

An Act

Legislative Act 24-12

ACT RELATING TO AND AMENDING TITLE 10 OF THE CHEROKEE NATION CODE ANNOTATED, THE CHILDREN'S CODE – SECTIONS 1.2, 25, 27, 28, 29.1, 40.2, 40.3, 40.4, 40.11 AND 60.2; AND DECLARING AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

Title and Codification 1.

This act shall be known as the “2012 Amendments to the Children’s Code” and codified as Title 10 of the Cherokee Nation Code Annotated.

Section 2. Purpose

This proposed language in Title 10 will enhance the ability of ICW to work directly with birth mothers across the United States. This language will help to limit the loss of our children to non-Indian homes utilized by private agencies, ensure extended family is explored for placement, utilize our tribal adoptive families across the United States, and remove the legal stigma of “deprived” from a mother who is making an informed decision and ultimately the best plan for her child.

Section 3. Legislative History

LA-08-91, enacted May 13, 1991 and amended by LA-11-05, LA-30-06, LA-20-07, LA-26-07, LA-08-08 and LA-08-11

Section 4. Substantive Provisions

Chapter 1 – General Provisions

§ 1.2. Application of Code

This code shall apply to children subject to the jurisdiction of the Cherokee Nation ~~who reside on "Indian Country"~~ as defined by federal and Cherokee Nation law.

Chapter 1A – Care and Custody

§ 25. Definitions

As used in this title, the terms hereinafter enumerated shall have the following meanings:

~~1. "Before the Court" as used in Section 28, means in-person or electronically via telephone or internet.~~

~~2.~~ "Cherokee Nation" means the government of the Cherokee Nation or the administrative agency within the Cherokee Nation designated by the Principal Chief to administer laws and programs involving children and juveniles.

~~3.~~ "Child" means any unmarried or unemancipated person under the age of eighteen (18) years;

~~4.~~ "Person" means any natural person, corporation, association, organization, institution, or partnership;

~~5.~~ "Court" means any court of competent jurisdiction which may hereafter be established for such purposes authorized to officiate in matters relating to children;

~~6.~~ "Department" means Administrative Department of the Cherokee offices with appropriate duties and services regarding children.

~~7.~~ "DHS" means the Oklahoma Department of Human Services.

~~8.~~ "District Court" means the District Court of the Cherokee Nation.

~~9.~~ "Foster Home" means a home or other place, other than the home of a parent, or a guardian of the child concerned, duly licensed by the Cherokee Nation, wherein a child is received for care, custody and maintenance.

~~10.~~ "Indian" means a persons as defined by section 40.2 of this title.

~~11.~~ "Nation" means the Cherokee Nation.

~~12. "State" means the State of Oklahoma.~~

§ 27. Authority to assign, relinquish or otherwise transfer

No person may assign, relinquish, or otherwise transfer to another his rights or duties with respect to the permanent care or custody of a child, except to the parents, or to the relatives within the fourth degree, of the child concerned, unless specifically authorized or required so to do by an order or judgment of a court of competent jurisdiction or unless by a relinquishment executed in writing in accordance with the provisions of this act, ~~or of Section 47 of Title 44 of the Oklahoma Statutes.~~

§ 28. Parties to whom relinquishments may be made

Relinquishments may be made only to:

1. the Cherokee Nation, and shall be executed in writing before the court;
2. a child placing agency duly licensed or recognized under ~~the provisions of Section 402 of Title 10 of the Oklahoma Statutes~~ Cherokee Nation Law;
3. any other person, with the written consent of the administrative officer of the

Cherokee Nation designated by the Principal Chief or the District Court.

§ 29.1. Termination of parental rights—Petition; Notice; Hearing; Orders

A. Whenever the mother of a child born out of wedlock who has custody of the child executes a relinquishment for the purpose of adoption pursuant to the provisions of Section 28 of Title 10 of the Cherokee Nation Statutes, the person or agency to whom such relinquishment is made shall file a petition with the district court in which the relinquishment was executed for the termination of the parental rights of the persons entitled to notice pursuant to subsection B of this section unless such rights have been previously terminated or relinquished.

B. Persons entitled to notice, pursuant to this section, shall include:

1. any person adjudicated by a court ~~in this state~~ to be the father of the child;
2. any person who is recorded on the child's birth certificate as the child's father;
3. any person who is openly living with the child and the child's mother at the time the proceeding is initiated or at the time the child was placed in the care of an authorized agency, and who is holding himself out to be the child's father;
4. any person who has been identified as the child's father by the mother in a sworn statement;
5. any person who was married to the child's mother within ten (10) months prior or subsequent to the birth of the child; and

C. Notice and hearing pursuant to this section shall comply with the provisions of Section 1131 of Title 10 of the Cherokee Nation Statutes. The notice shall also apprise such person of his legal rights and shall include a clear statement that failure to appear at the hearing shall constitute a denial of interest in the child which denial may result, without further notice of this proceeding or any subsequent proceeding, in the termination of his parental rights and the transfer of the child's care, custody, or guardianship or in the child's adoption.

D. A person may waive his right to notice under this section. Such waiver signed by such person, shall include a statement affirming that the person signing such waiver understands that said waiver shall constitute grounds for the termination of his parental rights pursuant to the provisions of this section and Section 60.6 of this title.

E. 1. At the hearing the court may, if it is in the best interest of the child:

- a. accept a relinquishment or consent to adoption executed by the father or putative father of the child;
- b. determine that the consent of the father or putative father to the adoption of the child is not required and may terminate any parental rights which such father or putative father may have; or
- c. terminate the parental rights of the father or putative father, pursuant to the provisions of this section or Section 1130 of this title; or
- d. grant custody of the child to the father or putative father, if the court determines such person to be the father of the child.

2. The court shall terminate the rights of a father or putative father if he fails to appear at the hearing or has waived notice under this section.

F. No order of the court shall be vacated, annulled, or reversed upon the application of any person who was properly served with notice in accordance with this section but failed to appear or who waived notice pursuant to subsection D of this section.

Chapter 1B – Indian Child Welfare Act

§ 40.2. Definitions

For the purposes of the Cherokee Nation Indian Child Welfare Act:

1. "Child custody proceeding" means

- i. "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
- ii. "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;
- iii. "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and
- iv. "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption. Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

1.2. "Indian" means a person who is either:

- a. a member of an Indian tribe; or
- b. is eligible for membership in an Indian tribe.

2.3. "Indian child" means any unmarried or unemancipated person who is under the age of eighteen (18) and is either:

- a. a member of an Indian tribe; or
- b. is eligible for membership in an Indian tribe.

3.4. "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody and control has been transferred by the parent of such child;

4.5. "Indian tribe" means any Indian tribe, band, nation or other organized group or community of Indians recognized as eligible for the services provided to Indians by

the Secretary of the Interior because of their status as Indians;

~~5.6.~~ "Indian-operated institution" means a residential care facility, group home or crisis foster care facility operated under a governing body or Board of Directors consisting of a minimum fifty percent (50%) whose board members are members of a federally recognized Indian tribe; and

~~6.7.~~ "Involuntary custody proceeding" means any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated.

§ 40.3. Application of act—Exemptions—Determination of Indian status

A. The Cherokee Nation Indian Child Welfare Act, applies to all child custody proceedings involving any Indian child who ~~resides in Indian country within the~~ is subject to the jurisdiction of Cherokee Nation under federal, state or tribal law, except the following:

1. A child custody proceeding arising from a divorce proceeding; or
2. A child custody proceeding arising from an adjudication of delinquency, unless there has been a request for termination of parental rights.

B. The Cherokee Nation Indian Child Welfare Act applies to a child who is a member of an Indian tribe or who is eligible for membership in an Indian tribe.

C. The court shall seek a determination of the Indian status of the child in accordance with the preceding standard in the following circumstances:

1. The court has been informed by an interested party, an officer of the court, a tribe, an Indian organization or a public or private agency that the child is Indian; or
2. The child who is the subject of the proceeding gives the court reason to believe he is an Indian child; or
3. The court has reason to believe the residence or domicile of the child is a predominantly Indian community.

D. The court shall seek verification of the Indian status of the child from the Indian tribe ~~or the Bureau of Indian Affairs~~. A determination of membership by an Indian tribe shall be conclusive. ~~A determination of membership by the Bureau of Indian Affairs shall be conclusive in the absence of a contrary determination by the Indian tribe.~~

E. The determination of the Indian status of a child shall be made as soon as practicable in order to ensure compliance with the notice requirements of Section 40.4 of this title.

§ 40.4. ~~Involuntary~~ Indian child custody proceedings—Notice

In any ~~involuntary~~ Indian child custody proceeding ~~of~~ under the Cherokee Nation Indian Child Welfare Act, ~~including review hearings~~, the court or party initiating the action, if it is a private action, shall send notice to the parents or to the Indian custodians, if any, and to the tribe

that may be the tribe of the Indian child, ~~and to the appropriate Bureau of Indian Affairs area office,~~ by registered mail return receipt requested, ~~personal service by a court approved process server, or after an affidavit of due diligence to locate, publication as provided for elsewhere in this title.~~ The notice shall be written in clear and understandable language and include the following information:

1. The name and tribal affiliation of the Indian child;
2. A copy of the petition by which the proceeding was initiated;
3. A statement of the rights of the biological parents or Indian custodians, and the Indian tribe:
 - a. to intervene in the proceeding,
 - b. to request an additional twenty (20) days from receipt of notice to prepare for the proceeding; further extensions of time may be granted with court approval;
4. A statement of the potential legal consequences of an adjudication on the future custodial rights of the parents or Indian custodians ~~or in a private proceeding, the legal consequences of failure to appear and contest the proceeding;~~
5. A statement that if the parents or Indian custodians are unable to afford counsel, counsel will be appointed to represent them; and
6. A statement that tribal officials should keep confidential the information contained in the notice.

§ 40.11. Parental rights termination orders; evidence; determination of damage to child

No termination of parental rights may be ordered in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, provided that nothing in this section shall prohibit a default order being entered by the court in cases where a parent or Indian custodian fails to appear for a hearing after receiving proper notice of that hearing; and provided further that nothing in this section will require the specified testimony if a parent or Indian custodian appears before a judge and admits, stipulates, or enters a no-contest stipulation to the allegations in a petition ~~or relinquishes parental rights for the purpose of an adoption not arising out of a deprived case.~~

Chapter 2A – Uniform Adoption Act

§ 60.2. Eligibility for adoption

Any Indian child present within Indian country within the Cherokee Nation at the time the petition for adoption is filed, ~~irrespective of place of birth or place of residence, may be adopted or in the custody of the Cherokee Nation.~~

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.

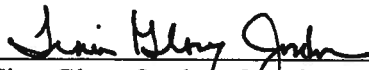
Section 7. Effective Date

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

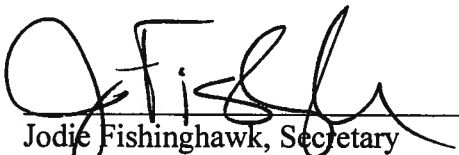
To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.

Enacted by the Council of the Cherokee Nation on the 16th day of July, 2012.



Tina Glory Jordan, Speaker
Council of the Cherokee Nation

ATTEST:



Jodie Fishinghawk, Secretary
Council of the Cherokee Nation

Approved and signed by the Principal Chief this _____ day of _____, 2012.

Bill John Baker, Principal Chief
Cherokee Nation

ATTEST:

Charles Head, Secretary of State
Cherokee Nation

YEAS AND NAYS AS RECORDED:

Tina Glory Jordan	<u>Yea</u>	Meredith A. Frailey	<u>Yea</u>
David Walkingstick	<u>Yea</u>	Dick Lay	<u>Yea</u>
Joe Byrd	<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>	Frankie Hargis	<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>
Lee Keener	<u>Yea</u>	Jack D. Baker	<u>Yea</u>
Curtis G. Snell	<u>Yea</u>		

Cherokee Nation Act/Resolution Proposal Form

ADMINISTRATIVE CLEARANCE

Dept/Program:

Linda Woodward 5/15/12
Signature/Initial _____ Date _____

Executive Director:

Marsha Jant 5/16/12
Signature/Initial _____ Date _____

Finance (if needed):

Signature/Initial _____ Date _____

Government Resources:

Signature/Initial _____ Date _____

Administration Approval:

Charles R. Hood 5-17-12
Signature/Initial _____ Date _____

LEGISLATIVE CLEARANCE:

Legal & Legislative Coordinator:

Abraham 5/30/12
Signature/Initial _____ Date _____

Standing Committee & Date:

Rules 6/28/12

Chairperson:

Hoskin Jr.
Signature/Initial _____ Date _____

Returned to Presenter: _____

Date _____

TITLE: _____

DEPARTMENT CONTACT: Linda Woodward

RESOLUTION PRESENTER: _____

COUNCIL SPONSOR: _____

NARRATIVE:

ICW is trying to make a way to better serve a population we have under-served for quite some time. When ICW began the adoption program in 1992 we were able to work directly with birth moms when they desired to place their children for adoption. We worked with the birth mom to ensure they were making the right decision and if their decision continued to be adoption we helped them select a family and then took the child into the custody of tribal court to complete the process. The only negative in that process was the necessity of adjudicating the child deprived as this was the only method afforded by the tribal court. While this worked in the legal sense the "deprived" titled action made it appear the mother had done something to warrant the child's removal, which was not the case.

Then about two years ago we were no longer able to assist mothers across the U.S. because anyone who wanted to place their child for adoption with their tribe had to come personally into the court in Tahlequah. Since our Cherokee population is nationwide, this extremely limited our ability to help both our birth mothers and potential adoptive families as this appearance in court was too much of a hardship for the parties involved.

We then had to refer most birth mother requests to private agencies. This has caused many conflicts and frankly we have lost more than we have gained. The problem with agencies is twofold. First, agencies are not inclined to follow the Federal Indian Child Welfare Act and any enforcement by us is limited due to timeliness in adoption matters and limited resources to fight such battles. Second, agencies charge exorbitant fees to the potential adoptive families and most of our families cannot afford these costs. This inability to pay in no way takes away from their ability to be good parents or to provide a safe and loving Cherokee home for our children. This is another excuse agencies utilize for not placing with Cherokee families.

You will find attached some proposed language in Title 10 that will grant ICW the ability to work directly with birth moms across the U.S. without referring them to a private agency, utilize our adoptive families across the U.S., ensure family is explored for placement and remove the stigma of "deprived" from a mom who is making an informed decision and ultimately the best plan for her child. These changes in the Title 10 language were devised cooperatively between the Attorney General's office and ICW. There are only the limited changes needed to provide this service. This language will give us jurisdiction of Cherokee children across the U.S. for purposes of adoption. It will allow relinquishments to be done in front of our tribal court (as this is a vital step) by electronic means and it creates a category other than deprived for these mothers to make choices for their children without legal stigma.



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CHEROKEE NATION®
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Office of the Chief

Bill John Baker
Principal Chief
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S. Joe Crittenden
Deputy Principal Chief
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July 24, 2012

Tina Glory-Jordan, Speaker
Chuck Hoskin, Jr., Deputy Speaker
Council of the Cherokee Nation
Tahlequah, Oklahoma

07-24-12P04:44 RCVD

Dear Speaker Jordon and Council Members:

I am returning the enactments passed by the Tribal Council at the regular meeting held on July 16, 2012, as required by our Constitution. The Cherokee Constitution (Article VI, Section 10) requires that every enactment approved by the majority of the Council be presented to the Principal Chief before it becomes effective. I am returning the enactments unsigned.

1. Resolution No. 67-12, A Resolution Authorizing the Submission of a Grant Application for Youth Shelter Services by the Department of Children, Youth and Family Services to the U.S. Family and Youth Services Bureau, Runaway and Homeless Youth Program.
2. Resolution No. 68-12, A Resolution Authorizing the Donation of Surplus Equipment to Kenwood Water District.
3. Resolution No. 69-12, A Resolution Approving and Authorizing the Submission of the Fiscal Year 2013 Indian Housing Plan to the U.S. Department of Housing and Urban Development.
4. Resolution No. 70-12, A Resolution Confirming the Nomination of Lynna Carson as a Member of the Cherokee Nation Environmental Protection Commission.
5. Resolution No. 71-12, A Resolution Confirming the Nomination of Linda O'Leary as Registrar for the Cherokee Nation Registration Committee.
6. Resolution No. 72-12, A Resolution Authorizing Cherokee Nation Marshal Service to Donate One (1) 1993 Chevrolet Ambulance to Craig County Emergency Management.

7. Resolution No. 73-12, A Resolution Authorizing the Submission of a Special Grant Application to the Centers for Disease Control and Prevention (CDC) for Funding to Develop and Build Capacity to Implement Interventions.
8. Resolution No. 74-12, A Resolution Authorizing the Submission of a Grant Application to the Department of Health and Human Services, Administration for Children and Families, Office of Child Care for Tribal Maternal, Infant and Early Childhood Home Visiting Grant Program.
9. Resolution No. 75-12, A Resolution Authorizing Cherokee Nation Warehouse to Donate Surplus Office Equipment to Ballu Indian Baptist Church in Mayes County.
10. Resolution No. 76-12, A Resolution Authorizing the Donation of Surplus Office Furniture to the Stilwell Police Department.

APPROVED LEGISLATIVE ACTS

1. Legislative Act 23-12, An Act Amending Legislative Act #11-10 Relating to Creation of Jobs Growth; Adding Language to Assign Seat Designations.
2. Legislative Act 24-12, An Act Relating To and Amending Title 10 of the Cherokee Nation Code Annotated, The Children's Code-Sections 1.2, 25, 27, 28, 29.1, 40.2, 40.3, 40.4, 40.11 and 60.2; and Declaring an Emergency.
3. Legislative Act 25-12, A Legislative Act Amending LA-34-07-Defining Nepotism, and Defining Acceptable Parameters for Employment and Contracting and Amending Title 28, "Ethics", Adding New Sections of the Cherokee Nation Code Annotated.
4. Legislative Act 26-12, An Act Repealing Legislative Act 36-10 and Amending Legislative Act 06-10; Revising Title 26 ("Elections") of the Cherokee Nation Code Annotated; Amending § 5, Adding Provisions for Apportionment; and Declaring an Emergency.
5. Legislative Act 27-12, An Act Amending Legislative Act #20-11 Authorizing the Comprehensive Operating Budget for Fiscal Year 2012-Mod. 10; and Declaring an Emergency.
6. Legislative Act 28-12, An Act Amending Legislative Act #21-11 Authorizing the Comprehensive Capital Budget for Fiscal Year 2012-Mod.4; and Declaring an Emergency.

Sincerely,

Charles R. Heard

for

Bill John Baker
Principal Chief

Cc: Legal & Legislative Coordinator, Council of the Cherokee Nation
Councilors (17), Council of the Cherokee Nation
Secretary of State, Cherokee Nation