosecutor to have more punishment options when prosecuting a defendant. For instance, certain crimes only allowed for economic penalties. In some cases, those convicted may not be able to pay the fines, putting them right back in court, creating a cycle. Now the prosecutor has the ability to impose a term of imprisonment and use community service, time served, etc.
- Certain sections within the chapters have been reserved for multiple reasons. Either the section was considered to be more procedural, therefore belonging in the criminal procedure code, or the sections were left out of the previous draft. If the reservation of a section was substantive, and not just for organizational purposes, the section will be included below.
- Change to the Alcohol Code to match the changes in Oklahoma Law that take effect October 1, 2018. Because of the Changes to this Oklahoma law, low-point beer becomes unnecessary as it will no longer be sold in Oklahoma.

Chapter 1 Preliminary Provisions:

- Section 61 (C) removed “while incarcerated” language. New language:
 - When any person is convicted of two or more crimes in the same proceeding or in different proceedings, and the judgment and sentence for each conviction arrives at a penal institution on different dates, the sentence which is first received at the institution shall commence and be followed by those sentences which are subsequently received at the institution, in the order in which they are received by the institution, regardless of the order in which the judgments and sentences were rendered by the court, unless a judgment and sentence provides that it is to run concurrently with another judgment and sentence.
- Section 61 (D) removed the ten-year suspension of voting rights after incarceration. Left the suspension of voting rights while incarcerated though, to avoid someone from arguing

the tribe would have to supply voting booths while imprisoned, or some other means allowing members to vote from prison.

Chapter 2 General Definitions:

- The definition of “bribe” was added to this chapter.
- Section 131 “civil remedies not affected” was deleted.
- Section 142 and its 31 subsections were reserved. This language was more relevant to criminal procedure, rather than the criminal code.

Chapter 3 Persons liable to punishment:

- Section 151 “Former Reservation” language was deleted, as it was not a defined term anywhere else in the code. This was change to:
 - within the Choctaw Nation of Oklahoma, as defined by Article I, Section 2 of the Constitution of the Choctaw Nation of Oklahoma.
- Section 155 “Subjection to superior exonerates” was reserved. Due to it being an anachronism.
- Section 174 was changed from the ambiguous language “if the underlying crime is a misdemeanor, there can be no accessories charged,” to a clearer statement “in misdemeanors, there are no accessories.” The original definition would likely not allow the prosecution to successfully convict anyone who was aiding in the act of a misdemeanor. The changed language would simply classify anyone participating in a misdemeanor as a principle of the crime, therefore allowing conviction.
- Section 175. (C) “not exceeding one-year imprisonment” language was removed, because there are exceptions to the one-year limitation of misdemeanor convictions.

Chapter 4 Crimes against the Choctaw Nation of Oklahoma:

- Section 260 was added to the title, which defines the term “Executive officer.”
- Section 264 (B) removed the purpose language in the first sentence. The section is related to citizens using their car to impersonate peace officers. Removed the purpose language, because it would be hard to prove their purpose of wanting to impersonate peace officers’ vehicles. Now it is a strict compliance law.

- Unreserved Section 272, “Compensation contingent upon influencing official acts or legislation.” This section was formerly under 322.
- Section 305 “Compelling tribal council to perform or omit act”, was reserved as it could wrongfully be used against law firms, employees of the Nation and other types of consulting experts that are redrafting documents and legislation, on behalf of the tribe. This work could be viewed as compelling the council to perform or omit an act. Sections 304, 306 and 308 prevent interference with the legislative process.
- Section 319 “penalty for bribery” definition was incorporated in section 318.
- Section 321 “penalty for violating section 320” was incorporated in section 320.
- Unreserved section 341. Concerns the embezzlement of property by tribal officials and employees.
- Reserved section 350. The language was incorporated in Section 372 “Protection of Seals and Flags.”
- Section 354 “penalty” was reserved. The language was incorporated in sections 352-353.
- Section 355 was reserved. The language was incorporated in section 358 “False, fictitious, or fraudulent claim for payment of public funds or on employment application.”

Chapter 5 Conspirator crimes:

- Section 422 removed “former reservation boundaries” language for the same reasons as stated above in section 151.
- Added a \$5,000 fine to section 438’s felony punishment
- Added a \$5,000 fine to section 440’s felony punishment

Chapter 6 Crimes against public justice:

- Added a \$5,000 fine to section 443’s felony punishment
- Added a \$5,000 fine to section 455’s felony punishment
- Added a \$5,000 fine to section 461’s felony punishment
- Added a \$5,000 fine to section 500’s felony punishment
- Added a \$5,000 fine to section 521’s felony punishment
- Added a \$5,000 fine to section 543’s felony punishment

- Added a three-year imprisonment to section 567.1's felony punishment
- Added a \$1,000 fine to section 543's misdemeanor punishment

Chapter 7 Crimes against persons:

- Added a \$15,000 fine to section 644's punishment. The amount of the fine was added because the severity of the crime, that consisted of abusing pregnant women.
- Added a \$5,000 fine to section 645's felony punishment
- Added a \$5,000 fine to section 651's felony punishment
- Added a \$5,000 fine to section 652's felony punishment
- Added a \$5,000 fine to section 662's felony punishment
- Added a \$5,000 fine to section 741's felony punishment
- Added a \$5,000 fine to section 742's felony punishment
- Added a \$5,000 fine to section 816's felony punishment
- Added a \$5,000 fine to section 849's felony punishment
- Added a \$5,000 fine to section 851's felony punishment
- Added a \$5,000 fine to section 853's felony punishment
- Added a \$5,000 fine to section 856.3's felony punishment
- Added a \$5,000 fine to section 885's felony punishment
- Added a \$5,000 fine to section 888's felony punishment
- Added a \$5,000 fine to section 891's felony punishment
- Added a \$5,000 fine to section 1031's felony punishment
- Added a \$5,000 fine to section 1086's felony punishment
- Added a \$5,000 fine to section 1087's felony punishment
- Added a \$5,000 fine to section 1121's felony punishment
- Added a \$1,000 fine to section 644's misdemeanor punishment

Chapter 8 Crimes against public health, safety general, and miscellaneous provisions:

- Removed "intended" language from section 1220.1's language, because this would unnecessarily restrict the prosecution, in proving the elements under this section.

- Added one-year imprisonment to section 1246's misdemeanor punishment.
- Section 1246; changed the language from "knowingly and willfully" to "knowingly or willfully". The "and" means that both knowingly and willfully have to be proven, in order to prosecute someone for the crime. The "or" provides the prosecution the ability to only need one of the terms, not both, to successfully prosecute someone.
- Section 1249; removed the language "directly into the nervous system," because this is physiologically incorrect, when referring to the inhalation of alcohol. The inhaled alcohol is directly passed through the respiratory system, before affecting the central nervous system.

Chapter 9 crimes against the public peace:

- Added a \$5,000 fine to section 1272.3's felony punishment
- Added a \$5,000 fine to section 1288's felony punishment
- Added a \$5,000 fine to section 1289.16's felony punishment
- Added a \$5,000 fine to section 1289.17's felony punishment
- Added a \$5,000 fine to section 1289.21's felony punishment
- Added a \$5,000 fine to section 1289.26's felony punishment
- Added a \$5,000 fine to section 1374's felony punishment
- Added a \$1,000 fine to section 1374's felony punishment
- Added one-year imprisonment to section 1373's felony punishment

Chapter 11 Fraud in general:

- Added one-year imprisonment to section 1550.41's punishment

Chapter 12 Crimes against property part II:

- Section 1701 removed the definition of "customer" from the section. This is a common meaning. There is no need to add a specific narrowing definition to the term, this could lead to problems later on.
- Section 1701 removed the definition of "demand" from the section. This is a common meaning. Limiting the term to "a possessor of library materials" is unnecessarily restrictive.

- Section 1701 added the language “and animals of the order galliformes” to the exotic animal’s definition. This includes chickens, turkeys, grouse, quail, ptarmigan, partridge, pheasant, junglefowl, and cracidae.
- Section 1701 removed the definition of “telephone record.” Common meaning, that does not need to be defined. The definition that was deleted, severely limited to what constituted a “telephone record.”
- Section 1701 defined the term “vandalism.”
- Section 1708 was reserved and the language was incorporated in section 1701.
- Sections 1738 (U) removed language “or the law enforcement agency which seized the property.” The Choctaw Nation should be the only entity deciding the use of seized property.
- Added a \$5,000 fine to section 1742’s punishment
- Added a \$5,000 fine to section 1752’s punishment
- Added one-year imprisonment to section 1754’s punishment
- Section 1835.1 replace the term “shoplifting” with “larceny.”
- Section 1835.1 replaced the term “public indecency” with “indecent exposure.”
- Section 1835.2 (B) (2) removed this paragraph, because it conflicted with the general rule under paragraph one of this section.
- Section 1835.2 (B) (2) (a) removed this paragraph, it also conflicted with the general rule under paragraph one of this section.
- Section 1840 “Anonymous campaign literature” was reserved. The Oklahoma statute was repealed in 2014. Article 1 of the Indian Civil Rights Act may be implicated, especially limitations on free speech.
- Section 1847a was deleted.
- Section 1849 was reserved. The penalty for Spurious coin-operated machines was incorporated into 1848.
- Section 1852 was reserved. The penalty for reporting firearms and false reporting was added to and expanded in section 1852 with a fine and imprisonment.
- Added one-year imprisonment to section 1992.2’s punishment

- Added one-year imprisonment and \$1,000 fine to each occurrence of section 1993's section.