



Council of the Cherokee Nation

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

Legislation Details (With Text)

| | | | | | |
|------------------------|--|----------------------|---|--------------|---|
| File #: | 19-096 | Version: | 2 | Name: | 2019 AMENDMENT TO THE TITLE 10 THE "CHILDRENS CODE" |
| Type: | Legislative Act | Status: | | | Tabled Indefinitely |
| File created: | 10/30/2019 | In control: | | | RULES COMMITTEE |
| On agenda: | 11/13/2019 | Final action: | | | |
| Enactment date: | | Enactment #: | | | |
| Title: | AN ACT AMENDING TITLE 10 OF THE CHEROKEE NATION CODE ANNOTATED TO PRESERVE, PROTECT, AND INCORPORATE CERTAIN CHEROKEE TRIBAL TRADITIONS, CUSTOMS AND CULTURE | | | | |
| Sponsors: | Wes Nofire | | | | |
| Indexes: | CHILDREN, Culture, Indian Child Welfare | | | | |
| Code sections: | Title 10 - Children | | | | |
| Attachments: | | | | | |

| Date | Ver. | Action By | Action | Result |
|------------|------|-----------------|---------------------|--------|
| 1/30/2020 | 2 | RULES COMMITTEE | Tabled Indefinitely | Pass |
| 12/16/2019 | 1 | RULES COMMITTEE | Tabled | Pass |
| 11/13/2019 | 1 | RULES COMMITTEE | Tabled | Pass |

AN ACT AMENDING TITLE 10 OF THE CHEROKEE NATION CODE ANNOTATED TO PRESERVE, PROTECT, AND INCORPORATE CERTAIN CHEROKEE TRIBAL TRADITIONS, CUSTOMS AND CULTURE

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act codifies certain amendments to Title 10 of the Cherokee Nation Code Annotated.

Section 2. Purpose

The purpose of this Act is to amend Title 10 of the Cherokee Nation Code Annotated to preserve, protect, and incorporate certain Cherokee tribal traditions, customs and culture into legal proceedings involving Cherokee children. Traditional Cherokee families must be protected and respected by the District Courts of the Cherokee Nation and Cherokee Elders should be respected and recognized by the District Courts as competent expert witnesses to provide evidence of Cherokee traditions, customs, and culture.

Section 3. Legislative History

Section 4. Definitions

Section 5. Substantive Provisions

§ 1.5. Preservation of Cherokee Tradition, Customs, and Culture

Cherokee people embrace a mix of both modern and traditional aspects of Cherokee traditions, customs, and culture. Respect for and recognition of Cherokee Elders as repositories of Cherokee traditions, customs and cultural knowledge shall be the law of the Cherokee Nation. Cherokee families have traditionally been based on matrilineal clans focused on the family group that include extended family primarily along the mother's family by blood. The Cherokee Nation acknowledges and respects this aspect of traditional Cherokee traditions, customs and culture, which extend beyond the modern custom of family recognized by most state governments. District Courts of the Cherokee Nation shall acknowledge and respect traditional Cherokee traditions, customs, and culture. As used in Title 10, Cherokee Elders shall mean Cherokee persons that have accumulated a great deal of wisdom and knowledge throughout his or her lifetime, especially in the traditions, customs and culture of the Cherokee people, to include, but not be limited to, Cherokee holy men, medicine men, and historians. Evidence of traditional Cherokee Culture and Customs may include testimony from Cherokee Elders. Cherokee Nation reserves the right to intervene in any court to determine whether a person qualifies as a Cherokee Elder.

§ 21.1. Custody-Order of preference-Death of custodial parent-Preference of child

A. Custody should be awarded in the following order of preference according to the best interests of the child to:

1. a parent or to both parents jointly except as otherwise provided in subsection (B) of this section;
2. a grandparent;
3. a person who was indicated by the wishes of a deceased parent;
4. a relative of either parent, including members of the mother's matrilineal clan;
5. the person in whose home the child has been living in a wholesome and stable environment; or
6. any other person deemed by the Court to be suitable and able to provide adequate and proper care and guidance for the child.

B. When a parent having physical custody and providing support to a child becomes deceased, in awarding custody or appointing as guardian of the child the noncustodial parent, the Court may deny the custody or guardianship only if:

1. the noncustodial parent has willfully failed, refused, or neglected to contribute to the support of the child for a period of at least twelve (12) months immediately preceding the determination of custody or guardianship action:
 - a. in substantial compliance with a support provision contained in a decree of divorce, or a decree of separate maintenance or an order adjudicating responsibility to support in a reciprocal enforcement of support proceeding, paternity action, juvenile proceeding, guardianship proceeding, or orders of modification to such decree, or other lawful orders of support entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support, or
 - b. according to such parent's financial ability to contribute to such child's support if no provision for support is provided in a decree of divorce or an order of modification subsequent thereto;
2. the noncustodial parent has abandoned the child; or
3. the Court finds it would be detrimental to the health or safety of the child for the noncustodial parent to have custody or be appointed guardian.

C. The Court may consider the preference of the child in awarding custody of said child if the child is of sufficient age to form an intelligent preference.

D. The Court shall consider the standards to be applied in meeting the preference requirements of this section to include the prevailing social and/or cultural standards of the Cherokee community in which the parent, child, or extended family resides or with which the parent, child, or extended family maintain social and/or cultural ties. To establish such social

and/or cultural standards, the Court may consider testimony from Cherokee Elders.

§ 25. Definitions

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

1. **"Before the court"** as used in 10 CNCA § 28, means in-person or electronically via telephone or internet.
2. **"Cherokee Nation"** means the government of Cherokee Nation or the administrative agency within 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. **"Court"** means any court of competent jurisdiction which may hereafter be established for such purposes authorized to officiate in matters relating to children.
5. **"Custodian"** means any Cherokee person who has ongoing physical and/or legal custody of an Indian child(ren) under tribal law, and/or Cherokee tradition and/or custom, including, but not limited to extended family that has temporary physical care, custody, and control transferred by either parent of such child(ren).
6. **"DHS"** means the Oklahoma Department of Human Services.
7. **"District Court"** means the District Court of Cherokee Nation.
8. **"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 Cherokee Nation, wherein a child is received for care, custody and maintenance.
9. **"Indian"** means a person as defined by 10 CNCA § 40.2.
10. **"Nation"** means Cherokee Nation.
11. **"Person"** means any natural person, corporation, association, organization, institution, or partnership.

Definitions provided in 10 CNCA § 1101 are incorporated for this title.

§ 26. Right to custody

No person, other than the parents, or relatives within the fourth degree or within the matrilineal clan of the child concerned, may assume the permanent care and custody of a child except in accordance with the provisions of this act, or in accordance with the decree of a court of competent jurisdiction.

§ 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 or within the matrilineal clan 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.

§ 32. Placement of child in foster home

No person except:

1. the parent or parents of the child involved;
2. a relative within the fourth degree or within the matrilineal clan of such child, having lawful custody thereof;

3. the legal guardian of such child, duly authorized thereto by the Court by which he was appointed; or

4. Cherokee Nation or a child welfare agency enumerated in 10 CNCA § 28, if the care and custody of the child has been relinquished to the Cherokee Nation or the agency under the terms of this act or has been committed thereto by order of judgment of a court of competent jurisdiction

shall place or offer to place a child for care in a foster home without securing the consent of Cherokee Nation or the District Court.

§ 40.2. Definitions

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

2. **"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. Evidence of tribal custom may include testimony from a Cherokee Elder.

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 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 8. Effective Date/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.

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.