

A COUNCIL BILL AMENDING THE CHOCTAW NATION CRIMINAL PROCEDURE 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 Criminal Procedure Code related to: establish procedures for presentence investigations; clarify the rights of crime victims in criminal cases; allowing for deferred sentences to be longer than three (3) years in duration; and clarifying language regarding eligibility for a deferred sentence.

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

WHEREAS, the Council has previously adopted the Choctaw Nation Code of Criminal Procedure, which establishes the laws governing the conduct of criminal prosecution within the Choctaw Nation of Oklahoma Reservation;

WHEREAS, the Nation, as a sovereign nation, possesses the right to set forth and define the procedures to be followed in the Courts of the Choctaw Nation to protect and promote public safety; and

WHEREAS, the Council finds it is in the best interest of the Nation to amend Choctaw Nation Criminal Procedure Code as follows.

THEREFORE BE IT ENACTED, by the Tribal Council of the Choctaw Nation of Oklahoma, that the Choctaw Nation Criminal Procedure Code is amended as follows:

SECTION 1. NEW LAW A new section of law to be codified in the Choctaw Nation Criminal Procedure Code as Section 982 of the Choctaw Nation Criminal Procedure Code, unless there is created a duplication in numbering, reads as follows:

Section 982. Presentence Investigation

- A. Whenever a person is convicted of a felony offense whether the conviction is for a single offense or part of any combination of offenses, the court may, before imposing the sentence, require a presentence investigation be made of the offender by the Department of Criminal

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- Justice. If the presentence investigation is requested by either party before sentencing, then the court shall order the presentence investigation. The court may order the defendant to pay a fee to the Department of Criminal Justice of not less than Fifty Dollars (\$50.00) nor more than Two Hundred Fifty Dollars (\$250.00) for the presentence investigation. In hardship cases, the court may reduce the amount of the fee, and may establish a payment schedule.
- B. When conducting a presentence investigation, the Department shall inquire into the circumstances of the offense and the characteristics of the offender. The information obtained from the investigation shall include, but not be limited to, a voluntary statement from each victim of the offense concerning the nature of the offense and the impact of the offense on the victim and the immediate family of the victim, the amount of the loss suffered or incurred by the victim as a result of the criminal conduct of the offender, and the age, marital status, living arrangements, financial obligations, income, family history and education, prior juvenile and criminal records, associations with other persons convicted of a felony offense, social history, indications of a predisposition to violence or substance abuse, remorse or guilt about the offense or the harm to the victim, job skills and employment history of the offender. The Department shall make a report of information from such investigation to the court, including a recommendation detailing the punishment which is deemed appropriate for both the offense and the offender, and specifically a recommendation for or against probation or suspended sentence. The report of the investigation shall be presented to the judge within a reasonable time, and upon failure to present the report, the judge may proceed with sentencing. Whenever, in the opinion of the court or the Department, it is desirable, the investigation shall include a physical and mental examination or either a physical or mental examination of the offender.
- C. The presentence investigation reports specified in this section shall not be referred to, or be considered, in any appeal proceedings. Before imposing a sentence, the court shall advise the defendant, counsel for the defendant, and the Tribal Prosecutor of the factual contents and conclusions of the presentence investigation report. The court shall afford the offender a fair opportunity to controvert the findings and conclusions of the reports at the time of sentencing. If either the defendant or the Tribal Prosecutor desires, a hearing shall be set by the court to allow both parties an opportunity to offer evidence proving or disproving any finding contained in a report, which shall be a hearing in mitigation or aggravation of punishment.

SECTION 2. AMENDATORY. Section 991c of the Choctaw Nation Criminal Procedure Code is amended to read as follows:

Section 991c. Deferred Sentence

- A. Upon a verdict or plea of guilty or upon a plea of nolo contendere, but before a judgment of guilt, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings upon the specific conditions prescribed by the court not to exceed a period of ~~three (3)~~ five (5) years. The court shall first consider restitution among the various conditions it may prescribe. The court may also consider ordering the defendant to:

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1. Pay court costs;
2. Pay an assessment in lieu of any fine authorized by law for the offense;
3. Pay any other assessment or cost authorized by law;
4. Engage in a term of community service without compensation, according to a schedule consistent with the employment and family responsibilities of the defendant;
5. Jail confinement for a period not to exceed ninety (90) days or the maximum amount of jail time provided for the offense, if it is less than ninety (90) days;
6. Pay an amount as reimbursement for reasonable attorney fees, to be paid into the court fund, if a court appointed attorney has been provided to defendant;
7. Be supervised on probation for a period not to exceed two (2) years. As a condition of any supervision, the defendant shall be required to pay a supervision fee of Forty Dollars (\$40.00) per month. The supervision fee shall be waived in whole or part by the supervisory agency when the accused is indigent. No person shall be denied supervision based solely on the inability of the person to pay a fee;
8. Make other reparations to the community or victim as required and deemed appropriate by the court;
9. Order any conditions which can be imposed for a suspended sentence pursuant to subsection C of Section 991a-1 of this title; or
10. Any combination of the above provisions.

B. Upon completion of the conditions of the deferred judgment, and upon a finding by the court that the conditions have been met and all fines, fees, and monetary assessments have been paid as ordered, the defendant shall be discharged without a court judgment of guilt, and the court shall order the verdict or plea of guilty or plea of nolo contendere to be expunged from the record and the charge shall be dismissed with prejudice to any further action. The procedure to expunge the record of the defendant shall be as follows:

1. All references to the name of the defendant shall be deleted from the docket sheet;
2. The public index of the filing of the charge shall be expunged by deletion, mark-out or obliteration;

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3. Upon expungement, the court clerk shall keep a separate confidential index of case numbers and names of defendants which have been obliterated pursuant to the provisions of this section;

4. No information concerning the confidential file shall be revealed or released, except upon written order of a judge of the district court or upon written request by the named defendant to the court clerk for the purpose of updating the criminal history record of the defendant with the Oklahoma State Bureau of Investigation; and

5. Defendants qualifying under Section 18 of this title may petition the court to have the filing of the information and the dismissal expunged from the public index and docket sheet. This section shall not be mutually exclusive of Section 18 of this title.

C. Upon violation of any condition of the deferred judgment, the court may enter a judgment of guilt and proceed as provided in Section 991a-1 of this title or may modify any condition imposed. Provided, however, if the deferred judgment is for a felony offense, and the defendant commits another felony offense, the defendant shall not be allowed bail pending appeal. ~~The deferred judgment procedure described in this section shall apply only to defendants who have not been previously convicted of a felony offense and have not received a deferred judgment for a felony offense within the ten (10) years previous to the commission of the pending offense.~~

~~— Provided, the court may waive this prohibition upon written application of the prosecuting attorney. Both the application and the waiver shall be made a part of the record of the case.~~

D. _____ The deferred judgment procedure described in this section shall apply only to defendants who have not been previously convicted of a felony offense and have not received a deferred judgment for a felony offense within the ten (10) years previous to the commission of the pending offense. Provided, the court may waive this prohibition upon written application of the prosecuting attorney. Both the application and the waiver shall be made a part of the record of the case.

E. The deferred judgment procedure described in this section shall not apply to defendants found guilty or who plead guilty or nolo contendere to a sex offense required by law to register pursuant to the Sex Offenders Registration Act Sex Offender Registration and Notification Act, 34 U.S.C. § 20911 et seq., as amended, and/or the Oklahoma Sex Offenders Registration Act, 57 O.S. § 581 et seq., as amended.

SECTION 3. NEW LAW. A new section of law to be codified in the Choctaw Nation Criminal Procedure Code as Section 1901 of the Choctaw Nation Criminal Procedure Code unless there is created a duplication in numbering, reads as follows:

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Chapter 30. Victim' Rights Act**Section 1901. Rights of Victims in Criminal Proceedings.**

- A. The victim of a crime shall have the following rights in any criminal proceeding related to said crime, upon his request:
1. To be notified of and present at all proceedings involving the criminal case;
 2. To be heard in any proceeding involving release, plea, sentencing, disposition or any other proceeding where a right of the victim is implicated;
 3. To be notified as soon as practicable whenever any court proceeding at which the victim has been subpoenaed will or will not go on as scheduled, in order to save the person an unnecessary trip to court;
 4. To be treated with fairness and respect for the safety, dignity and privacy of the victim, to receive protection from harm and threats of harm arising out of the cooperation of the person with law enforcement and prosecution efforts, to be provided with information as to the level of protection available and how to access protection and, upon request, to be notified of any release or escape of an accused;
 5. To be informed of financial assistance and other social services available as a result of being a witness or a victim, including information on how to apply for the assistance and services;
 6. To be informed of the procedure to be followed in order to apply for and receive any witness fee to which the victim or witness is entitled;
 7. To be informed of the procedure to be followed in order to apply for and receive any restitution to which the victim is entitled;
 8. To be provided, whenever possible, a secure waiting area during court proceedings that does not require close proximity to defendants and families and friends of defendants;
 9. To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis and property the ownership of which is disputed, shall be returned to the person;
 10. To be provided with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize the loss of pay and other benefits of the employee resulting from court appearances;

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11. To have the family members of all homicide victims afforded all of the services under this section, whether or not the person is to be a witness in any criminal proceeding;
 12. To be informed of any plea bargain negotiations and, upon request, to confer with the attorney for the Nation;
 13. To have victim impact statements filed with the judgment and sentence;
 14. To be informed if a sentence is overturned, remanded for a new trial or otherwise modified by an appellate court;
 15. To a speedy disposition of the charges free from unwarranted delay caused by the defendant or at his behest, and to have this right considered any time a delay in the criminal proceedings is requested by any party;
 16. To refuse an interview or other request made by the defendant or any person acting on behalf of the defendant, other than a refusal to appear if subpoenaed by the defendant;
 17. To have their residential address, telephone number, place of employment or other personal information to be excluded or redacted from any law enforcement record or court document, other than the transcript of a court proceeding, if the Court determines that is necessary to protect the victim or a member of their immediate family from harassment or physical harm and if the court determines the information is immaterial to the defense; and
 18. To receive notification of these rights as soon as practicable.
- B. The Tribal Prosecutor shall make all practicable efforts to promptly notify victims of their rights as set forth in this section. Upon the commencement of a criminal proceeding, the Tribal Prosecutor shall cause to be mailed to the last-known address of the victim a written notification of said rights.
- C. The Tribal Prosecutor shall make all practicable efforts to provide all victims, regardless of whether the crime victim makes a specific request, with an official request for restitution form to be completed and signed by the crime victim, and to include all invoices, bills, receipts, and other evidence of injury, loss of earnings and out-of-pocket loss. The crime victim shall provide all documentation and evidence of compensation or reimbursement from insurance companies or agencies of this state, any other state, or the federal government received as a direct result of the crime for injury, loss of earnings or out-of-pocket loss. The unexcused failure or refusal of the crime victim to provide all or part of the requisite information prior to the sentencing, unless disclosure is deferred by the court, shall constitute a waiver of any grounds to appeal or seek future amendment or alteration of the restitution order predicated on the undisclosed available information.
- D. The victims and the legal representative of a victim of a crime shall have a priority interest in any proceeds or profits received by a district court from an offender or any other person with the cooperation of the offender, who is required to forfeit any proceeds or profits from any source, as a direct or indirect result of the crime or sentence, or the notoriety which the crime

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or sentence has conferred upon the offender pursuant to the provisions Section 17 of the Choctaw Nation Criminal Procedure Code.

E. For purposes of this section:

1. "Crime victim" or "victim" means any person against whom a crime or delinquent act was committed or a person directly and proximately harmed by the commission of a crime or delinquent act, except homicide, in which case the victim may be a surviving family member including a stepbrother, stepsister or stepparent, or the estate when there are no surviving family members other than the defendant, and who, as a direct result of the crime, suffers injury, loss of earnings, out-of-pocket expenses, or loss or damage to property, and who is entitled to restitution from an offender pursuant to an order of restitution imposed by a sentencing court under the laws of this state. The term "victim" does not include the accused or a person whom the court finds would not act in the best interests of a person who is deceased or incompetent, a minor or an incapacitated victim;
2. "Criminal proceeding" includes any criminal or juvenile delinquent case, in which a person is accused of committing a criminal offense in violation of the laws of the Choctaw Nation of Oklahoma;
3. "Injury" means any physical, mental, or emotional harm caused by the conduct of an offender and includes the expenses incurred for medical, psychiatric, psychological, or generally accepted remedial treatment of the actual bodily or mental harm, including pregnancy and death, directly resulting from a crime and aggravation of existing physical injuries, if additional losses can be attributed to the direct result of the crime;
4. "Loss of earnings" means the deprivation of earned income or of the ability to earn previous levels of income as a direct result of a crime and the loss of the cash equivalent of Social Security, railroad retirement, pension plan, retirement plan, disability, veteran's retirement, court-ordered child support or court-ordered spousal support, where the payment is the primary source of the victim's income, and where the victim is deprived of the money as a direct result of the crime;
5. "Members of the immediate family" means the spouse, a child by birth or adoption, a stepchild, a parent by birth or adoption, a stepparent, a grandparent, a grandchild, a sibling, or a stepsibling of each victim;
6. "Out-of-pocket loss" means the unreimbursed and nonreimbursable expenses or indebtedness incurred for medical care, nonmedical care, or other services necessary for the treatment of the actual bodily or mental harm, including pregnancy and funeral expenses, directly resulting from the crime and aggravation of existing physical injuries, if additional losses can be attributed directly to the crime; the unreimbursed and nonreimbursable expenses for damage to real and personal property as a direct result of the

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crime, and unreimbursed and nonreimbursable economic losses incurred as a consequence of participation in prosecution and proceedings related to the crime;

- 7. "Property" means any real or personal property;
- 8. "Restitution" means the return of property to the crime victim or payments in cash or the equivalent thereof, and payment in cash or the equivalent thereof as reparation for injury, loss of earnings, and out-of-pocket loss ordered by the court in the disposition of a criminal proceeding; and
- 9. "Victim impact statements" means information about the financial, emotional, psychological, and physical effects of a violent crime on each victim and members of their immediate family, or person designated by the victim or by family members of the victim and includes information about the victim, circumstances surrounding the crime, the manner in which the crime was perpetrated, and the opinion of the victim of a recommended sentence.

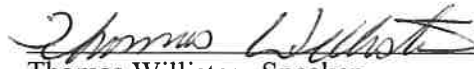
SECTION 4. EFFECTIVE DATE. The amendments enacted in this Council Bill shall become effective immediately.

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 eleven (11) members answered roll call and that a quorum was present at the Regular Session of the Tribal Council in Tuskahoma, Oklahoma on October 14, 2023. I further certify that the foregoing Council Bill CB- 02 - 24 was adopted at such meeting by the affirmative vote of eleven (11) members, zero (0) negative votes, and zero (0) abstaining.



Ronald Perry, Secretary
Choctaw Nation Tribal Council



Thomas Williston, Speaker
Choctaw Nation Tribal Council



Gary Batton, Chief
Choctaw Nation of Oklahoma

Date 10-17-23

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Purpose/Need of Council Bill: This bill proposes an amendment to the Choctaw Nation Criminal Procedure Code to establish procedures for presentence investigations, clarify the rights of crime victims in criminal cases, allowing for deferred sentences to be longer than three (3) years in duration, and clarifying language regarding eligibility for a deferred sentence.

Title of Council Bill: A COUNCIL BILL AMENDING THE CHOCTAW NATION CRIMINAL PROCEDURE CODE

Agency: Legal & Compliance

Budget: N/A

Match Required: N/A

Request by Project Director: Kara Bacon, Tribal Prosecutor, Brian Danker, SEO, Legal & Compliance