

**A COUNCIL BILL AMENDING THE CHOCTAW NATION CRIMINAL PROCEDURE
CODE RELATING TO SEARCH WARRANTS AND IMMUNITY**

**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 by amending Chapter 24, Sections 1221, 1227, and 1233, as well as adding Section 1243 relating to searches and seizures and the rules and requirements of search warrants and adding Section 1902 relating to compelling testimony when immunity is granted.

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; and

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

THEREFORE BE IT ENACTED, by the Tribal Council of the Choctaw Nation of Oklahoma, that this bill be cited as approval to enact the following section in the Criminal Procedure Code:

SECTION 1. AMENDATORY Section 1221 of the Choctaw Nation Criminal Procedure Code is amended to read as follows:

Section 1221. Search Warrant Defined

A. A search warrant is an order in writing, in the name of the Choctaw Nation, signed by a magistrate, directed to a peace officer, commanding him or her to search for personal property and bring it before the magistrate.

B. For purposes of Sections 1221 through 1242 of this title, the term "personal property" or "property" shall mean items and information that can be analyzed, seen, weighed, measured, felt or touched or that are in any other manner perceptible to the senses.

SECTION 2. AMENDATORY Section 1227 of the Choctaw Nation Criminal Procedure Code is amended to read as follows:

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Section 1227. Requisites of Search Warrant—Issuing Magistrate

A. If a magistrate be thereupon satisfied of the existence of grounds of the application, or that there is probable cause to believe their existence, the magistrate must issue a search warrant, signed by him or her, with the magistrate's name of office, directed to a peace officer of the Choctaw Nation of Oklahoma, commanding the officer forthwith to search the person or place named, for the property specified, and to bring it before the magistrate, and also to arrest the person in whose possession the same may be found, to be dealt with according to law.

~~B. — The magistrate may orally authorize a peace officer to sign the name of the magistrate on a copy made to conform to the original warrant if the peace officer applying for the warrant is not in the actual physical presence of the magistrate. Such copy shall be deemed to be a search warrant for the purposes of this title, and it shall be returned to the magistrate as provided for in Section 1235 of this title. In such cases, the magistrate shall enter on the face of the original warrant the exact time of the issuance of the warrant and shall sign and file the original warrant and the copy made to conform to the original warrant with the clerk of the district court as provided for in Section 1226 of this title.~~

B. In addition to any other procedure authorized by law, a proposed search warrant, affidavit or both search warrant and affidavit may be personally presented to the magistrate or communicated to the magistrate by telephone or by electronic mail or any similar electronic communication which delivers a complete printable image of the warrant or affidavit.

1. If the proposed search warrant is communicated telephonically, the affiant shall:
 - a. recite information establishing probable cause to support issuance of the search warrant, and
 - b. recite the proposed search warrant to the magistrate verbatim and obtain the oral permission of the magistrate to print the name of the magistrate on the search warrant along with the date and time of the signature.

The oral recorded authorization of the magistrate to print the name of the magistrate on the proposed search warrant shall constitute issuance of the search warrant under this section. The conversation establishing probable cause, reciting the contents of the search warrant verbatim and any authorization to sign by the magistrate shall be audio-recorded, transcribed, and filed together with the warrant in accordance with Section 1235.

2. If communication of the proposed affidavit is made by electronic mail or other electronic communication, the affidavit may contain a notarized acknowledgement of the affiant's signature, or the affiant may swear to the affidavit by telephone. A magistrate administering an oath telephonically shall endorse upon the face of the affidavit the date and time which the affiant undertook the oath by telephone. Additionally, the magistrate may issue the warrant as follows:

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a. by physically signing a printed copy of the affidavit and proposed warrant and returning a copy to the affiant by electronic mail or other electronic communication. After execution, if the magistrate physically signed the search warrant, then the original signed warrant and affidavit shall be filed along with the printed copy of the affidavit and warrant received by the affiant, as provided for in Section 1235 of this title;

b. by electronically signing a physical signature to a digital copy of the affidavit and proposed warrant and transmitting said signed documents back to the affiant by electronic mail or other electronic communication. The printed copy received by the affiant shall constitute a search warrant and be executed as such. After execution, if the magistrate electronically signed the affidavit and warrant, he or she shall sign the digital copy returned to him or her with an original signature along with the date and time, which shall be an attestation that the digital signature is true and correct, as provided for in Section 1235 of this title;

c. by returning an electronic communication to the affiant authorizing the affiant to sign the name of the magistrate to the proposed search warrant. The affiant shall print the affidavit and search warrant and physically sign the name of the magistrate and the copy shall serve as a search warrant for purposes of this title. After execution, the affiant shall return the affiant's signed copy to the magistrate, as provided for in Section 1235 of this title, and the magistrate shall physically sign the copy returned to him or her with an original physical signature along with the date and time, which shall be an attestation that he or she provided the affiant with authority to sign his or her signature.

SECTION 3. AMENDATORY Section 1233 of the Choctaw Nation Criminal Procedure Code is amended to read as follows:

Section 1233. Search Warrant Void After Ten Days

A search warrant must be executed and returned to the magistrate by whom it is issued within ten (10) days. After the expiration of these times respectively, the warrant, unless executed is void. Provided, if the search warrant authorizes a forensic, scientific, or digital analysis of items or samples already in the custody of law enforcement, the search shall be commenced within a reasonable time and the return shall be made within ten (10) days following the completion of said search.

SECTION 4. NEW LAW A new section of law to be codified in the Choctaw Nation Code of Criminal Procedures as Section 1243 of the Choctaw Nation Code of Criminal Procedures reads as follows:

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Section 1243. Orders for Disclosure of Contents of Wire or Electronic Communication

Upon presentation of an affidavit for a search warrant seeking to obtain the contents of wire or electronic communications from a provider of electronic communication service, the Court shall, in addition to the search warrant, be authorized to enter any order as authorized by 18 U.S.C. § 2703 for the production of said communications without notice to the subscriber or customer.

SECTION 5. NEW LAW A new section of law to be codified in the Choctaw Nation of Oklahoma Code of Criminal Procedure as Section 1902 of the Choctaw Nation of Oklahoma Code of Criminal Procedure reads as follows:

Section 1902. Compelling Testimony When Immunity Granted

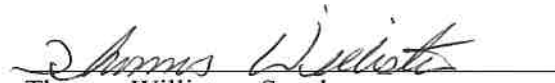
- A. The Tribal Prosecutor may agree to grant any individual use or derivative use immunity for the testimony or production of other information, including but not limited to any book, paper, document, record, recording or other material in said individual's possession, if in the Tribal Prosecutor's judgment the testimony or production of other information may be necessary to the public interest, and the individual has refused or is likely to refuse or produce other information on the basis of his privilege against self-incrimination.
- B. For the purposes of this section, "use or derivative use immunity" shall mean that the individual's testimony and production of other information and any information directly or indirectly derived from such testimony or production of other information shall not be used against him in any criminal case within the Choctaw Nation of Oklahoma, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order of a Court to testify.
- C. In the event that the Tribal Prosecutor shall agree to such immunity, it shall be made in writing, and notice shall be given to the individual. Then, upon the application of the Tribal Prosecutor, any Court of the Choctaw Nation shall require said individual to appear and give testimony or produce other information as requested in any proceeding before the Court, notwithstanding any attempt by the individual to refuse to do so based on his privilege against self-incrimination. Any testimony or production of other information and any information directly or indirectly derived from such testimony or production of other information shall not be used against him in any criminal case within the Choctaw Nation of Oklahoma, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order of a Court to testify.
- D. The immunity granted under this section shall only be use or derivative use immunity. In no event under the provisions of this section shall an individual be granted immunity from prosecution for any offense to which the compelled testimony or production of other information relates.

SECTION 5. 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 at Tuskahoma, Oklahoma on March 9, 2024. I further certify that the foregoing Council Bill CB- 40 -24 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 Batton, Chief
Choctaw Nation of Oklahoma

Date 3-14-24

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Purpose/Need of Council Bill: The purpose of this bill is to amend Chapter 24, Sections 1221, 1227, 1233, as well as add Section 1243 and 1902 of the Choctaw Nation of Oklahoma Criminal Procedure Code. These amendments to the Criminal Procedure Code further the Nation's strategic goal of exercising and protecting tribal sovereignty for the Nation and tribal members by prescribing rules that increase law and order on the reservation.

Title of Council Bill: **A COUNCIL BILL AMENDING THE CHOCTAW NATION
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Agency: Legal & Compliance

Budget: N/A

Match Required: N/A

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