

A COUNCIL BILL AMENDING THE CHOCTAW NATION CRIMINAL CODE

IN THE TRIBAL COUNCIL OF THE CHOCTAW NATION

RONALD PERRY INTRODUCED THE FOLLOWING COUNCIL BILL

TO AMEND the Criminal Code by amending section 268 to expand the definition of an officer; amending section 540.1 by correcting the range of punishment and removing references to state correctional facilities; amending section 644 by adding fines to the punishments and removing references to the department of corrections; amending section 843 by modifying the definition of sexual abuse and sexual exploitation; amending section 1211 by expanding the crime and range of punishment; adding section 1403 and prohibiting fires during emergency drought conditions, making violations a misdemeanor, and creating exceptions; amending section 1753.1 by changing violations from a felony to misdemeanor; and amending section 1760 by modifying the range of punishment for violations.

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

WHEREAS the Council has previously adopted the Choctaw Nation Criminal Code, which defines and sets forth punishments for various crimes within the Choctaw Nation Reservation;

WHEREAS the Nation, as a sovereign nation, possesses the right to define crimes and punishments in order to protect and promote public safety; and

WHEREAS the Council finds it is in the best interest of the Nation to adopt the proposed amendments to the Choctaw Nation Criminal Code.

THEREFORE BE IT ENACTED by the Tribal Council of the Choctaw Nation of Oklahoma:

Section 1. AMENDATORY Section 268 of the Choctaw Nation Criminal Code is amended to read as follows:

Section 268. Resisting an ~~executive~~ officer.

Every person who attempts, by means of any threat or violence, to deter or prevent any ~~executive officer~~ law enforcement officer, police officer, corrections personnel as defined by Section 649 of this Code, or other peace officer employed or duly appointed by any tribal governmental agency, or a law enforcement officer who is commissioned pursuant to a cross-deputization agreement to enforce tribal laws while said officer is in the performance of his duties from performing any duty imposed upon such officer by law is guilty of a misdemeanor.

A COUNCIL BILL AMENDING THE CHOCTAW NATION CRIMINAL CODE

SECTION 2. AMENDATORY Section 540.1 of the Choctaw Nation Criminal Code is amended to read as follows:

Section 540.1. Eluding police officer.

A. Any operator of a motor vehicle who has received a visual signal, a red light, from a peace officer driving a motor vehicle showing the same to be an official law enforcement vehicle directing the operator to bring the vehicle to a stop and who willfully increases the speed or extinguishes the lights of the vehicle in an attempt to elude such peace officer, or willfully attempts in any other manner to elude the peace officer, or who does elude such peace officer, is guilty of a misdemeanor. The peace officer, while attempting to stop a violator of this section, may communicate a request for the assistance of other peace officers from any office, department or agency. Any peace officer within the Choctaw Nation of Oklahoma having knowledge of such request is authorized to render such assistance in stopping the violator and may effect an arrest under this section upon probable cause. Violation of this subsection shall constitute a misdemeanor and shall be punishable by not more than one (1) year imprisonment or by a fine of not less than One Hundred Dollars (\$100.00) nor more than Two Thousand Dollars (\$2,000.00) or by both such fine and imprisonment. A second or subsequent violation of this subsection shall be punishable by not more than one (1) year imprisonment or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) or both such fine and imprisonment.

B. Any person who violates the provisions of subsection A of this section in such manner as to endanger any other person shall be deemed guilty of a felony punishable by imprisonment for a term of not less than one (1) year nor more than three (3) years, or by a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

C. 1. Any person who causes an accident, while eluding or attempting to elude an officer, resulting in great bodily injury to any other person while driving or operating a motor vehicle within the Choctaw Nation of Oklahoma and who is in violation of the provisions of subsection A of this section may be charged with a violation of the provisions of this subsection. Any person who is convicted of a violation of the provisions of this subsection shall be deemed guilty of a felony punishable by imprisonment ~~in a state correctional institution~~ for not less than one (1) year and not more than ~~five (5)~~ three (3) years, and a fine of not more than Five Thousand Dollars (\$5,000.00).

2. As used in this subsection, "great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

SECTION 3. AMENDATORY Section 644 of the Choctaw Nation Criminal Code, is amended to read as follows:

A COUNCIL BILL AMENDING THE CHOCTAW NATION CRIMINAL CODE

Section 644. Assault – Assault and battery – Domestic abuse

A. Assault shall be punishable by imprisonment ~~in a county jail~~ not exceeding thirty (30) days, or by a fine of not more than Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

B. Assault and battery shall be punishable by imprisonment ~~in a county jail~~ not exceeding ninety (90) days, or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

C. Any person who commits any assault and battery against a current or former intimate partner or a family or household member as defined by Section 60.2 of the Choctaw Nation Criminal Procedure Code shall be guilty of domestic abuse. Upon conviction, the defendant shall be punished by imprisonment ~~in the county jail~~ for not more than one (1) year, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. Upon conviction for a second or subsequent offense, the person shall be punished by imprisonment ~~in the custody of the Department of Corrections~~ for not more than three (3) years, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. The provisions of Section 51 of this title shall apply to any second or subsequent offense.

1. "Intimate partner" means: current or former spouses, persons who are or were in a dating relationship, persons who are the biological parents of the same child, regardless of their marital status or whether they have lived together at any time, and persons who currently or formerly lived together in an intimate way, primarily characterized by affectionate or sexual involvement. A sexual relationship may be an indicator that a person is an intimate partner, but is never a necessary condition;

2. "Family or household members" means: parents, including grandparents, stepparents, adoptive parents and foster parents, children, including grandchildren, stepchildren, adopted children and foster children, and persons otherwise related by blood or marriage living in the same household;

D. 1. Any person who, with intent to do bodily harm and without justifiable or excusable cause, commits any assault, battery, or assault and battery upon an intimate partner or a family or household member as defined in subsection C with any sharp or dangerous weapon, upon conviction, is guilty of domestic assault or domestic assault and battery with a dangerous weapon which shall be a felony and punishable by imprisonment not exceeding three (3) years, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. The provisions of Section 51 of this title shall apply to any second or subsequent conviction for a violation of this paragraph.

2. Any person who, without such cause, shoots an intimate partner or a family or household member as defined in subsection C by means of any deadly weapon that is likely to produce

A COUNCIL BILL AMENDING THE CHOCTAW NATION CRIMINAL CODE

death shall, upon conviction, be guilty of domestic assault and battery with a deadly weapon which shall be a felony punishable by imprisonment ~~in the custody of the Department of Corrections~~ not exceeding three (3) years, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. The provisions of Section 51 of this title shall apply to any second or subsequent conviction for a violation of this paragraph.

E. 1. Any person convicted of domestic abuse committed against a pregnant woman with knowledge of the pregnancy shall be guilty of a misdemeanor, punishable by imprisonment for not more than one (1) year, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

2. Any person convicted of a second or subsequent offense of domestic abuse against a pregnant woman with knowledge of the pregnancy shall be guilty of a felony, punishable by imprisonment for not more than three (3) years, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

3. Any person convicted of domestic abuse committed against a pregnant woman with knowledge of the pregnancy and a miscarriage occurs or injury to the unborn child occurs shall be guilty of a felony, punishable by imprisonment for not more than three (3) years, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

F. Any person convicted of domestic abuse as defined in subsection C of this section that results in great bodily injury to the victim shall be guilty of a felony ~~and punished by imprisonment in the custody of the Department of Corrections for not less than two (2) years; punishable by~~ imprisonment for not more than three (3) years, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. The provisions of Section 51 of this title shall apply to any second or subsequent conviction of a violation of this subsection.

G. Any person convicted of domestic abuse as defined in subsection C of this section that was committed in the presence of a child shall be punished by imprisonment for not less than six (6) months nor more than one (1) year, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. Any person convicted of a second or subsequent domestic abuse as defined in subsection C of this section that was committed in the presence of a child shall be punished by imprisonment for not less than one (1) year nor more than three (3) years, or by a fine not exceeding Seven Thousand Dollars (\$7,000.00), or by both such fine and imprisonment. The provisions of Section 51 of this title shall apply to any second or subsequent offense. For every conviction of a domestic abuse crime in violation of any provision of this subsection committed against an intimate partner or a family or household member, the court shall:

1. Specifically order as a condition of a suspended or deferred sentence that a defendant participate in counseling or undergo treatment to bring about the cessation of domestic abuse as specified in paragraph 2 of this subsection;

A COUNCIL BILL AMENDING THE CHOCTAW NATION CRIMINAL CODE

2. a. The court shall require the defendant to complete an assessment and follow the recommendations of a certified batterers' intervention program. If the defendant is ordered to participate in a batterers' intervention program, the order shall require the defendant to attend the program for a minimum of fifty-two (52) weeks, complete the program, and be evaluated before and after attendance of the program by program staff. Three unexcused absences in succession or seven unexcused absences in a period of fifty-two (52) weeks from any court-ordered batterers' intervention program shall be prima facie evidence of the violation of the conditions of probation for the Tribal Prosecutor to seek acceleration or revocation of any probation entered by the court.

b. A program for anger management, couples counseling, or family and marital counseling shall not solely qualify for the counseling or treatment requirement for domestic abuse pursuant to this subsection. The counseling may be ordered in addition to counseling specifically for the treatment of domestic abuse or per evaluation as set forth below. If, after sufficient evaluation and attendance at required counseling sessions, the domestic violence treatment program or licensed professional determines that the defendant does not evaluate as a perpetrator of domestic violence or does evaluate as a perpetrator of domestic violence and should complete other programs of treatment simultaneously or prior to domestic violence treatment, including but not limited to programs related to the mental health, apparent substance or alcohol abuse or inability or refusal to manage anger, the defendant shall be ordered to complete the counseling as per the recommendations of the domestic violence treatment program or licensed professional.

3. a. The court shall set a review hearing no more than one hundred twenty (120) days after the defendant is ordered to participate in a domestic abuse counseling program or undergo treatment for domestic abuse to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements. The court may suspend sentencing of the defendant until the defendant has presented proof to the court of enrollment in a program of treatment for domestic abuse by an individual licensed practitioner or a certified domestic abuse treatment program and attendance at weekly sessions of such program. Such proof shall be presented to the court by the defendant no later than one hundred twenty (120) days after the defendant is ordered to such counseling or treatment. At such time, the court may complete sentencing, beginning the period of the sentence from the date that proof of enrollment is presented to the court, and schedule reviews as required by subparagraphs a and b of this paragraph and paragraphs 4 and 5 of this subsection. Three unexcused absences in succession or seven unexcused absences in a period of fifty-two (52) weeks from any court-ordered domestic abuse counseling or treatment program shall be prima facie evidence of the violation of the conditions of probation for the district attorney to seek acceleration or revocation of any probation entered by the court.

b. The court shall set a second review hearing after the completion of the counseling or treatment to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements. The court shall retain continuing jurisdiction over the defendant during the course of ordered counseling through the final review hearing;

A COUNCIL BILL AMENDING THE CHOCTAW NATION CRIMINAL CODE

4. The court may set subsequent or other review hearings as the court determines necessary to assure the defendant attends and fully complies with the provisions of this subsection and the domestic abuse counseling or treatment requirements;
5. At any review hearing, if the defendant is not satisfactorily attending individual counseling or a domestic abuse counseling or treatment program or is not in compliance with any domestic abuse counseling or treatment requirements, the court may order the defendant to further or continue counseling, treatment, or other necessary services. The court may revoke all or any part of a suspended sentence, deferred sentence, or probation pursuant to Section 991b of the Choctaw Nation Criminal Procedure Code and subject the defendant to any or all remaining portions of the original sentence;
6. At the first review hearing, the court shall require the defendant to appear in court. Thereafter, for any subsequent review hearings, the court may accept a report on the progress of the defendant from individual counseling, domestic abuse counseling, or the treatment program. There shall be no requirement for the victim to attend review hearings; and

The defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the court.

H. As used in subsection G of this section, "in the presence of a child" means in the physical presence of a child; or having knowledge that a child is present and may see or hear an act of domestic violence. For the purposes of subsections C and G of this section, "child" may be any child whether or not related to the victim or the defendant.

I. For the purposes of subsections C and G of this section, any conviction for assault and battery against an intimate partner or a family or household member shall constitute a sufficient basis for a felony charge: ~~1.~~ 1. if that conviction is rendered in any tribal, state, county, municipal, or parish court of record of this or any other tribe or state.

J. Any person who commits any assault and battery with intent to cause great bodily harm by strangulation or attempted strangulation against an intimate partner or a family or household member shall, upon conviction, be guilty of domestic abuse by strangulation and shall be punished by imprisonment for a period of not less than one (1) year nor more than three (3) years, or by a fine of not more than Three Thousand Dollars (\$3,000.00), or by both such fine and imprisonment. Upon a second or subsequent conviction for a violation of this section, the defendant shall be punished by imprisonment for a period of not less than two (2) years nor more than three (3) years, or by a fine of not more than Twenty Thousand Dollars (\$20,000.00), or by both such fine and imprisonment. The provisions of Section 51 of this title shall apply to any second or subsequent conviction of a violation of this subsection. As used in this subsection, "strangulation" means any form of asphyxia; including, but not limited to, asphyxia characterized by closure of the blood vessels or air passages of the neck as a result of external pressure on the neck or the closure of the nostrils or mouth as a result of external pressure on the head.

A COUNCIL BILL AMENDING THE CHOCTAW NATION CRIMINAL CODE

K. The Choctaw Nation District Court and any judge thereof shall be immune from any liability or prosecution for issuing an order that requires a defendant to:

1. Attend a certified treatment program for domestic abusers;
2. Attend counseling or treatment services ordered as part of any suspended or deferred sentence or probation; and
3. Attend, complete, and be evaluated before and after attendance by a certified treatment program for domestic abusers.

L. There shall be no charge of fees or costs to any victim of domestic violence, stalking, or sexual assault in connection with the prosecution of a domestic violence, stalking, or sexual assault offense.

M. In the course of prosecuting any charge of domestic abuse, stalking, harassment, rape, or violation of a protective order, the prosecutor shall provide the court, prior to sentencing or any plea agreement, a local history and any other available history of past convictions of the defendant within the last ten (10) years relating to domestic abuse, stalking, harassment, rape, violation of a protective order, or any other violent misdemeanor or felony convictions.

N. Any plea of guilty or finding of guilt for a violation of subsection C, F, G, I or J of this section shall constitute a conviction of the offense for the purpose of this act or any other criminal statute under which the existence of a prior conviction is relevant for a period of ten (10) years following the completion of any court imposed probationary term; provided, the person has not, in the meantime, been convicted of a misdemeanor involving moral turpitude or a felony.

O. For purposes of subsection F of this section, "great bodily injury" means bone fracture, protracted and obvious disfigurement, protracted loss or impairment of the function of a body part, organ or mental faculty, or substantial risk of death.

P. Any pleas of guilty or nolo contendere or finding of guilt to a violation of any provision of this section shall constitute a conviction of the offense for the purpose of any subsection of this section under which the existence of a prior conviction is relevant for a period of ten (10) years following the completion of any sentence or court imposed probationary term.

Q. Any person who commits domestic abuse, as defined by subsection C of this section, and has a prior pattern of physical abuse shall be guilty of a felony, upon conviction, punishable by for a term of not more than three (3) years or by a fine not exceeding Five Thousand Dollars

A COUNCIL BILL AMENDING THE CHOCTAW NATION CRIMINAL CODE

(\$5,000.00) or by both such fine and imprisonment. 4-For purposes of this subsection, "prior pattern of physical abuse" means two or more separate incidences, including the current incident, occurring on different days and each incident relates to an act constituting assault and battery or domestic abuse committed by the defendant against a current or former spouse, a present spouse of a former spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is in a dating relationship, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, a person living in the same household as the defendant, a current intimate partner or former intimate partner, or any combination of such persons, where proof of each incident prior to the present incident is established by the sworn testimony of a third party who was a witness to the alleged physical abuse or by other admissible direct evidence that is independent of the testimony of the victim.

SECTION 4. AMENDATORY Section 843 of the Choctaw Nation Criminal Code, is amended to read as follows:

Section 843. Definitions

As used in this Chapter:

A. "Abandonment" means:

1. the willful intent by words, actions, or omissions not to return for a child, or
2. the failure to maintain a significant parental relationship with a child through visitation or communication in which incidental or token visits or communication are not considered significant, or
3. the failure to respond to notice of deprived proceedings;

B. "Abuse" means harm or threatened harm or failure to protect from harm or threatened harm to the health, safety, or welfare of a child, including but not limited to nonaccidental physical or mental injury, sexual abuse, or sexual exploitation, or the act of willfully or maliciously injuring, torturing or maiming a child by another.

1. "Sexual abuse" includes but is not limited to rape, incest, and lewd or indecent acts or proposals made to a child by ~~a person responsible for the health, safety, or welfare of the child~~ any person over the age of 18;

2. "Sexual exploitation" includes but is not limited to allowing, permitting, or encouraging a child to engage in prostitution, or allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming, or depicting of a child in those acts ~~by a person responsible for the health, safety, and welfare of the child.~~

C. "Child" means any unmarried person less than eighteen (18) years of age;

A COUNCIL BILL AMENDING THE CHOCTAW NATION CRIMINAL CODE

D. "Custodian" means an individual other than a parent, legal guardian or Indian custodian, to whom legal custody of the child has been awarded by the court;

E. "Day treatment" means a nonresidential program which provides intensive services to a child who resides in the child's own home, the home of a relative, group home, a foster home or residential child care facility. Day treatment programs include, but are not limited to, educational services;

F. "Dependency" means a child who is homeless or without proper care or guardianship through no fault of his or her parent, legal guardian, or custodian;

G. "Enabling child abuse" means the causing, procuring or permitting of a willful or malicious act of child abuse by another. As used in this subsection, "permitting" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of abuse as proscribed by this subsection.

H. "Enabling child neglect" means the causing, procuring or permitting of a willful or malicious act of child neglect by another. As used in this subsection, "permitting" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of neglect as proscribed by this subsection.

I. "Enabling child sexual abuse" means the causing, procuring or permitting of a willful or malicious act of child sexual abuse by another. As used in this subsection, "permitting" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of sexual abuse as proscribed by this subsection.

J. "Enabling child sexual exploitation" means the causing, procuring or permitting of a willful or malicious act of child sexual exploitation by another. As used in this subsection, "permitting" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of sexual exploitation as proscribed by this subsection.

K. "Harm or threatened harm" means any real or threatened physical, mental, or emotional injury or damage to the body or mind that is not accidental including, but not limited to, sexual abuse, sexual exploitation, neglect, or dependency;

L. "Neglect" means that a person responsible for a child's health, safety, or welfare has:

1. failed or omitted to provide any of the following:

A COUNCIL BILL AMENDING THE CHOCTAW NATION CRIMINAL CODE

a. adequate nurturance and affection, food, clothing, shelter, sanitation, hygiene, or appropriate education,

b. medical, dental, or behavioral health care,

c. supervision or appropriate caretakers, or

d. special care made necessary by the physical or mental condition of the child,

2. failed or omitted to protect a child from exposure to any of the following:

a. the use, possession, sale, or manufacture of illegal drugs,

b. illegal activities, or

c. sexual acts or materials that are not age- appropriate, or

3. abandoned the child.

4. Nothing in this paragraph shall be construed to mean a child is abused or neglected for the sole reason the parent, legal guardian or person having custody or control of a child, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child;

M. "Person responsible for a child's health, safety, or welfare" includes a parent; a legal guardian; custodian; a foster parent; a person eighteen (18) years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child; an agent or employee of a public or private residential home, institution, facility or day treatment program; or an owner, operator, or employee of a child care facility;

N. "Risk" means the likelihood that an incident of child abuse or neglect will occur in the future;

O. "Safety threat" means the threat of serious harm due to child abuse or neglect occurring in the present or in the very near future and without the intervention of another person, a child would likely or in all probability sustain severe or permanent disability or injury, illness, or death;

SECTION 5. AMENDATORY Section 1211 of the Choctaw Nation Criminal Code, is amended to read as follows:

Section 1211. Disruption or prevention of emergency telephone call—Penalties

Any person, who intentionally interrupts, disrupts, impedes or interferes with an emergency telephone call or intentionally prevents or hinders another person from placing an emergency telephone call shall be guilty of a misdemeanor. Upon conviction, the person shall be punished

A COUNCIL BILL AMENDING THE CHOCTAW NATION CRIMINAL CODE

by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment not more than one (1) year or by both such fine and imprisonment.

No person shall call a Public Safety Answering Point or an emergency response services provider of the Choctaw Nation for the purpose of making a knowingly false alarm or complaint or reporting knowingly false information which could result in the dispatch of emergency services. Nor shall any person call a Public Safety Answering Point or an emergency response services provider of the Choctaw Nation for nonemergency or personal use. Any person violating the provisions of this section shall be guilty of a misdemeanor. Upon conviction, the person shall be punished by a fine of not to exceed Five Hundred Dollars (\$500.00) and by assessment for the resulting costs of any dispatching of emergency personnel and equipment for each such offense; or by imprisonment not more than one (1) year; or by such fine, assessment for resulting costs, and imprisonment.

For the purposes of this section, the following words shall have the following meanings:

“Call”, includes the use of any method of communication including, but not limited to: telephones, facsimiles, Voice over Internet Protocols, e-mail messages, text messages, and electronic transmissions of an image or video.

“Emergency response services provider”, a police department, fire department, emergency medical service provider, Public Safety Answering Point, public safety department, private safety department or other public safety agency of the Choctaw Nation.

“Public Safety Answering Point”, a facility assigned the responsibility of receiving 911 calls and, as appropriate, directly dispatching emergency response services or transferring or relaying emergency 911 calls to other public or private safety agencies or other Public Safety Answering Points.

SECTION 6 NEW LAW a new section of law to be codified in the Choctaw Nation Criminal Code as Section 1403, unless there is created a duplication in numbering, reads as follows:

A. It is unlawful for any person to set fire to any forest, grass, range, crop, or other wildlands, or to build a campfire or bonfire, or to burn trash or other material that may cause a forest, grass, range, crop or other wildlands fire in any district, districts, or area within a district of the Choctaw Nation of Oklahoma Reservation (the “Reservation”) where, because of emergency drought conditions or other high fire danger conditions, there is proclaimed by the Chief of the Choctaw Nation of Oklahoma (the “Chief”) that an extraordinary danger from fire exists, unless the setting of any backfire during the drought emergency is necessary to afford protection as determined by a representative of the Choctaw Nation Department of Public Safety, or unless it can be established that the setting of the backfire was necessary for the purpose of saving life or property. The burden of proving the necessity shall rest on the person claiming a defense.

B. The Choctaw Nation Department of Public Safety shall advise the Chief when, because of emergency drought conditions or other high fire danger conditions, the lands described in subsection A of this section in any district, districts, or area within a district of the Reservation

A COUNCIL BILL AMENDING THE CHOCTAW NATION CRIMINAL CODE

are in extraordinary danger from fire. The Chief may by Executive Order declare a drought or high fire danger emergency to exist and describe the general boundaries of the area affected.

C. Any Executive Order promulgated by the Chief under authority of this section shall be effective immediately upon the Chief's signed approval of the emergency Executive Order. Notice of the Executive Order shall occur through posting on the Choctaw Nation of Oklahoma's website and informing local news media. Evidence of publication or posting as herein provided shall be maintained by the Choctaw Nation Department of Public Safety.

D. When conditions warrant, due notice of the termination of the emergency shall be promptly made by Executive Order, which shall be published or posted in like manner as when officially declared.

E. Any person who violates this section is guilty of a misdemeanor punishable by a fine of not more than One Thousand Dollars (\$1,000.00), by imprisonment for not more than one (1) year, or both.

F. The following exceptions are authorized and deemed exempt from any Executive Order promulgated by the Chief under authority of this section:

1. ceremonial fires conducted in sweat lodges or over non-flammable surfaces of at least ten (10) feet by ten (10) feet; and
2. outdoor cooking using a propane, natural gas, or charcoal grill, as long as cooking is done over a non-flammable surface that is at least five (5) feet from flammable vegetation.

SECTION 7 AMENDATORY Section 1753.1 of the Choctaw Nation Criminal Code is amended to read as follows:

Section 1753.1 Throwing, dropping, depositing or otherwise placing litter upon highways, roads or public property—Penalties

A. The operator of a vehicle, unless any other person in the vehicle admits to or is identified as having committed the act, shall be liable pursuant to subsection B of this section for any act of throwing, dropping, depositing, or otherwise placing any litter from a vehicle upon public roadways or public property.

B. Any person convicted of violating the provisions of subsection A of this section shall be guilty of a misdemeanor punishable by a fine of not more than One Thousand Dollars (\$1,000.00) and upon conviction shall be sentenced to perform not less than five (5) nor more than twenty (20) hours of community service in a work program as approved by the court,

C. Any person convicted of violating the provisions of subsection A of this section with any flaming or glowing substances except those which by law may be placed upon highway rights-of-way, or any substance which may cause a fire shall be guilty of a felony misdemeanor punishable by a fine of not more than Five Thousand Dollars (\$5,000.00) and, upon conviction,

A COUNCIL BILL AMENDING THE CHOCTAW NATION CRIMINAL CODE

shall be sentenced to perform not less than ten (10) nor more than one hundred (100) hours of community service in work program approved by the court.

D. During a declared burn ban by the Choctaw Nation of Oklahoma any person convicted of violating the provisions of subsection A of this section with any flaming or glowing substances except those which by law may be placed upon highway rights-of-way, or any substance which may cause a fire shall be guilty of a ~~felony~~ misdemeanor punishable by a fine of not more than Five Thousand Dollars (\$5,000.00) and, upon conviction, shall be sentenced to perform not less than twenty (20) nor more than one hundred (100) hours of community service in a work program approved by the court.

E. As used in this section, "litter" means any flaming or glowing substances except those which by law may be placed upon roadway rights-of-way, any substance which may cause a fire, any bottles, cans, trash, garbage, or debris of any kind. As used in this section, "litter" shall not include trash, garbage, or debris placed beside a public road for collection by a garbage or collection agency, or deposited upon or within public property designated by the Choctaw Nation of Oklahoma or by any of its agencies or political subdivisions as an appropriate place for such deposits if the person making the deposit is authorized to use the property for such purpose.

SECTION 8 AMENDATORY Section 1760 of the Choctaw Nation Criminal Code is amended to read as follows:

Section 1760. Dumping of trash on public or private property prohibited— Penalties

A. Any person who deliberately places, throws, drops, dumps, deposits, or discards any garbage, trash, waste, rubbish, refuse, debris, or other deleterious substance on any Choctaw Nation of Oklahoma property or on any private property of another without consent of the property owner shall be deemed guilty of a misdemeanor.

B. Any person convicted of violating the provisions of subsection A of this section shall be punished by a fine of more than One Thousand Dollars (\$1,000.00) or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.

C. Any person convicted of violating the provisions of subsection A of this section with any flaming or glowing substance, or any substance which may cause a fire shall be punished by a fine of not more than Five Thousand Dollars (\$5,000.00) or by imprisonment for not more than one (1) year, or by both such fine and imprisonment. Any person violating the provisions of this subsection shall be liable for all damages caused by the violation.

D. During a burn ban declared by the Choctaw Nation of Oklahoma, any person convicted of violating the provisions of subsection A of this section with any flaming or glowing substances, or any substance which may cause a fire shall be guilty of a misdemeanor and punished by a fine of not more than Five Thousand Dollars (\$5,000.00) or by imprisonment for not more than ~~three~~ one (1) year, or by both such fine and imprisonment. Any person violating the provisions of this subsection shall be liable for all damages caused by the violation.

A COUNCIL BILL AMENDING THE CHOCTAW NATION CRIMINAL CODE

Purpose/Need of Council Bill: This bill amends several sections of the Choctaw Nation Criminal Code. This bill amends Section 268 by expanding the definition of an officer for violations of resisting an officer. This bill amends section 540.1 by correcting the range of punishment for a violation of eluding a police officer and removes language referencing state correctional facilities. This bill amends section 644 by adding fines to the punishments and removing references to the department of corrections. This bill amends section 843 and broadens the definitions of sexual abuse and sexual exploitation. The previous language was narrow and only allowed the Nation to prosecute for these crimes under limited circumstances. The bill amends section 1211 by expanding the crime and range of punishment for violations for disruption or prevention of emergency telephone calls. This bill adds section 1403 and prohibits fires during emergency drought conditions, makes violations a misdemeanor, and creates exceptions. This bill amends section 1753.1 by changing violations of littering with something that may cause a fire from a felony to misdemeanor. This bill amends section 1760 modifying the range of punishment for violations of dumping trash on public or private property. These amendments will further the Nation's strategic plan goals by: creating more laws, allowing for the continuing optimal function of the Nation's court system, and allowing the Nation to continue to exercise its sovereignty to the fullest extent possible.

Title of Council Bill: TO AMEND THE CHOCTAW NATION OF OKLAHOMA CRIMINAL CODE

Agency: Legal & Compliance

Budget: N/A

Match Required: N/A

Request by Project Director: Brian Danker, SEO, Legal & Compliance

A COUNCIL BILL AMENDING THE CHOCTAW NATION CRIMINAL CODE

E. In addition to the penalty prescribed by subsection B of this section, the court shall direct the person to make restitution to the property owner affected; to remove and properly dispose of the garbage, trash, waste, rubbish, refuse, or debris from the property; to pick up, remove, and properly dispose of garbage, trash, waste, rubbish, refuse, debris, and other nonhazardous deleterious substances from public property; or perform community service or any combination of the foregoing which the court, in its discretion, deems appropriate.

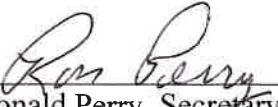
F. The discovery of two or more items which have been dropped, dumped, deposited, discarded, placed, or thrown at one location and which bear a common address in a form which tends to identify the latest owner of the items shall create a rebuttable presumption that any competent person residing at such address committed the unlawful act.

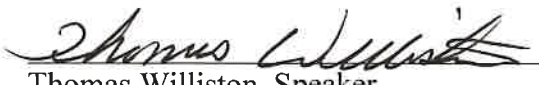
G. Any person may report a violation of this section, if committed in their presence, to a law enforcement officer or any other peace officer in the Choctaw Nation of Oklahoma. The law enforcement officer shall then conduct an investigation into the allegations, if warranted. If a violation of this section has in fact been committed, and the law enforcement officer has reasonable cause to believe a particular person or persons have committed the violation, a report shall be filed for prosecution.

SECTION 9. The amendments enacted in this Council Bill shall be effective immediately.

CERTIFICATION

I, the undersigned, as speaker of the Tribal Council of the Choctaw Nation of Oklahoma, do hereby certify that the Tribal Council is composed of twelve (12) seats. Eight (8) members must be present to constitute a quorum. I further certify that twelve (12) members answered roll call and that a quorum was present at the Regular Session of the Tribal Council in Tuskahoma, Oklahoma on April 8, 2023. I further certify that the foregoing Council Bill CB- 63 -23 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


 Thomas Williston, Speaker
 Choctaw Nation Tribal Council


 Gary Batton, Chief
 Choctaw Nation of Oklahoma

Date 4-11-23