

TO AMEND THE CHOCTAW NATION OF OKLAHOMA CHILDREN'S CODE

IN THE TRIBAL COUNCIL OF THE CHOCTAW NATION

RONALD PERRY INTRODUCED THE FOLLOWING COUNCIL BILL

A COUNCIL BILL

TO AMEND the Choctaw Nation of Oklahoma Children's Code by adding language to Section 1-4-101 to ensure that any court proceedings involving a deprived-child matter is stayed until further order of the Court; striking a reference to "10 1/2 counties" and replacing with the word "Reservation;" and amending Section 1-4-505 which relates to the admissibility of statements of a child recorded before a proceeding and allowing for alternative forms of testimony subject to the Choctaw Nation Evidence Code.

WHEREAS, in accordance with Article IX, Section 4 of the Constitution of the Choctaw Nation of Oklahoma, the Tribal Council (the "Council") shall enact legislation, rules, and regulations 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 Children's Code, which provides for laws involving deprived children within the Choctaw Nation Reservation;

WHEREAS, the Nation, as a sovereign nation, possesses the right to define when its courts have jurisdiction and venue for its courts; and

WHEREAS, the Council finds it is in the best interest of the Nation to adopt the proposed amendment to the Choctaw Nation Children's Code, in order to clarify the appropriate venue for deprived-child proceedings.

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

SECTION 1. AMENDATORY Section 1-4-101, is amended to read as follows:

Section 1-4-101. Jurisdiction – Temporary Order – Interlocutory Relief – Conflicting Orders – Venue – Transfer of Proceedings

A. 1. Upon the filing of a petition, the assumption of the custody of a child, or issuance of an emergency custody order pursuant to the provisions of the Choctaw Nation Children's Code, the district court shall obtain jurisdiction over any child who is, or is alleged to be, deprived. Jurisdiction shall also be obtained over any parent, legal guardian, or custodian of and any other

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person living in the home of such child who appears in court or has been properly served with a summons pursuant to Section 1-4-304 of this Title.

2. When jurisdiction has been obtained over a child who is or, is alleged to be, a deprived child:

a. such jurisdiction may be retained until the child becomes eighteen (18) years of age,

b. the court may issue any temporary order or grant any interlocutory relief authorized by this Code in an emergency, regardless of whether another court has prior or current jurisdiction to determine the custody, support, or visitation of the child,

c. any and all other actions then pending or thereafter commenced within the Choctaw Nation that concerns the custody, support, or visitation of the child shall be automatically stayed unless after notice to the parties in the deprived action, the written consent of such court is obtained and filed in the other proceeding; provided, a child's delinquency action may, in the discretion of the court, proceed pursuant to the Choctaw Nation Juvenile Code,

d. all orders entered in the deprived proceeding concerning the custody, support, or visitation of a child shall control over conflicting orders entered in other actions until such time as the jurisdiction of the court in the deprived proceeding terminates, and

e. the judge presiding over a deprived action shall have the authority to make a final determination in the matter and preside over any separate action necessary to finalize a child's court-approved permanency plan including an adoption, guardianship, or other custody proceeding.

B. 1. Venue of any action involving a child alleged to be deprived may be in any county of the State of Oklahoma within the ~~10 1/2 counties~~ Reservation of the Choctaw Nation of Oklahoma where:

a. the child is found,

b. the child resides,

c. the alleged acts of deprivation occurred, or

d. a parent or sibling has a deprived action pending.

2. For purposes of this section, the residence of the child shall be the residence of the person who has the legal right to physical custody of the child according to a prior court order or by operation of law.

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a. If there is no order determining the custody of the child, the custodian of the child shall be:

- (1) both parents where they reside together,
- (2) the primary or actual physical custodial parent where parents do not reside together, or
- (3) the mother where paternity has or has not been established.

b. The residence of a newborn child shall be deemed to be the county where the child's mother legally resided at the time of the child's birth.

c. When the child is in the permanent custody of a public or private child care agency, the residence of the child shall be the county in which the child resides at the time when legal proceedings are initiated.

d. For purposes of transfer, the residence of the child may be with the person that the court approves for permanent placement.

3. The place of holding court will be determined by the appropriate court.

SECTION 2. AMENDATORY PART 1. JURISDICTION, Section 1-4-505, is amended to read as follows:

Section 1-4-505. Applicability of Section – Admissibility of Child Statement Recorded Before Proceedings Begin

A. This section shall apply only to a proceeding brought within the purview of the Choctaw Nation Children's Code in which a child is alleged to be deprived, and shall apply only to the statement of that child or another child witness.

B. The recording of an oral statement of the child made before the proceedings begin is admissible into evidence if:

1. The court determines in a hearing conducted outside the presence of the jury, if any jury be present, that the time, content, and totality of circumstances surrounding the taking of the statement provide sufficient indicia of reliability so as to render it inherently trustworthy. In determining trustworthiness, the court may consider, among other things, the following factors: the spontaneity and consistent repetition of the statement, the mental state of the declarant, whether the terminology used is unexpected of a child of similar age or of an incapacitated person, and whether a lack of motive to fabricate exists; and the child either:

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a. testifies or is available to testify at the proceedings in open court or through an alternative method pursuant to the provisions of the ~~Uniform Child Witness Testimony by Alternative Methods Act~~ Choctaw Nation Evidence Code, or

b. is unavailable as a witness as defined by the Choctaw Nation Evidence Code. When the child is unavailable, such statement may be admitted only if there is corroborative evidence of the ~~Act~~;

2. No attorney for any party is present when the statement is made. However, if appropriate facilities are utilized that allow observation of the child without the child's knowledge or awareness in any way, any such attorney may be present as an observer, but not as a participant, and no such attorney shall have any right to intervene, object, or otherwise make his or her presence known to the child before, after, or during the making of the statement of the child;

3. The recording is both visual and aural and is recorded on film or videotape or by other electronic means;

4. The recording equipment is capable of making an accurate recording, the operator of the equipment is competent, and the recording is accurate and has not been altered;

5. The statement is not made in response to questioning calculated to lead the child to make a particular statement or is otherwise clearly shown to be the child's statement and not made solely as a result of a leading or suggestive question;

6. Every voice on the recording is identified;

7. The person conducting the interview of the child in the recording is present at the proceeding and is available to testify or be cross-examined by any party;

8. Each party to the proceeding is afforded an opportunity to view the recording before the recording is offered into evidence; and

9. A copy of a written transcript of the recording transcribed by a licensed or certified court reporter is available to the parties.


A statement may not be admitted under this subsection unless the proponent of the statement makes known to the parties an intention to offer the statement and the particulars of the statement at least ten (10) days in advance of the proceedings to provide the parties with an opportunity to prepare to answer the statement.

SECTION 3. This Council Bill shall become effective immediately.

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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 July , 8 , 2023. I further certify that the foregoing Council Bill CB-90 -23 was adopted at such meeting by the affirmative vote of twelve (12) members, zero (0) negative votes, and zero (0) abstaining.


Thomas Williston, Speaker
Choctaw Nation Tribal Council


Ronald Perry, Secretary
Choctaw Nation Tribal Council


Gary Patton, Chief
Choctaw Nation of Oklahoma

Date 7.12.2023

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Purpose/Need of Council Bill: This bill amends the Choctaw Nation Children's Code by adding language to Section 1-4-101 to ensure that any court proceedings involving a deprived-child matter is stayed until further order of the Court. This amendment to Section 1-4-101 also strikes a reference to "10 1/2 counties" and replaces with the word "Reservation;" This bill amends Section 1-4-505 which relates to the admissibility of statements of a child recorded before a proceeding. The amendment and allows for alternative forms of testimony subject to the Choctaw Nation Evidence Code.

Title of Council Bill: TO AMEND THE CHOCTAW NATION OF OKLAHOMA CHILDREN'S CODE

Agency: Legal & Compliance

Budget: N/A

Match Required: N/A

Request by Project Director: Kara Bacon, Tribal Prosecutor