

Committee: Rules

Date: 2-04-05 Committee Date: 2-17-05

Author: Richard Osburn

Sponsor: \_\_\_\_\_

# An Act

## Legislative Act 12-05

**AN ACT RELATING TO AND AMENDING TITLE 43 OF THE CHEROKEE NATION CODE ANNOTATED TO ADD CHAPTER 5, SECTIONS 500 THROUGH 506, WHICH ESTABLISH THE CHEROKEE NATION OFFICE OF CHILD SUPPORT ENFORCEMENT, AND WHICH ADDS CHAPTER 6, SECTIONS 507 THROUGH 517 WHICH ESTABLISH THE PROCEDURES FOR ENTERING, AMENDING, AND ENFORCING CHILD SUPPORT ORDERS, AND WHICH REQUIRES THE CHEROKEE NATION TO COOPERATE WITH OTHER JURISDICTIONS IN THE ENFORCEMENT OF CHILD SUPPORT ORDERS**

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

### Section 1. Title and Codification

This act shall be known as the "Child Support and Enforcement Amendment Act of 2005" and codified as Title 43 Chapter 5 §§ 500-506 and Title 43 Chapter 6 §§ 507-517 of the Cherokee Nation Code Annotated.

### Section 2. Purpose

The purpose of this Act is to create an Office of Child Support Enforcement within the Cherokee Nation Department of Justice and to establish procedures for the enforcement of child support orders.

### Section 3. Amendments

**Title 43 of the Cherokee Nation Code Annotated is hereby amended to read as follows:**

#### **Title 43**

#### **Chapter 5**

#### **OFFICE OF CHILD SUPPORT ENFORCEMENT**

#### **§ 500 OFFICE OF CHILD SUPPORT ENFORCEMENT RECOGNIZED; DUTIES.**

The Legislature hereby recognizes the Office of Child Support Enforcement ("CSE" or "Office") of the Department of Justice. The Legislature further recognizes that CSE may enter into contracts within and without the Cherokee Nation for purposes of enforcement of child support orders. In all cases involving unmarried children under the age of eighteen (18) years or through the age of nineteen (19) if regularly attending high school, the Court may order that child support be computed and/or collected by CSE.

1. When the Court orders that child support shall be computed and/or collected by CSE, the parties shall be ordered to provide proof of income to CSE within five (5) days of the court order. If a party does not comply with such order, then all income alleged by the opposing party shall be accepted as true.

2. When so ordered, CSE shall act as a referee of the Court, compute the amount(s) to be paid as child support, method(s) of payment, and all other necessary determinations within twenty (20) days of the court order. CSE shall provide such determinations to the parties and to the Court for placement in the case file. The Court shall accept the determinations of CSE as a child support order upon receipt.

3. If a party takes issue with a determination of CSE, the party may apply to the Court for a hearing on the matter. If an application for hearing is granted, the matter shall be heard within thirty (30) days.

### **§ 501 COSTS IN CHILD SUPPORT ENFORCEMENT CASES.**

Costs incurred in a child support enforcement case in which a party is represented by the Office of Child Support Enforcement shall be recorded by the Court Clerk. The reasonable costs may be assessed by the Court against the noncustodial parent at the conclusion of the proceedings.

### **§ 502 AGREEMENTS TO OBTAIN CERTAIN NECESSARY INFORMATION.**

1. The Office of Child Support Enforcement shall maintain a central case registry on all Title IV-D (42 U.S.C. 651 et seq.) cases and all child support orders established or modified in the Cherokee Nation after the date of the enactment of this subsection. Title IV-D cases are cases in which child support services are being provided under the Nation's child support plan as approved by the Federal Administration for Children and Families.

2. In Title IV-D cases, the case registry shall include, but not be limited to, information required to be transmitted to the federal case registry pursuant to 42 U.S.C., Section 654A.

B. 1. All orders entered after the date of the enactment of this subsection, which establish paternity or establish, modify or enforce a child support obligation shall state for all parties and custodians subject to the order:

- a. an address of record for service of process in support, visitation and custody actions, and
- b. the address of record may be different from the party's or custodian's physical address.

2. The address shall be maintained by the central case registry. The order shall direct that any changes in the address of record shall be provided in writing to the central case registry within thirty (30) days of the change. The address of record is subject to disclosure to a party or custodian upon request pursuant to the provisions of this section and rules promulgated by the Office of Child Support Enforcement. The Office of Child Support Enforcement may refuse to disclose address and location information if the Office has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to a party, custodian or child.

C. 1. All parties and custodians ordered to provide an address of record to the central case registry as specified in this section may, in subsequent child support actions, be served with process by regular mail to the last address of record provided to the central case registry.

2. Proof of service shall be made by a certificate of mailing from a United States Post Office, or in child support cases where services are being provided under the state child support plan, by a certificate of mailing from the child support representative.

D. The Office of Child Support Enforcement shall promulgate rules as necessary to implement the provisions of this section.

### **§ 503 ESTABLISHMENT; ENFORCEMENT AND MODIFICATION OF ORDERS FOR SUPPORT; CONFIDENTIAL RECORDS**

A. When the right to receive support has been assigned to the Child Support Enforcement Office, the Office may petition the district court for an order:

Requiring the obligor to provide health insurance for the dependent children whenever it is available through employment or other group plan regardless of whether the obligor has insurance coverage available at that time or there has been a change of circumstances;

2. Establishing paternity;
3. Requiring medical support, child support, or other support;
4. Enforcing orders for paternity, medical support, child support, or other support;
5. Requiring that the obligor keep the Office informed of the name and address of the current employer of the obligor and of any health insurance or other insurance policy

information of the obligor within thirty (30) days of any change;

6. Providing for collection and distribution of child support monies; and
7. Assisting in the location of absent parents and their assets, in cooperation with federal

agencies, other agencies of the various states, territories, and foreign nations requesting assistance with the enforcement of support orders entered in the United States and elsewhere.

B. The Office may petition the district court to modify any order for support regardless of whether there has been a change of circumstances.

C. Except as otherwise authorized by law, all files and records concerning the assistance and services provided under this section or concerning a putative father of a child born out of wedlock are confidential. Release of information from the files and records shall be restricted to purposes directly connected with the administration of the child support collection, paternity determination, or parent location. Information may be released to public officials under rules adopted by the Office consistent with federal rules or regulations.

#### **§ 504 CSE ATTORNEYS REPRESENT THE CHEROKEE NATION**

A. Office attorneys represent the Cherokee Nation and not the interests of any other party. Providing services under Cherokee Nation Code Title 43 Section 500 et. seq. does not create an attorney-client relationship with any other party.

B. No attorney providing services under Title 43 Section 500 et. Seq. shall be authorized to accept service for any party other than the Office of Child Support Enforcement.

#### **§ 505 OFFICE OF CHILD SUPPORT ENFORCEMENT TO FOLLOW THE CHEROKEE NATION CHILD SUPPORT GUIDELINES**

The amount of child support and other support shall be ordered and reviewed in accordance with the child support guidelines provided in Section 516 of Title 43 of the Cherokee Nation Statutes.

#### **§ 506 CHILD SUPPORT.**

A. In all cases involving minor children, child support shall be determined or redetermined or as the case may be upon hearing on application of either parent for any affirmative relief.

1. A person under the age of nineteen (19) and not graduated from a high school shall be considered a minor child provided the child is regularly attending public or private school

2. A person under the age of eighteen (18) shall be considered a minor child.

B. The Court shall determine child support by referring the parties to the Cherokee Nation Office of Child Support Enforcement (CSE) to act as referee to determine child support pursuant to guidelines established by Title 43 Section 516 et seq.

C. Should either the payor or payee of child support take issue with the ruling of child support CSE, said party may appeal the child support order within ten (10) days of the CSE's filing of the determination with the Court. Hearing on such appeal shall be a de novo review; however, either party may request the CSE appear before the Court to explain the determination made on the basis that CSE maintains expertise in child support determination.

D. Absent specific direction of the Court, all child support shall be due on the first day of each month.

E. The CSE may institute child support collection cases in the name of the Cherokee Nation on behalf of any payee for whom CSE is collecting support, provided nothing herein shall prevent any payee of child support from retaining independent counsel and collecting child support directly in the name of the payee.

F. Any attorney retained to collect child support for a payee shall notice the CSE of being so retained. Said attorney shall report all child support legal action and collection to CSE within ten (10) days of such action or collection.

## **Chapter 6**

### **CHILD SUPPORT GUIDELINES**

#### **§ 507 PURPOSE.**

The purpose is to provide child support guidelines for the Cherokee Nation. The child support guidelines as provided herein shall be used by the courts of the Cherokee Nation in any proceeding which involves the care, custody and control of minor children and/or incompetents and the Court determines a need for child support to be provided by one (1) or more parties.

#### **§ 508 CHILD SUPPORT ORDERS TO INCLUDE PROVISION FOR INCOME ASSIGNMENT; VOLUNTARY INCOME ASSIGNMENT.**

A. In all child support cases arising out of an action for divorce, paternity or other proceeding, the Court shall order the wage of the obligor subject to immediate income assignment, regardless of whether support payments by such parent are in arrears, unless:

1. one (1) of the parties demonstrates and the Court finds there is good cause not to require immediate income withholding; or
2. a written agreement is reached between the parties which provides for an alternative arrangement.

B. The obligated party may execute a voluntary income assignment at any time. The voluntary assignment shall be filed with the Court and shall take effect after service on the payor.

C. With the consent of the custodial parent and under the supervision of the Office, the payor may make payments of in-kind goods or services. In-kind payments cannot be used to pay arrearages.

#### **§ 509 CHILD SUPPORT ORDERS TO INCLUDE PROVISION FOR HEALTH INSURANCE AND DAY CARE EXPENSES.**

In all cases where child support is ordered, such order shall include provisions for providing or sharing the expenses of health insurance and other out-of-pocket medical costs of the minor child(ren), and for employment-related day care expenses.

#### **§ 510 SECURITY OR BOND FOR PAYMENT OF CHILD SUPPORT.**

The Court may order a person obligated to support a minor child to post a security, bond, or other guarantee in a form and amount satisfactory to the Court to ensure the payment of child support.

#### **§ 511 PAST DUE SUPPORT PAYMENTS AS JUDGMENT; ARREARAGE PAYMENT SCHEDULE.**

A. Any payment or installment of child support ordered pursuant to any order, judgment, or decree of the court or administrative order of the Cherokee Nation or a state department of human services, or an equivalent state organization, is, on and after the date it becomes past due, a judgment by operation of law. Judgments for past due support shall:

1. have the full force and effect of any other judgment of the Cherokee Nation, including the ability to be enforced by any method available under the laws of the Cherokee Nation and the State of Oklahoma to enforce and collect money judgments; and
2. be entitled to full faith and credit as a judgment in the Cherokee Nation and any state.
3. An order that provides for payment of child support, if willfully disobeyed, may be enforced by indirect civil contempt proceedings, notwithstanding that the support payment is a judgment on and after the date it becomes past due. Any amounts determined to be past due by the Court may subsequently be enforced by indirect civil contempt proceedings.

B. An arrearage payment schedule set by the Court or administrative order of the Cherokee Nation shall not exceed three (3) years, unless imposition of a payment schedule would be unjust, inequitable, unreasonable, or inappropriate under the circumstances, or not in the best interests of the child or children involved. When making this determination, reasonable support obligations of either parent for other children in the custody of the parent may be considered. If an arrearage payment schedule that exceeds three (3) years is set, specific findings of fact supporting the action shall be made.

**§ 512 MODIFICATION, SUSPENSION OR TERMINATION OF INCOME ASSIGNMENT ORDER.**

A person obligated to pay support or the person entitled to the support may petition the Court to:

1. modify, suspend, or terminate the order for income assignment because of a modification, suspension, or termination of the underlying order for support; or
2. modify the amount of income to be withheld to reflect payment in full of the delinquency by income assignment or otherwise; or
3. suspend the order for income assignment because of inability to deliver income withheld to the person entitled to support payments due to the failure of the person entitled to support to provide a mailing address or other means of delivery.

**§ 513 INTEREST ON DELINQUENT CHILD SUPPORT AND SUIT MONEYS PAYMENT.**

Court-ordered child support payments and court-ordered payments of suit moneys shall draw interest at the rate of ten percent (10%) per year from the date they become delinquent, and the interest shall be collected in the same manner as the payments upon which the interest accrues.

**§ 514 CHILD SUPPORT GUIDELINES.**

In determining the amount of child support to be awarded in divorce, separate maintenance and paternity determinations the district court shall follow the Oklahoma Child Support Guidelines.

**§ 515 CHILD SUPPORT COMPUTATION FORM**

A. A child support computation form shall be signed by the judge and incorporated as a part of all orders which establish or modify a child support obligation.

B. When services are not being provided under the Office of Child Support Enforcement IV-D plan, a support order summary form shall be prepared by the attorney of record or the pro se litigant and presented to the judge with all orders which establish paternity or establish, modify or enforce a child support obligation. No paternity or child support order shall be signed by the judge without presentation of the support order summary form. After the order is signed by the judge, the summary of support order form shall be submitted to the Central Case Registry provided for in Section 502 of this title.

**§ 516 CHILDREN NOT OTHERWISE CONSIDERED.**

A. Any parent that has child support calculated may submit a child support calculation for any child not otherwise considered in the calculation of child support, provided such parent is, in fact, the lawful parent of such child and such parent actually supports the child to the extent identified in the child support calculation form.

C. The Court may consider any and all support provided to such child in determining the Child Support calculation and in its discretion may deduct the child support attributed to such parent in the same manner as for approved child support deductions.

**§517 Full Faith And Credit For Child Support Orders Validly Issued by Foreign Jurisdictions**

(a) **General Rule.**— The Office of Child Support Enforcement

(1) shall enforce according to its terms a child support order made consistently with this section by a

court of another State; and

(2) shall not seek or make a modification of such an order except in accordance with subsections (e), (f), and (i).

**(b) Definitions.** In this section:

“child” means

(A) a person under 18 years of age; and

(B) a person 18 or more years of age with respect to whom a child support order has been issued pursuant to the laws of a State.

“child’s State” means the State in which a child resides.

“child’s home State” means the State in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the State in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the 6-month period.

“child support” means a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.

“child support order”

(A) means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum; and

(B) includes—

(i) a permanent or temporary order; and

(ii) an initial order or a modification of an order.

“contestant” means—

(A) a person (including a parent) who—

(i) claims a right to receive child support;

(ii) is a party to a proceeding that may result in the issuance of a child support order; or

(iii) is under a child support order; and

(B) a State or political subdivision of a State to which the right to obtain child support has been assigned.

“court” means a court or administrative agency of a State that is authorized by State law to establish the amount of child support payable by a contestant or make a modification of a child support order.

“modification” means a change in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supersedes, or otherwise is made subsequent to the child support order.

“State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and Indian country (as defined in section 1151 of title 18).

**(c) Requirements of Child Support Order.** A child support order made by a court of a State is made consistently with this section if

(1) a court that makes the order, pursuant to the laws of the State in which the court is located and subsections (e), (f), and (g)

(A) has subject matter jurisdiction to hear the matter and enter such an order; and

(B) has personal jurisdiction over the contestants; and reasonable notice and opportunity to be heard is given to the contestants.

**(d) Continuing Jurisdiction.** A court of a State that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the State is the child's State or the residence of any individual contestant unless the court of another State, acting in accordance with subsections (e) and (f), has made a modification of the order.

**(e) Authority To Modify Orders.** A court of a State may modify a child support order issued by a court of another State if

(1) the court has jurisdiction to make such a child support order pursuant to subsection (i); and  
(2) (A) the court of the other State no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child's State or the residence of any individual contestant; or

(B) each individual contestant has filed written consent with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume continuing, exclusive jurisdiction over the order.

**(f) Recognition of Child Support Orders.—** If 1 or more child support orders have been issued with regard to an obligor and a child, a court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:

(1) If only one court has issued a child support order, the order of that court must be recognized.

(2) If 2 or more courts have issued child support orders for the same obligor and child, and only 1 of the courts would have continuing, exclusive jurisdiction under this section, the order of that court must be recognized.

(3) If 2 or more courts have issued child support orders for the same obligor and child, and more than 1 of the courts would have continuing, exclusive jurisdiction under this section, an order issued by a court in the current home State of the child must be recognized, but if an order has not been issued in the current home State of the child, the order most recently issued must be recognized.

(4) If 2 or more courts have issued child support orders for the same obligor and child, and none of the courts would have continuing, exclusive jurisdiction under this section, a court having jurisdiction over the parties shall issue a child support order, which must be recognized.

(5) The court that has issued an order recognized under this subsection is the court having continuing, exclusive jurisdiction under subsection (d).

**(g) Enforcement of Modified Orders.—** A court of a State that no longer has continuing, exclusive jurisdiction of a child support order may enforce the order with respect to nonmodifiable obligations and unsatisfied obligations that accrued before the date on which a modification of the order is made under subsections (e) and (f).

**(h) Choice of Law.**

(1) **In general.—** In a proceeding to establish, modify, or enforce a child support order, the forum State's law shall apply except as provided in paragraphs (2) and (3).

(2) **Law of state of issuance of order.—** In interpreting a child support order including the duration of current payments and other obligations of support, a court shall apply the law of the State of the court that issued the order.

(3) **Period of limitation.** In an action to enforce arrears under a child support order, a court shall apply the statute of limitation of the forum State or the State of the court that issued the order, whichever statute provides the longer period of limitation.

(i) **Registration for Modification.** If there is no individual contestant or child residing in the issuing State, the party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another State shall register that order in a State with jurisdiction over the nonmovant for the purpose of modification.

**§518 Cooperation with Other IV-D Programs**

The Cherokee Nation Office of Child Support Enforcement shall extend the full range of services available under its IV-D program to respond to all requests from, and cooperate with, State and other IV-D agencies.

**Section 4. Provisions as cumulative**

The provisions of this act shall be cumulative to existing law

**Section 5. 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.

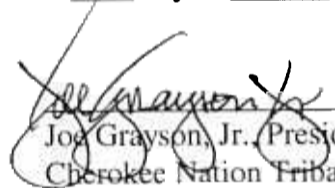
**Section 6. Emergency declared**

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this act shall take effect and be in full force after its passage and approval.


**Section 7. 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 14<sup>th</sup> day of March, 2005.

  
Joe Grayson, Jr., President  
Cherokee Nation Tribal Council


**ATTEST:**

  
Audra Smoke-Conner, Secretary  
Cherokee Nation Tribal Council

Approved and signed by the Principal Chief this 21<sup>st</sup> day of MARCH, 2005.

  
Chad Smith, Principal Chief  
Cherokee Nation

**ATTEST:**

  
Callie Catcher, Secretary/Treasurer  
Cherokee Nation

**YEAS AND NAYS AS RECORDED:**

Audra Smoke-Conner	<u>Absent</u>	Melvina Shotpouch	<u>YEA</u>
Bill John Baker	<u>YEA</u>	Meredith A. Frailey	<u>YEA</u>
Joe Crittenden	<u>YEA</u>	John F. Keener	<u>YEA</u>
Jackie Bob Martin	<u>YEA</u>	Cara Cowan	<u>YEA</u>
Phyllis Yargee	<u>YEA</u>	Buel Anglen	<u>YEA</u>
David W. Thornton, Sr.	<u>YEA</u>	William G. Johnson	<u>YEA</u>
Don Garvin	<u>YEA</u>	Charles "Chuck" Hoskin	<u>YEA</u>
Linda Hughes-O'Leary	<u>Absent</u>		