



Legislation Text

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A LEGISLATIVE ACT AMENDING TITLE 21 OF THE CHEROKEE NATION CODE ANNOTATED - CRIMES AND PUNISHMENTS; ADDING SECTION 565; AMENDING SECTION 567; AND ADDING SECTION 567.1

BE IT ENACTED BY THE CHEROKEE NATION:

SECTION 1. TITLE AND CODIFICATION

This act shall be codified as Title 21, Sections 565, 567, and 567.1 of the Cherokee Nation Code Annotated.

SECTION 2. PURPOSE

AND

The purpose of this legislative act is to define contempt of court; establish when a jury trial for contempt is required or not required; establish when a party bringing a contempt action must be in court for the initial hearing; and to establish requirements for purging a contempt charge for violation of a child support order.

SECTION 3. LEGISLATIVE HISTORY

Source. LA 10-90, §13, effective November 13, 1990.

SECTION 4. SUBSTANTIVE PROVISIONS OF LAW

565 - Definition of Direct Contempt and Indirect Contempt

Contempts of court shall be divided into direct and indirect contempts. Direct and indirect contempts can be civil or criminal in nature:

A. Direct and Indirect Contempts

(1) Direct contempts shall consist of disorderly or insolent behavior committed during the session of the court and in its immediate view, and presence, and of the unlawful and willful refusal of any person to be sworn as a witness, and the refusal to answer any legal or proper question; and any breach of the peace, noise or disturbance, so near to it as to interrupt its proceedings, shall be deemed direct contempt of court, and may be summarily punished as hereinafter provided for.

(2) Indirect contempts of court shall consist of willful disobedience of any process or order lawfully issued or made by court; resistance willfully offered by any person to the execution of a lawful order or process of a court.

B. Civil and Criminal Contempts

(1) Civil contempts: failure to obey a court order that was issued for another party's benefit. A civil contempt procedure is coercive or remedial in nature.

(2) Criminal contempts: acts that obstruct justice or attack the integrity of the court. A criminal contempt proceeding is punitive in nature.

§ 567 Indirect contempts-Notice-Trial by jury-Appearance bond

A. In all cases of indirect contempt the party charged with contempt shall be notified in writing of the accusation and have a reasonable time for defense; and the party so charged shall, upon demand, have a trial by jury.

B. In the event the party so charged shall demand a trial by jury, the court shall thereupon set the case for trial at the next jury term of said court, and shall fix the amount of an appearance bond to be posted by said party charged, which bond shall be signed by said party and two sureties, which sureties together shall qualify by showing ownership of real property, the equal of which property shall be in double the amount of the bond, or, in the alternative, the party charged may deposit with the court clerk cash equal to the amount of the appearance bond.

C. In a case of indirect contempt, it shall not be necessary for the party alleging indirect contempt, or an attorney for that party, to attend an initial appearance or arraignment hearing for the party charged with contempt, unless the party alleging the indirect contempt is seeking a cash bond. If a cash bond is not being requested, the clerk of the court shall, upon request, notify the party alleging the indirect contempt of the date of the trial.

D. Notwithstanding any other provision of law, a party charged with indirect civil contempt of court for failure to pay child support, day care expenses or unreimbursed medical, dental, orthodontic, psychological, optometric, or any other physical or mental health expenses as required by the terms of a valid child support order shall not be entitled to trial by jury.

567.1 - Indirect Contempt for Failure to Pay Child Support - Purge Fee

When a person is found guilty of indirect contempt of court for failure to pay child support, day care expenses or unreimbursed medical, dental, orthodontic, psychological, optometric, or any other physical or mental health expenses, that person may purge the contempt by:

(a) Making all future payments for child support, day care expenses and unreimbursed medical, dental, orthodontic, psychological, optometric, or any other physical or mental health expenses as required by the current order for child support; and

(b) (1) paying the full amount of the arrearage, or some portion thereof, as a lump sum if the court determines the contemnor has the financial ability to do so, and

(2) if the full amount of the arrearage is not paid in a lump sum, then by making additional monthly payments in an amount equal to one-half of the current monthly child support obligation, exclusive of day care expenses.

All payments made pursuant to this Subsection (b)(2) shall be applied to reduce the amount of child support arrearage which was the subject of the contempt action. Payments made in accordance with the provisions of this Subsection (b)(2) shall bear interest as set forth in Title 43 CNCA §513 and 511(c).

(c) The total amount of the payments required to be made pursuant to Subsections (a) and (b) above shall not exceed 40% of the contemnor's current gross monthly income. For purposes of this Subsection, the contemnor's gross income shall be determined in accordance with the provisions of Title 43 O.S. § 118(2) and (3) as incorporated by reference in the Cherokee Nation Code Annotated at 43 CNCA §514. If the total amount of the payments required to be made pursuant to Subsections (a) and (b)(2) above exceeds 40% of the contemnor's gross monthly income, then the amount required to be paid under Subsection (b)(2) above shall be reduced such that the total payments required under Subsections (a) and (b)(2) shall equal 40% of the contemnor's gross monthly income. If application of this Subsection (c) creates a payout schedule which exceeds three years, then the terms and provisions of Title 43 CNCA §511(B) shall apply.

(d) The payments required to be made pursuant to this section shall continue until the child support arrearage, which was the subject of the contempt action, has been paid in full, at which time the contempt shall be deemed purged.

(e) If a contemnor is committed to the custody of the sheriff to serve the sentence imposed by the court, the contemnor may thereafter only be discharged from the custody of the sheriff:

(1) upon payment in full of the adjudicated arrearage; or

(2) upon serving the full sentence; or

(3) upon the making of a subsequent agreement by the parties as to payment of the arrearages, which agreement has been approved by the court and entry of a court order that the contemnor be released from the custody of the sheriff with the balance of the sentence to be conditionally suspended, subject to performance of the terms of the agreement and the provisions of the court order for release. Persons incarcerated pursuant to the provisions of this Section shall not be entitled to credit for good time, blood time, trustee time, or any other credit for time served. Persons incarcerated pursuant to the provisions of this section shall serve flat time in all cases.

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.

Enacted by the Council of the Cherokee Nation on the ____ day of _____, 2007.