



Council of the Cherokee Nation

Cherokee Nation Tribal
Council
17763 S. Muskogee Ave.
Tahlequah, OK 74464

Legislation Text

File #: 17-007, Version: 1

AN ACT RELATING TO TECHNICAL AMENDMENTS TO THE CHEROKEE NATION PATERNITY CODE

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This Act shall be known and may be cited as the "Paternity Code Technical Amendments Act of 2017"

Section 2. Purpose

The purpose of this Act is to make technical amendments to the Cherokee Nation Paternity Code, codified at 10 CNCA § 100 et seq.

Section 3. Legislative History

LA 11-05, effective March 21, 2005
LA 30-06, effective December 30, 2006
LA 20-07, effective April 23, 2007
LA 08-11, effective May 19, 2011

Section 4. Amendatory.

Section 104 of Title 10 of the Cherokee Nation Code Annotated is amended to read as follows:

§ 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~~ Office of Child Support 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.

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 The statement may be rescinded by the mother or acknowledging father within the earlier of:

i. 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

ii. 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.

2. After the sixty- (60) 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.

i. 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.

ii. The husband's denial of paternity form shall be prescribed by the Division Office of Child Support 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 Office of Child Support 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 Office of Child Support Services 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 Office of Child Support Services, 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, 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 43 CNCA § 515 which shall be submitted to the Central Case Registry as provided for in 43 CNCA § 502. 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 eighteen (18) years or within one (1) year after the child reaches the age of eighteen (18).

Section 5. Amendatory.

Section 110 of Title 10 of the Cherokee Nation Code Annotated is amended to read as follows:

§ 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 10 CNCA § 104, 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 (18th) birthday of the child.

3. If paternity has been legally determined pursuant to 10 CNCA § 104, 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. An individual who has been legally determined to be the father of a child pursuant to 10 CNCA § 104, 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)~~ two (2) years preceding the filing of the action, absent good cause to deviate. The amount to 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.

D. The amount of child support and other support including amounts provided for in 10 CNCA § 110(C) shall be ordered and reviewed in accordance with the child support guidelines provided in 43 CNCA § ~~514~~ 507 *et seq.*

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 10 CNCA § 121;

b. a notarized written statement acknowledging paternity of the child executed by the putative father;

c. a presumption of paternity pursuant to 10 CNCA § 100 or 100.1; 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 43 CNCA § ~~514~~ 507 *et seq.* 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.

Section 6. Amendatory.

Section 112 of Title 10 of the Cherokee Nation Code Annotated is amended to read as follows:

§ 112. Persons eligible to bring paternity actions

A. The mother, putative father, guardian or custodian of the child, the ~~Division~~ Office of Child Support 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~~ Office of Child Support 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 Cherokee Nation, who is the subject of a paternity action. When a person who is subject to the jurisdiction of the Court is outside Cherokee Nation, the person may be served outside of 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 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 Code.

G. Attorneys ~~for the Division~~ representing the Office of Child Support 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~~ Office of Child Support Services.

H. In a proceeding brought under subsection (G) of this section by the ~~Division~~ Office of Child Support 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 7. Amendatory.

Section 117 of Title 10 of the Cherokee Nation Code Annotated is amended to read as follows:

§ 117. Preparation of birth certificate-Acknowledgement of paternity

A. Unless an adoption decree has been presented, and consent to adoption has been given as otherwise provided by law, upon the birth of a child to an unmarried woman, the person required by the State of Oklahoma, under 63 O.S. § 1- ~~344~~ 318, to prepare and file an Oklahoma birth certificate shall:

1. Provide written materials and an oral, audio, or video presentation to the child's mother and/or

natural father including an affidavit acknowledging paternity on a form prescribed by the Division of Child Support Enforcement Office of Child Support Services. The completed affidavit shall be filed with the District Court. The affidavit shall contain:

- a. a statement by the mother consenting to the assertion of paternity and stating the name of the father,
- b. a statement by the father that he is the natural father of the child,
- c. the social security numbers of both parents, and
- d. other information as the United States Secretary of Health and Human Services may require;

2. Provide written information, furnished by the Division of Child Support Enforcement Office of Child Support Services, along with an oral, audio, or video presentation to the mother:

- a. explaining that the completed, notarized affidavit shall be filed with the District Court,
- b. regarding the benefits of having her child's paternity established and of the availability of paternity establishment services, including a request for support enforcement services, and
- c. explaining the implications of signing, including parental rights and responsibilities; and

3. Provide the original affidavit acknowledging paternity to the Office of the State Registrar of Vital Statistics. Copies of the original affidavit acknowledging paternity shall be provided to the Division of Child Support Enforcement Office of Child Support Services and to the mother and acknowledged father of the child.

B. The Division of Child Support Enforcement Office of Child Support Services shall make the affidavits acknowledging paternity and the husband's denial of paternity forms available at each office of the Division Office of Child Support Services.

C. A person signing an affidavit of paternity prior to attaining the age of 18 years shall be allowed to challenge said affidavit in Cherokee Nation District Court. A petition challenging the paternity affidavit must be filed by the person who acknowledged paternity prior to his nineteenth birthday. A challenge must be supported by DNA testing and the standard for proving paternity shall be the same as that found in 10 CNCA § 121.

Section 8. Amendatory.

Section 120 of Title 10 of the Cherokee Nation Code Annotated is amended to read as follows:

§ 120. Compensation of expert witnesses

A. The compensation of each expert witness appointed by the Court or called by a party and costs of

tests required shall be fixed at reasonable amounts by the Court. Said compensation and costs shall be paid as the Court shall order. The Court may order that said compensation and costs be paid by the parties in such proportions and at such times as it shall prescribe. All additional testing must be paid for in advance by the party requesting the additional test. The Court may order that, after payment by the parties, said compensation and costs may be taxed as costs in the action.

B. The Court shall not assess costs against the Office of Child Support ~~Enforcement~~ Services.

Section 9. Provisions as cumulative

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

Section 10. 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 11. Effective Date

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

Section 12. 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.