

# An Act

## Legislative Act 08-11

### A LEGISLATIVE ACT AMENDING TITLE 10 OF THE CHEROKEE NATION CODE ANNOTATED – PATERNITY; AMENDING CHAPTER 3 PATERNITY

#### BE IT ENACTED BY THE CHEROKEE NATION:

#### Section 1. Title and Codification

This act shall be codified as Title 10, Chapter 3, Paternity.

#### Section 2. Purpose

The purpose of this legislative act is to repeal Section 102 as inconsistent with the provision for child support contained in Title 10 and Title 43; amend Section 104, 105, and 112 to change the name of the Office of Child Support Enforcement to the Office of Child Support Services; amend Section 104(D) to make the decision to enter an order of child support after a determination of paternity discretionary by the court; amend Section 105 for jurisdictional and practical changes.

#### Section 3. Legislative History

Source. LA 11-05, effective March 21, 2005.  
Amended. LA 30-06, effective December 20, 2006.  
Amended. LA 20-07, effective April 23, 2007.

#### Section 4. Substantive Provisions of Law

##### ~~§ 102. Support and Education.~~

~~The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the parent having custody is able to give are inadequate, the other parent must assist to the extent of his or her ability.~~

##### **§ 104 Natural Mother of Child -Establishment of Paternity.**

- A. Except as otherwise provided by law, a woman who gives birth to a child is the natural mother of the child.

B. Paternity may be established by:

1. Completion of the Affidavit Acknowledging Paternity, provided by the Division of Child Support ~~Enforcement~~ Services, by the father and mother. A statement acknowledging paternity shall have the same legal effect as an order of paternity entered in a court or administrative proceeding.

a. The statement may be rescinded by the mother or acknowledging father within the earlier of:

(1) sixty (60) days after the statement is signed by making a motion to the district court requesting an order rescinding the affidavit on the same grounds as subsection (B) 1 (a)(2) of this section, or

(2) the date of an administrative or judicial proceeding relating to the child, including but not limited to a proceeding to establish a support order, in which the signatory is a party.

After the sixty-day period referred to in division (1) of this subparagraph, a signed voluntary acknowledgment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger. Legal responsibilities, including but not limited to child support obligations, of any signatory arising from the acknowledgment shall not be suspended during the challenge, except for good cause shown.

This subparagraph shall not be interpreted to authorize the rescission of an acknowledgement of paternity if such rescission would be prohibited under applicable federal law.

b. (1) If the mother was married at the time of conception or birth, and her husband is not the natural father of the child, the husband may sign a husband's denial of paternity form, which must be filed along with the affidavit acknowledging paternity.

(2) The husband's denial of paternity form shall be prescribed by the Division of Child Support ~~Enforcement~~ Services and made available at the same locations as the affidavit acknowledging paternity;

2. Scientifically reliable genetic tests, including but not limited to blood tests;
3. District or administrative court order; or
4. As otherwise provided by law.

- C. 1. If the person signing the acknowledgment of paternity is determined in an administrative or judicial proceeding not to be the father of the child, on the basis of fraud, duress or material mistake of fact pursuant to subsection B of this section, the Division of Child Support ~~Enforcement~~ Services or the court shall dismiss any pending court or administrative collection proceedings against the father and the father will be released from any court ordered or Division-ordered payments for the support and maintenance of the child.
- 2. The State Registrar of Vital Statistics shall remove the name of the person listed as the father from the birth certificate upon notice from the Division that such person has been judicially or administratively determined not to be the father. Once paternity is established, the State Registrar of Vital Statistics shall correct its records and amend the birth certificate to reflect the father's name.
- D. Proceedings to establish paternity must be brought in the district court. Proceedings may be brought by the mother, father, guardian, or custodian of the child, the Division, the prosecutor, a public or private agency or authority chargeable with the support of the child, or by the child. The court, after determining paternity in a civil action, ~~shall~~ may, at the discretion of the court, enter an order providing for the support and maintenance of the child. The social security numbers of both parents and the child shall be included on the summary of support order form provided for in Section 515 of Title 43 of the Cherokee Nation Statutes which shall be submitted to the Central Case Registry as provided for in Section 502 of Title 43 of the Cherokee Nation Statutes. The district court may further make provision for custody and visitation based upon the best interests of the child.
- E. An action to establish paternity shall be available to a child if commenced prior to the child attaining the age of 18 years or within one (1) year after the child reaches the age of eighteen (18).

**§ 105 ~~Complaint~~ Petition- Verification- Jurisdiction-~~Title~~-~~Death of~~ Mother.**

If a woman, ~~who is a citizen of the Cherokee Nation,~~ is delivered of a child, or is pregnant with a child, and the paternity of said child is not determined, ~~complaint a petition~~ a petition may be ~~made~~ filed, in writing duly verified by any person, to the district court stating that fact and charging the proper person with being the father thereof if that person is a citizen of the Cherokee Nation or in the case of a non-member Indian or a non-Indian, if the case arose within the jurisdictional boundaries of the Cherokee Nation and the child in question is an enrolled citizen of the Cherokee Nation or is eligible for enrollment as a citizen of the Cherokee Nation that person resides within the territorial boundaries of the Cherokee Nation. ~~The proceeding shall be entitled in the name of the Cherokee Nation against the accused as defendant and shall be brought by the Child Support Enforcement Division.~~ The death of the mother shall not abate an action which is brought under this section, and it will not prevent the bringing of an action for the support of the child.

**§ 110 Father's Liability to support and educate child.**

- A. An individual who has been legally determined to be the father of a child pursuant to Section 104 of this title, or an individual who has been judicially determined to be the father of a child is liable for the support and education of the child to the same extent as the father of a child born in wedlock.
  
- B.
  - 1. An action to enforce the obligation of support, maintenance, and education may be brought by the mother or custodian or guardian of the child, by the public authority chargeable with the support of the child, or by the child.
  - 2. An action to determine paternity and to enforce this obligation may be brought any time before the eighteenth birthday of the child.
  - 3. If paternity has been legally determined pursuant to Section 104 of this title, or judicially determined, court ordered child support is not subject to any statute of limitations and an action to enforce the obligation may be brought at any time and the support in question is owed until paid.
  - 4. The father's obligation to support is terminated if the child is adopted.
  - 5. The court may order the payments made to the mother or custodian or guardian of the child, or to some other person, corporation or agency to administer under the supervision of the court.
  
- C.
  - 1. An individual who has been legally determined to be the father of a child pursuant to Section 104 of this title, or an individual who has been judicially or administratively determined to be the father of a child shall be ordered to pay all or a portion of the reasonable expenses of providing for the child, provided that liability for support provided before the determination of paternity shall be imposed for five (5) years preceding the filing of the action, absent good cause to deviate. The amount be paid by the father shall be determined by applying the child support guidelines for establishing current support and applying the amount of the reasonable expenses against the percentage derived from the guidelines. No interest shall be applied to this amount retroactively.
  - 2. ~~Copies of bills for pregnancy, childbirth, and genetic testing are admissible as evidence without requiring third-party foundation testimony, and shall constitute prima facie evidence of amounts incurred for such services or for genetic testing on behalf of the child.~~
  
- D. The amount of child support and other support including amounts provided for in subsection 110 (C) of this section shall be ordered and reviewed in accordance with the child support guidelines provided in Section 514 of Title 43 of the Cherokee Nation Statutes.

- E. 1. When a civil or administrative action is filed to determine paternity of a minor child, an interested party may request the court to enter a temporary order for support of the child pending a final determination of paternity. The application for temporary support shall set forth facts supporting the application and shall be verified by the party or entity seeking the order. The application and notice of hearing shall be served as in other civil cases.
2. After service of the application and opportunity for hearing, the court shall enter a temporary order for support if the court finds there is clear and convincing evidence of paternity, including, but not limited to:
- a. a genetic test which establishes a rebuttable or conclusive presumption of paternity pursuant to Section 121 of Title 10 of the Cherokee Nation Statutes,
  - b. a notarized written statement acknowledging paternity of the child executed by the putative father,
  - c. a presumption of paternity pursuant to Section 100 of this title, or
  - d. other evidence which establishes a high probability of paternity.
3. Temporary orders for support shall be established in accordance with the child support guidelines pursuant to Section 514 of Title 43 of the Cherokee Nation Statutes. A temporary support order terminates when a final judgment is entered which establishes support or when the action is dismissed. A temporary support order shall not be retroactively modified, but it may be modified prospectively before final judgment upon motion of an interested party and a showing of facts supporting a modification.

**§ 112 Persons Eligible to bring Paternity Actions.**

- A. The mother, putative father, guardian or custodian of the child, the Division of Child Support ~~Enforcement~~ Services, a public or private agency or authority chargeable with the support of the child, or the child may bring an action in a civil proceeding in district court or by an administrative action through the Division of Child Support ~~Enforcement~~ Services, to determine paternity and the amount of child support due and owing for the maintenance of the child.
- B. Venue of an action to determine the paternity of a child pursuant to this section shall be, at the option of the plaintiff, in either the district court in Tahlequah or the closest site of a Cherokee Nation child support enforcement court docket.
- C. A court may exercise personal jurisdiction over a person, whether or not a resident of the Cherokee Nation, who is the subject of a paternity action. When a person who is subject to the jurisdiction of the court is outside the Cherokee Nation, the person may be served outside of the Cherokee Nation by any method that is authorized by the statutes of this

Nation.

- D. The petition shall be verified as true by the affidavit of the plaintiff. A summons may be issued thereon and shall be served or publication made as in other civil cases.
- E. The practice, pleading, and proceedings in such action shall conform to the rules prescribed by the Judicial Branch of the Cherokee Nation.
- F. If the defendant fails to answer the petition of the plaintiff or appear for show cause hearing, then the court shall proceed to determine issues of paternity, support, custody and visitation if service on the defendant was made pursuant to the Cherokee Nation Statutes.
- G. Attorneys for the Division of Child Support ~~Enforcement~~ Services may appear or initiate an action brought under this section on behalf of:
  - 1. A recipient of Temporary Assistance for Needy Families; or
  - 2. A person not receiving Temporary Assistance for Needy Families, including but not limited to the putative father, upon the request of such person and proper application pursuant to rules and regulations adopted by the Division.
- H. In a proceeding brought under subsection G of this section by the Division of Child Support ~~Enforcement~~ Services, the court may, and unless it is not in the best interests of the child, shall, limit the issues in that proceeding to issues of paternity and support, unless issues of custody and visitation are specifically and affirmatively pled by the father. All contested issues of custody and visitation shall be addressed by the district court.

**Section 5. Provisions as cumulative**

The provisions of this act shall be cumulative to existing law.

**Section 6. Severability**

The provisions of this act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

**Section 7. Effective Date**

The provisions of this act shall become effective thirty (30) days from and after the date of its passage and approval.

**Section 8. Self-Help Contributions**

To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.


Enacted by the Council of the Cherokee Nation on the 11th day of April, 2011.

Meredith A. Frailey  
Meredith A. Frailey, Speaker  
Council of the Cherokee Nation

**ATTEST:**

Don Garvin  
Don Garvin, Secretary  
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 19th day of April, 2011.

  
Chadwick Smith, Principal Chief  
Cherokee Nation

**ATTEST:**

Melanie Knight  
Melanie Knight, Secretary of State  
Cherokee Nation

**YEAS AND NAYS AS RECORDED:**

Tina Glory Jordan	<u>Yea</u>	Meredith A. Frailey	<u>Yea</u>
Bill John Baker	<u>Yea</u>	Chris Soap	<u>Yea</u>
Joe Crittenden	<u>Yea</u>	Cara Cowan Watts	<u>Yea</u>
Jodie Fishinghawk	<u>Yea</u>	Buel Anglen	<u>Yea</u>
Janelle Lattimore Fullbright	<u>Yea</u>	Bradley Cobb	<u>Yea</u>
David W. Thornton, Sr.	<u>Yea</u>	Charles Hoskin, Jr.	<u>Yea</u>
Don Garvin	<u>Yea</u>	Julia Coates	<u>Yea</u>
Harley L. Buzzard	<u>Yea</u>	Jack D. Baker	<u>Yea</u>
Curtis G. Snell	<u>Yea</u>		

## Cherokee Nation Act/Resolution Proposal Form

Act       Resolution

<b><u>ADMINISTRATIVE CLEARANCE</u></b>	
<b>Dept/Program:</b> <i>Kara Whitworth</i>	<i>2/17/11</i>
Signature/Initial	Date
<b>Group Leader:</b>	
<i>Norma Merriman</i>	<i>02/17/11</i>
Signature/Initial	Date
<b>Finance (if needed):</b>	
Signature/Initial	Date
<b>Government Resources:</b>	
<i>Lita May</i>	<i>3/15/11</i>
Signature/Initial	Date
<b>Administration Approval:</b>	
<i>J.P. Gould</i>	<i>3.15.11</i>
Signature/Initial	Date
<b><u>LEGISLATIVE CLEARANCE:</u></b>	
<b>Legal &amp; Legislative Coordinator:</b>	
<i>B. Britain</i>	<i>3/15/11</i>
Signature/Initial	Date
<b>Standing Committee &amp; Date:</b>	
<i>Rules 3/31/11</i>	
<b>Chairperson:</b>	
<i>Frailey</i>	
Signature/Initial	Date
<b>Returned to Presenter:</b>	
Date	

**TITLE:** A Legislative Act Amending Title 10 of the Cherokee Nation Code Annotated - Paternity: Amending Chapter 3 Paternity

**DEPARTMENT CONTACT:** Kara Whitworth

**RESOLUTION PRESENTER:** Norma Merriman, Kara Whitworth

**COUNCIL SPONSOR:** Meredith Frailey

**NARRATIVE:**

We recently changed the program name from Office of Child Support Enforcement to Office of Child Support Services because we believe that child support is more than just enforcing court orders. Child support is about capacity building. We work with clients to address barriers that prevent them from paying their child support, as well as barriers that keep them from being a healthy member of the child's family. Through a system of referrals, both voluntary and court-ordered, our clients access services--vocational rehabilitation, employment services, behavioral health--and work towards becoming healthy, functioning parents and individuals. We've successfully used this approach numerous times as an alternative to incarceration.

- There are several references throughout the Act where the name is being changed.
- There is a conforming amendment to mirror the changes in the recently amended §24, of CNCA Title 20, which expands eligibility to children eligible for tribal enrollment.
- On a national level child support is defined as "support and maintenance" so we've amended the code to conform to the nationally-accepted definition of support, *maintenance*, and education as opposed to support and education.
- We've included a 'good cause' provision that allows us to deviate from the practice of seeking up to 60 months of past due support from a man who has just been determined to be the father of children who are 5 years of age or older.
- Previous amendments removed provisions that would have required CNCSS to assess birthing costs as a child support arrearage to a non-married non-custodial parent. §110 C.2 should have been deleted with the original amendment but wasn't so we are deleting it now.

03-15-11P04:42 RCVD