



Council of the Cherokee Nation

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AN ACT REPEALING TITLE 10 OF THE CHEROKEE NATION CODE ANNOTATED CHAPTER 51, SECTION 1130(D)

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act shall be known as the _____ and codified as _____ (Title) _____ (Section) _____ of the Cherokee Nation Code Annotated.

Section 2. Purpose

The purpose of this Act is to repeal in its entirety Title 10 of the Cherokee Nation Code Annotated Chapter 51, Section 1130(D). This provision was copied from state law and was changed by the State several years ago. The ability of one parent to terminate the parental rights of the other parent conflicts with the purpose of the Indian Child Welfare Act. Legal removal of a living parent should not be allowed unless another person is legally stepping into their place through adoption.

Section 3. Legislative History

Section 4. Definitions

Section 5. Substantive Provisions of Law

§ 1130. Termination of parental rights in certain situations

A. The finding that a child is delinquent, in need of supervision or deprived shall not deprive the parents of the child of their parental rights, but a Court may terminate the rights of a parent to a child in the following situations:

1. Upon a written consent of a parent, including a parent who is a minor, acknowledged as provided in 10 CNCA § 60.5(4), who desires to terminate his parental rights; provided that the Court finds that such termination is in the best interests of the child; or

2. A finding that a parent who is entitled to custody of the child has abandoned it; or

3. A finding that:

a. the child is deprived, as defined in this chapter, and

b. such condition is caused by or contributed to by acts or omissions of his parent, and

c. termination of parental rights is in the best interests of the child, and

d. the parent has failed to show that the condition which led to the making of said finding has not been corrected although the parent has been given three (3) months to correct the condition; provided, that the parent shall be given notice of any hearing to determine if the condition has been corrected. The Court may extend the time in which such parent may show the condition has been corrected, if, in the judgment of the Court, such extension of time would be in the best interest of the child. During the period that the parent has to correct the condition the Court may return the child to the custody of its parent or guardian, subject to any conditions which it may wish to impose or the Court may place the child with an individual or an agency; or

4. A finding that a parent who does not have custody of the child has willfully failed to contribute to the support of the child as provided in a decree of divorce or in some other court order during the preceding year or, in the absence of such order, consistent with the parent's means and earning capacity; or

5. A conviction in a criminal action pursuant to the provisions of 21 CNCA or §§ 843, 845 [repealed], 1021.3, 1111 and 1123 or 10 O.S. §§ 7102 and 7115, 21 O.S. §§ 1021.3, 1111 and 1123, as amended, or a finding in a deprived child action either that:

a. the parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse that is heinous or shocking to the Court or that the child or sibling of such child has suffered severe harm or injury as a result of such physical or sexual abuse; or

b. the parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse subsequent to a previous finding that such parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse; or

6. A conviction in a criminal action that the parent has caused the death of a sibling of the child as a result of the physical or sexual abuse or chronic neglect of such sibling; or

7. A finding that all of the following exist:

a. the child is deprived, as defined in this chapter, and

b. custody of the child has been placed outside the home of a natural or adoptive parent, guardian or extended family member, and

c. the parent whose rights are sought to be terminated has been sentenced to a period of incarceration of not less than ten (10) years, and

d. the continuation of parental rights would result in harm to the child based on consideration of the following factors, among others: the duration of incarceration and its detrimental effect on the parent/child relationship; any previous incarcerations; any history of criminal

behavior, including crimes against children; the age of the child; the evidence of abuse or neglect of the child or siblings of the child by the parent; and the current relationship between the parent and the child and the manner in which the parent has exercised parental rights and duties in the past, and

e. termination of parental rights is in the best interests of the child. Provided, that the incarceration of a parent shall not in and of itself be sufficient to deprive a parent of his parental rights; or

8. A finding that all of the following exist:

a. the child is deprived as defined in this chapter, and

b. custody of the child has been placed outside the home of a natural or adoptive parent, guardian or extended family member, and

c. the parent whose rights are sought to be terminated has a mental illness or mental deficiency, as defined by 43A O.S. § 6-201, Article II, paragraphs f and g, as amended, which renders the parent incapable of adequately and appropriately exercising parental rights, duties and responsibilities, and

d. the continuation of parental rights would result in harm or threatened harm to the child, and

e. the mental illness or mental deficiency of the parent is such that it will not respond to treatment, therapy or medication and, based upon competent medical opinion, the condition will not substantially improve, and

f. termination of parental rights is in the best interests of the child.

Provided, a finding that a parent has a mental illness or mental deficiency shall not in and of itself deprive the parent of his parental rights.

B. Unless otherwise provided for by law, any parent or legal custodian of a child who willfully omits or neglects, without lawful excuse, to perform any duty imposed upon such parent or legal custodian by law to furnish necessary food, clothing, shelter or medical attendance for such child, upon conviction, is guilty of a crime. As used in this section, the duty to furnish medical attention shall mean that the parent or legal custodian of a child must furnish medical treatment in such manner and on such occasions as an ordinarily prudent person, solicitous for the welfare of a child, would provide; such parent or legal custodian is not criminally liable for failure to furnish medical attendance for every minor or trivial complaint with which the child may be afflicted. Any person who leaves the state to avoid providing necessary food, clothing, shelter or medical attendance for such child, upon conviction, is guilty of a crime. Nothing in this section shall be construed to mean a child is endangered for the sole reason the parent or guardian, in good faith, selects and depends upon spiritual means alone through prayer or traditional methods of healing, in accordance with the tenets and practice of a recognized church or religion for the treatment or cure of disease or remedial care of such child; provided, that medical care shall be provided where permanent physical damage could result to such child; and that the laws, rules and regulations relating to communicable diseases and sanitary matters are not violated. Nothing contained herein shall prevent a Court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect his health or welfare. Psychiatric and psychological testing and counseling are exempt from the provisions of this act.

C. An order directing the termination of parental rights is a final appealable order.

D. A parent or guardian of a child may petition the Court to terminate the parental rights of a parent or the parents of a child for any of the grounds listed in paragraphs (1), (2) or (4) of subsection (A) of this section. A prior finding by a Court that a child is delinquent, deprived or in need of supervision shall not be required for the filing of such petition by the parent or guardian.

Section (code section) 6. Provisions as cumulative

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

Section 7. 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 8. Effective Date

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

Section 9. 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.