



Council of the Cherokee Nation

Cherokee Nation Tribal
Council
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Legislation Text

File #: 08-047, Version: 1

A LEGISLATIVE ACT AMENDING CERTAIN SECTIONS OF THE CHILDREN'S CODE RELATING TO CHILD PROTECTION AND BACKGROUND CHECKS FOR INDIVIDUALS WORKING WITH CHILDREN

BE IT ENACTED BY THE CHEROKEE NATION:

SECTION 1. TITLE AND CODIFICATION.

SECTION 2. LEGISLATIVE HISTORY.

This Act amends Title 10, Section 1407, of the Cherokee Nation Code, which was passed into law by Legislative Act 08-91, effective May 13, 1991.

SECTION 3. PURPOSE AND FINDINGS.

The purpose of this legislation is to conform Cherokee Nation law with the federal Indian Child Protection and Family Violence Prevention Act and federal regulations regarding the minimum standards of character and suitability for employment and volunteerism for individuals whose duties and responsibilities allow them regular contact with or control over Indian children.

SECTION 4. AMENDATORY. TITLE 10 CNCA § 1407 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 1407. Child Protection.

This title may be cited as the "~~Indian~~ Cherokee Nation Child Protection and Family Violence Prevention Act."

A. Findings and Purpose

1. Findings-The Council of the Cherokee Nation, after careful review of the problem of child abuse on Indian Country, finds that:
 - a. Incidents of abuse of children in ~~an~~ Indian Country are grossly underreported.
 - b. There is no resource that is more vital to the continued existence and integrity of the Cherokee Nation than its children and the ~~United States~~ Cherokee Nation has a direct interest, as trustee, in protecting Indian children who are members of, or are eligible for membership in the Cherokee Nation.
2. Purpose-The purposes of this act are to:
 - a. Require that reports of abused Indian children are made to the appropriate authorities in an effort to prevent further abuse.
 - b. Authorize such other actions as are necessary to ensure effective child protection in Indian country.
 - c. Provide for the treatment and prevention of incidents of family violence.
 - d. Provide minimum standards of character and suitability for employment or volunteerism for individuals whose duties and responsibilities allow them regular contact with or control over Indian children.
 - e. Authorize other actions necessary to ensure effective child protection on Indian country.

B. Definitions-For the purposes of this act, the term:

1. "Bureau" means the Bureau of Indian Affairs of the Department of the Interior.
2. "Child" ~~means any person under the age of eighteen (18) years, except any person convicted of a crime where statute requires that persons charged with such crimes must be considered adults or any person who has been certified as an adult and convicted of a felony; an individual who:~~
 - a. ~~is not married, and~~
 - b. ~~has not attained 18 years of age.~~
3. "child Abuse" ~~means harm or threatened harm to a child's health, safety or welfare by a person responsible for the child's health, safety or welfare, including sexual abuse and sexual exploitation; includes but is not limited to:~~
 - a. ~~any case in which:~~
 - i. ~~a child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, and~~
 - ii. ~~such condition is not justifiably explained or may not be the product of an accidental occurrence;~~
 - b. ~~any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution.~~
4. "child Neglect" ~~means failure or omission to provide:~~
 - a. ~~adequate food, clothing, shelter, medical care, and supervision,~~
 - b. ~~special care made necessary by the physical or mental condition of the child, or~~
 - c. ~~abandonment; includes but is not limited to, negligent treatment or maltreatment of a child by a person, including a person responsible for the child's welfare, under circumstances which indicate that the child's health or welfare is harmed or threatened thereby.~~
6. "Family violence" means any act, or threatened act, of violence, including any forceful detention of an individual, which:
 - a. results, or threatens to result, in physical or mental injury, and
 - b. is committed by an individual against another individual:
 - i. to whom such person is or was, related by blood or marriage or otherwise legally related, or
 - ii. with whom such person is, or was, residing.
6. "Indian" means any individual who is a member of an Indian tribe or is eligible for membership in an Indian tribe.
7. "Indian child" has the meaning given to such term by Section 4(4) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(4)).
8. "Indian country" has the meaning given to such term by Section 1151 of title 18, United States Code.
9. "Local child protective services agency" means that agency of the Federal Government, of a State, or of an Indian tribe that has the primary responsibility for child protection on any Indian reservation or within any community in Indian country.
10. "Local law enforcement agency" means that federal, tribal, or state law enforcement agency that has the primary responsibility for the investigation of an instance of alleged child abuse within the portion of Indian country involved.
11. "Person responsible for a child's health, safety or welfare" includes a parent; a legal guardian; a

custodian; a foster parent; a person eighteen (18) years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child; an agent or employee of a public or private residential home, institution, facility or day treatment program; or an owner, operator, volunteer, or employee of a child care facility; means any person who has legal or other recognized duty for the care and safety of a child, including:

- a. any employee or volunteer of a children's residential facility, and
- b. any person providing out-of-home care, education, or services to children.

12. "Related assistance":

- a. includes counseling and self-help services to abusers, victims, and dependents in family violence situations (which shall include counseling of all family members to the extent feasible) and referrals for appropriate healthcare services (including alcohol and drug abuse treatment), and
- b. may include food, clothing, child care, transportation, and emergency services for victims of family violence and their dependents.

13. "Secretary" means the Secretary of the Interior.

14. "Shelter" means the provision of temporary refuge and related assistance in compliance with applicable Federal and Tribal laws and regulations governing the provision, on a regular basis, of shelter, safe homes, meals, and related assistance to victims of family violence or their dependents.

15. "Service" means the Indian Health Service of the Department of Health and Human Services.

16. "Harm or threatened harm to a child's health or safety" includes, but is not limited to:

- a. nonaccidental physical or mental injury,
 - b. sexual abuse,
 - c. sexual exploitation,
 - d. neglect,
 - e. failure or omission to provide protection from harm or threatened harm,
- or
- f. abandonment.

17. "Sexual abuse" includes, but is not limited to, rape, incest and lewd or indecent acts or proposals made to a child, as defined by law, by a person responsible for the child's health, safety or welfare;

18. "Sexual exploitation" includes, but is not limited to, allowing, permitting, or encouraging a child to engage in prostitution, as defined by law, by a person responsible for the child's health, safety or welfare or allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming, or depicting of a child in those acts as defined by the state law, by a person responsible for the child's health, safety or welfare;

19. "Child advocacy center" means an entity that is a full member in good standing with the State of Oklahoma's standard for accreditation.

20. "Department" means the Cherokee Nation Department of Children, Youth, and Family Services' Indian Child Welfare Program;

21. "Investigation" means an approach utilized by the Department to respond to reports of alleged child abuse or neglect which, according to priority guidelines established by the Department, constitute a serious and immediate threat to the child's health or safety. An investigation includes, but is not limited to, the following elements:

- a. an evaluation of the child's safety or welfare,
- b. a determination whether or not child abuse or neglect occurred, and
- c. a determination regarding the family's need for prevention and intervention-related services;

22. "Services not needed determination" means a report in which a child protective services

worker, after an investigation, determines that there is no identified risk of abuse or neglect;

23. “Services recommended determination” means a report in which a child protective services worker, after an investigation, determines the allegations to be unfounded or for which there is insufficient evidence to fully determine whether child abuse or neglect has occurred, but one in which the Department determines that the child and the child's family could benefit from receiving prevention and intervention-related services;

24. “Confirmed report - services recommended” means a report which is determined by a child protective services worker, after an investigation and based upon some credible evidence, to constitute child abuse or neglect which is of such a nature that the Department recommends prevention and intervention-related services for the parents or persons responsible for the care of the child or children, but for which initial court intervention is not required;

25. “Confirmed report - court intervention” means a report which is determined by a child protective services worker, after an investigation and based upon some credible evidence, to constitute child abuse or neglect which is of such a nature that the Department finds that the child's health, safety or welfare is threatened, and court intervention is being recommended;

26. “Child protective services worker” means a person employed by the Department with sufficient experience or training as determined by the Department in child abuse prevention and identification;

27. “Prevention and intervention-related services” means community-based programs that serve children and families on a voluntary and time-limited basis to help reduce the likelihood or incidence of child abuse and neglect

C. Reporting Procedures-Report to Local Law Enforcement Agency.

1. Any person who is a:

- a. physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or health care provider,
- b. teacher, school counselor, instructional aide, teacher's aide, teacher's assistant, or bus driver employed by any tribal, federal, public or private school,
- c. administrative officer, supervisor of child welfare and attendance, or truancy officer of any tribal, federal, public or private school,
- d. child day care worker, headstart teacher, public assistance worker, worker in a group home or residential or day care facility, or social worker,
- e. psychiatrist, psychologist, or psychological assistant,
- f. licensed or unlicensed marriage, family, or child counselor,
- g. person employed in the mental health profession, or
- h. law enforcement officer, probation officer, worker in a juvenile rehabilitation or detention facility, or person employed in a public agency who is responsible for enforcing statutes and judicial orders.

2. who knows, or has reasonable suspicion, that:

- a. a child was abused in Indian Country, or
- b. actions are being taken, or are going to be taken, that would reasonable be expected to result in abuse of a child in Indian Country; and

3. fails to immediately report such abuse or actions described in paragraph (2) to the local child protective services agency or local law enforcement agency, shall be fined not more than \$5,000.00 or imprisoned for not more than 6 months or both.

4. Any person who supervises, or has authority over, a person described in subsection (1), and inhibits or prevents that person from making the report described in subsection (a), shall be fined

not more than \$5,000.00 or imprisoned for not more than 6 months or both.

5. For purposes of this section, the term:

a. "abuse" includes:

i. any case in which:

a child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, and such condition is not justifiably explained or may not be the product of an accidental occurrence; and

ii. any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution;

b. "child" means any person under the age of eighteen (18) years, except any person convicted of a crime where statute requires that persons charged with such crimes must be considered adults or any person who has been certified as an adult and convicted of a felony; an individual who:

i. is not married, and

ii. has not attained 18 years of age;

c. "local child protective services agency" means that agency of the Federal Government, of a State, or of an Indian tribe that has the primary responsibility for child protection on any Indian reservation or within any community in Indian country; and

d. "local law enforcement agency" means that federal, tribal, or state law enforcement agency that has the primary responsibility for the investigation of an instance of alleged child abuse within the portion of Indian country involved.

7. Any person making a report described in subsection (a) which is based upon their reasonable belief and which is made in good faith shall be immune from civil or criminal liability for making that report.

8. Notification of Child Abuse Reports:

a. When a local law enforcement agency or local child protective services agency receives an initial report from any person of:

i. the abuse of a child in Indian country, or

ii. actions which would reasonably be expected to result in abuse of a child in Indian country, the receiving agency shall immediately notify appropriate officials of the other agency of such report and shall also submit, when prepared, a copy of the written report required under subsection (c) to such agency.

b. Where a report of abuse involves an Indian child or where the alleged abuser is an Indian and where a preliminary inquiry indicates a criminal violation has occurred, the local law enforcement agency, if other than the Federal Bureau of Investigation, shall immediately report such occurrence to the Federal Bureau of Investigation.

9. Written Report of Child Abuse:

a. Within 36 hours after receiving an initial report described in subsection (b), the receiving agency shall prepare a written report which shall include, at a minimum, if available:

i. the name, address, age, and sex of the child that is the subject matter of the report;

ii. the grade and the school in which the child is currently enrolled;

iii. the name and address of the child's parents or other person responsible for the child's care;

iv. the name and address of the alleged offender,

v. the name and address of the person who made the report to the agency;

vi. a brief narrative as to the nature and extent of the child's injuries, including any previously known or suspected abuse of the child or the child's siblings and the suspected date of the abuse; and

vii. any other information the agency or the person who made the report to the agency believes to be important to the investigation and disposition of the alleged abuse.

b. i. Any local law enforcement agency or local child protective services agency that receives a report alleging abuse described in section 503(3) shall immediately initiate an investigation of such allegation and shall take immediate, appropriate steps to secure the safety and well-being of the child or children involved.

ii. Upon completion of the investigation of any report of alleged abuse that is made to a local law enforcement agency or local child protective services agency, such agency shall prepare a final written report on such allegation.

10. Confidentiality of Informant: The identity of any person making a report described in subsection (b)(1) shall not be disclosed, without the consent of the individual, to any person other than a court of competent jurisdiction or an employee of an Indian tribe, a State or the Federal Government who needs to know the information in the performance of such employee's duties.

D. Confidentiality

Agencies of any Indian tribe, of any State, or of the Federal Government that investigate and treat incidents of abuse of children may provide information and records to those agencies of any Indian tribe, any State, or the Federal Government that need to know the information in performance of their duties. For purposes of this section, Indian tribal governments shall be treated the same as other Federal Government entities.

E. Waiver of Parental Consent

1. Examination and Interviews-Photographs, x-rays, medical examinations, psychological examinations, and interviews of an Indian child alleged to have been subject to abuse in Indian Country shall be allowed without parental consent, if local child protective services or local law enforcement officials have reason to believe the child has been subject to abuse.

2. Interviews By Law Enforcement and Child Protective Services Officials-In any case in which officials of the local law enforcement agency or local child protective services agency have reason to believe that an Indian child has been subject to abuse in Indian country, the officials of those agencies shall be allowed to interview the child without first obtaining the consent of the parent, guardian, or legal custodian.

3. Protection of Child-Examinations and interviews of a child who may have been the subject of abuse shall be conducted under such circumstances and with such safeguards as are designed to minimize additional trauma to the child.

4. Court Order-Upon a finding of reasonable suspicion that an Indian child has been the subject of abuse in Indian country, a Judge of the District Court may issue an order enforcing any provision of this action.

F. Character Investigation

1. The Cherokee Nation Human Resources Department personnel department shall conduct an investigation of the character of each individual who is employed by, or is being considered for employment by, is subject to the supervision of, or receives funding from the Cherokee Nation, in a position that involves regular contact with, or control over, Indian children, ~~and~~

2. The Cherokee Nation shall employ individuals in those positions having regular contact with or control over Indian children only if the individuals meet standards of character regarding care, custody, and safety of children established by the Human Resources Department subject to

approval of the Principal Chief.

3.
 - a. The Human Resources Department shall establish a list of positions at the Cherokee Nation which involve regular contact with or control over Indian children.
 - b. The positions listed by the Human Resources Department must include, at a minimum, any employee or volunteer of a children's residential facility, any position providing out-of-home care, education or services to children. The position list shall also include, but not be limited to:
 - i. adults responsible for administration or direct supervision of staff who have regular contact with or control over Indian children;
 - ii. any staff person, volunteer, or official of the Nation who engages in regular contact with children as part of their duties with the Nation; and
 - iii. any staff person, volunteer, or official of the Nation who engages in activities with children where the activities include overnight stays with children.
 - c. The following may be excluded from the character investigation requirement:
 - i. A volunteer providing time-limited specialized services if this person is directly supervised by an individual who has cleared a character investigation, and the volunteer spends no more than 16 hours per week engaging in activities with children, and the volunteer does not spend any overnights with the children, and the volunteer is not left alone with children in care.
 - ii. A student enrolled or participating at an accredited educational institution if the student is directly supervised by an individual who has cleared a character investigation, the facility has an agreement with the educational institution concerning the placement of the student, and the volunteer does not spend any overnights with the children, and the student spends no more than 16 hours per week engaging in activities with children, and the student is not left alone with children in care.
 - iii. A volunteer who is a relative, legal guardian, or foster parent of a client being provided services by the Nation shall not be subject to the character investigation requirement when the volunteer is engaging in activities related to the services being provided to his/her child unless the volunteer is required to spend an overnight with the children in which case, he/she must be cleared through a character investigation.
 - iv. A contracted repair person retained by a facility where children are served, if not left alone with children in care, shall be exempt from the requirements of this subdivision.
 - v. Any person similar to those described in this subdivision, as defined by Human Resources.
4. The Human Resources Department shall establish procedures for determining suitability for employment and efficiency of service as mandated by the Indian Child Protection and Family Violence Prevention Act and shall include in said procedures standards of character to ensure that individuals having regular contact with or control over Indian children have not been convicted of certain types of crimes or acted in a manner that placed others at risk or raised questions about their trustworthiness.
 - a. The Human Resources Department's determinations of suitability shall measure the fitness or eligibility of an applicant, volunteer, or employee for a particular position. Suitability for employment does not evaluate an applicant's education, skills, knowledge, experience, etc.; rather, it requires that the Human Resources Department investigate the background of each applicant, volunteer, and employee to:
 - i. Determine the degree of risk the applicant, volunteer, or employee brings to the position; and
 - ii. Certify that the applicant's, volunteer's, or employee's past conduct would not interfere with his/her performance of duties, nor would it create an immediate or long-term risk for any Indian child.
 - b. Efficiency of service procedures shall verify that the applicant or employee is able to perform the duties and responsibilities of the position, and his/her presence on the job will not

inhibit other employees or the agency from performing their functions.

5. The Human Resources Department shall use character traits and past conduct to determine whether an applicant, volunteer, or employee can effectively perform the duties of a particular position without risk of harm to others. Minimum standards of character require that no applicant, volunteer, or employee will be placed in a position with regular contact with or control over Indian children if he/she has been found guilty of or entered a plea of nolo contendere or guilty to any offense under Federal, state, or tribal law involving crimes of violence, sexual assault, sexual molestation, sexual exploitation, sexual contact or prostitution, crimes against persons, an offense involving a child victim, other sex crimes, or a drug-related felony. Minimum standards of character shall also require that no applicant, volunteer, or employee will be placed in a position with regular contact with or control over Indian children if the individual has resorted to physical punishment or mistreatment while working with children even if a criminal conviction has not been obtained.

6. An applicant, volunteer, or employee shall be disqualified from consideration or continuing employment or volunteer work where the employment or work requires regular contact with or control over children if it is found that he/she does not meet the minimum standards listed herein. Elected officials shall be disqualified from engaging in any activities and work, whether as part of their duties or as volunteers, where they would have regular contact with or control over children.

7. An applicant, volunteer, official, or employee may be disqualified from consideration or continuing employment or volunteer work where the employment or work requires regular contact or control over children if it is found that:

a. The individual's misconduct or negligence interfered with or affected a current or prior employer's performance of duties and responsibilities.

b. The individual's criminal or dishonest conduct affected the individual's performance or the performance of others.

c. The individual made an intentional false statement, deception or fraud on an examination or in obtaining employment.

d. The individual has refused to furnish testimony or cooperate with an investigation.

e. The individual's alcohol or substance abuse is of a nature and duration that suggests the individual could not perform the duties of the position or would directly threaten the property or safety of others.

f. The individual has illegally used narcotics, drugs, or other controlled substances without evidence of substantial rehabilitation.

g. The individual knowingly and willfully engaged in an act or activities designed to disrupt government programs.

h. While working with children, the individual has resorted to physical punishment or mistreatment.

i. The individual fails to demonstrate good judgment as evidenced by prudent and responsible behavior that reasonably ensures the health and safety of children in care.

8. A determination that an individual who is currently employed by the Nation is disqualified for continuing employment pursuant to this section shall be cause for termination of such employee. An individual who is an official of the Nation or who is a volunteer and is determined to be disqualified shall be prohibited from engaging in any activities and work on behalf of the Nation or where children in the Nation's care are involved and where they would have regular contact with or control over children.

SECTION 5. PROVISIONS NOT CUMULATIVE.

The provisions of this act shall not be cumulative to existing law and the provisions of this act shall supersede any existing law in conflict herewith.

SECTION 6. SEVERABILITY.

The provisions of this act are severable, and if any part or 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. 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.