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OKLAHOMA SECRETARY OF STATE

INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF OKLAHOMA AND THE CHEROKEE NATION REGARDING JURISDICTION OVER INDIAN CHILDREN WITHIN THE NATION'S RESERVATION

I. PREAMBLE

The Indian Child Welfare Act of 1978 was passed by Congress to reverse the trend of the destruction of Indian families. The intent of the Act was to protect Indian children and families by defining how cases involving Indian children should be handled. The Act's provisions respected the broad authority that Indian tribes had long exercised over Indian children located within tribal jurisdictions, and the United States Supreme Court recognized that, "the ICWA designates the tribal court as the exclusive forum for the determination of custody and adoption matters for reservation-domiciled Indian children, and the preferred forum for nondomiciliary Indian children." Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 52–53 (1989).

This Agreement is the result of a partnership formed by the Cherokee Nation and the State of Oklahoma. The intent of this Agreement is to further streamline the jurisdictional provisions put forth in the Indian Child Welfare Act and create concurrent jurisdiction on the reservation of the Cherokee Nation with the State of Oklahoma and its political subdivisions.

II. DEFINED TERMS.

As used in this section, the term—

(1) "Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual;

(2) "child custody proceeding" shall mean and include—

(A) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(B) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(C) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

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(D) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(3) "Department" means the Oklahoma Department of Human Services, or other agency having responsibility for child protection and welfare in the state of Oklahoma.

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "State or state" means the state of Oklahoma.

(6) "Tribe or tribe" means the federally recognized Indian Tribe known as the Cherokee Nation.

III. LEGAL AUTHORITY

The Indian Child Welfare Act (hereinafter the "Act") 25 U.S.C. 1901 et seq. (Public Law 95-608), authorizes states and Indian tribes to enter into agreements concerning the care and custody of Indian children and jurisdiction over child custody proceedings involving such children. Oklahoma law similarly authorizes "[t]he Director of the Department of Human Services and the Executive Director of the Office of Juvenile Affairs ... to enter into agreements with Indian tribes in Oklahoma regarding care and custody of Indian children as authorized by the Federal Indian Child Welfare Act, 25 U.S.C. § 1919." Okla. Stat. tit. 10, § 40.7. The State of Oklahoma and the Cherokee Nation, through their undersigned representatives, hereby enter into the following Agreement to provide for concurrent jurisdiction as authorized by §1919 of the Act. In the event the Tribe enters into separate agreements or MOUs with the State, those separate agreements shall control to the extent inconsistent with this Agreement.

IV. CONCURRENT JURISDICTION

The parties have agreed to enter into this jurisdiction sharing Agreement based on the premise that the Tribe has jurisdiction exclusive as to the State over any child custody proceeding involving an Indian child domiciled within the boundaries of the Tribe's reservation as provided for in 25 U.S.C. §1911(a).

Within the reservation boundaries of the Tribe, the State of Oklahoma and the Tribe shall share concurrent jurisdiction over any Indian child domiciled within the reservation, except as follows:

(1) The Tribe shall retain exclusive jurisdiction over any child custody proceeding involving an Indian child domiciled or located on:

(A) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same; or

(B) land held in trust by the United States on behalf of an individual Indian or the Tribe;

or

(C) land owned in fee by the Tribe, if the Tribe—

(i) acquired fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which the Tribe was a party; and (ii) never allotted the land to a citizen or member of the Tribe.

(2) Where an Indian child is a ward of the Tribe's court, the Tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

V. DETERMINATION OF TRIBAL OR STATE COURT JURISDICTION

Except in cases of emergency, the following procedures will apply to initiation of involuntary child custody proceedings in an Oklahoma court regarding an Indian child who is domiciled or resident on the Tribe's reservation, but not domiciled on the lands described above in Section (IV)(1). In cases of emergency, the procedures set forth in Part VI of this Agreement, regarding emergency foster care placements, shall be followed.

(1) Involuntary child custody proceedings where the State of Oklahoma is a party.

Prior to the State filing any petition to initiate an involuntary child custody proceeding in an Oklahoma court, the Department will seek to determine whether the Indian child is a ward of a tribal court or whether the child is domiciled or located on the lands described above in Section IV(1).

In seeking to determine whether the child is a ward of tribal court, the Department will contact the Tribe concerning the matter. If the child is a ward of tribal court, the Tribe has exclusive jurisdiction and the Department shall refer the case to the appropriate tribal authorities.

If the child is domiciled on the Tribe's reservation but is not a ward of the court or domiciled or located on lands described in Section IV(1), the Department will, at the earliest possible time, notify the Tribe of its intent to request the State file a petition in the State court on or after a specified date. The notice will include all documents and records in support of the necessity of initiating an involuntary child custody proceeding, and the Tribe must be given notice prior to the

filing of the deprived petition. If, prior to the date specified in the notice to the Tribe, a child custody proceeding is commenced in the tribal court then the matter will proceed in tribal court.

With respect to children identified in a notice sent by the Department, the Tribe will immediately notify the Department of any child custody proceeding commenced in tribal court prior to the date specified in the notice.

If the Department is notified or has knowledge that a child custody proceeding has been commenced in tribal court, the State will not file a child custody proceeding in State court and, upon request, will assist in the tribal court adjudication of the matter, including providing records and/or testimony from the Department.

The Department will keep a record on a case-by-case basis of the inquiries made to determine whether a child is a ward of the tribal court and of the facts considered in reaching a decision that the child is or is not domiciled or resident on an Indian reservation. This record, upon request, will be provided to the Indian child's tribe, parent or Indian custodian, and any guardian ad litem appointed to represent the child.

If an Indian child is domiciled or located within the Tribe's reservation and the child is not a member of or eligible for membership in the Tribe, nothing in this Agreement shall relieve the Department of any responsibilities to the child's tribe imposed by the Act. If, in such circumstances, the provisions of this Agreement and the provisions of the Act are in conflict, the provisions of the Act shall prevail.

(2) Voluntary child custody proceedings and involuntary child custody proceedings where the State of Oklahoma is not a party.

In guardianships, adoptions, or other child custody proceedings where the State of Oklahoma is not a party and the child is domiciled or located within the reservation of the Tribe, the party initiating the child custody proceeding may file said action in either the state or the relevant tribal court. The state or tribal court that makes the first child custody determination concerning a particular child shall retain exclusive, continuing jurisdiction over the child custody proceeding, unless the Tribe seeks to transfer the matter to tribal court. The tribal court may relinquish its exclusive, continuing jurisdiction if the court finds that such relinquishment would be in the best interest of the child. The state court shall transfer any voluntary custody proceeding, or any involuntary custody proceeding where the State of Oklahoma is not a party, to the tribal court if requested by the tribe. The good cause provisions of 25 U.S.C. § 1911(b) and the accompanying regulations shall not operate to deny transfer to tribal court as the tribal court would have otherwise had exclusive jurisdiction. Provided, however that transfers requested by a parent, guardian, or other party pursuant to 25 U.S.C. § 1911(b) shall control, absent tribal court declination, as to any requests to transfer a foster care placement or termination of parental rights to the relevant tribal court.

Either the state or tribal courts may exercise temporary, emergency jurisdiction over an Indian child if the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling of the child is subjected to or threatened with mistreatment or abuse. Upon being informed that an initial child custody determination has been made previously by a tribal or state court, the court that exercised temporary, emergency jurisdiction over the Indian child should immediately communicate with that court to resolve the emergency, protect the safety of the child, and determine a period for the duration of the temporary order.

VI. EMERGENCY FOSTER CARE PLACEMENT OVER WARDS OF TRIBAL COURTS AND/OR CHILDREN DOMICILED ON LANDS DESCRIBED IN IV(1)

In general, if an Indian child is a ward of the tribal court or domiciled or located on lands described above at IV(1), neither the Department nor the state courts may exercise any authority to place the child in foster care, unless authorized to do so under the laws of the Tribe.

However, if such an Indian child is located off the reservation the Department may take steps to obtain a state court order authorizing an emergency placement of the child in foster care in order to prevent imminent physical damage or harm to the child, including sexual abuse.

Following placement, the Department will make active efforts to make it possible to return the child to its home and shall take necessary steps to insure that the emergency foster care placement of the child terminates immediately when such placement is no longer necessary to prevent imminent physical damage or harm to the child, including sexual abuse. Upon termination of the placement, the child shall immediately be returned to his/her parent(s) or Indian custodian(s).

Whenever an Indian child is placed in emergency foster care, the Department will seek tribal court approval of such placement at the earliest possible time, but in no event shall an emergency foster care placement extend for a period longer than 72 hours, excluding Saturdays, Sundays and holidays, without an order of the tribal court approving such placement, or if the tribal court is unable to issue an order within the 72 hour period, a state court order approving such placement. The Department will immediately seek dismissal of the state court proceeding as soon as the tribal court exercises jurisdiction over the child.

VII. WAIVER OF AGREEMENT PROVISIONS

A duly designated representative of the State and the Tribe, on a case-by-case basis, may agree in writing to waive any of the provisions of this agreement. The waiver shall identify the provision(s) to be waived, the case or circumstances to which the waiver is applicable, the reasons for the waiver and the duration of the waiver.

Any provision of this Agreement may be waived generally by agreement of the State and the Tribe, without regard to a particular case or circumstance. A general waiver of any provision of this Agreement shall take effect upon the date the State and the Tribe agree to such a waiver.

VIII. AMENDMENTS TO AGREEMENT

The State or the Tribe may amend or modify this Agreement at any time upon mutual consent. Amendments shall be effective when approved in the same manner as required for approval of the original Agreement.

IX. TERMINATION OF AGREEMENT

This Agreement or any part thereof may be revoked by mutual consent or by either the State or the Tribe upon ninety (90) days written notice to the other party. The notice shall state the reasons for and the effective date of the revocation. The parties agree to extend full faith and credit to all child custody determinations rendered under this Agreement in any court prior to revocation and consent not to petition to invalidate any such action.

Prior to notification of revocation, a party considering revocation shall, whenever possible, seek to cooperatively explore with the other party ways in which to avoid revocation.

Prior to the effective date of any revocation, the parties agree to cooperate in assuring that the revocation will not unnecessarily result in a break in service or in disruption of the services provided to Indian children and families.

X. RETROACTIVITY

The State and the Tribe agree that the concurrent jurisdiction provisions of this Agreement apply to any cases, actions, or proceedings pending at the time this Agreement becomes effective. Any cases pending in the state courts involving an Indian child domiciled on the Tribe's reservation shall continue in the state courts pursuant to the concurrent jurisdiction described in this Agreement. The Tribe hereby ratifies and agrees to extend full faith and credit to all child custody determinations rendered in any state court prior to this Agreement, except those child custody determinations involving an Indian child domiciled or located on lands identified in Section IV(1), and consent not to petition to invalidate any such action under 25 U.S.C. § 1914 on the basis that such action violated § 1911(a).

XI. NO WAIVER OF OTHER RIGHTS

Except as otherwise agreed herein, this Agreement shall not be deemed as a waiver or abandonment of any jurisdictional power or prerogatives of the Tribe, the State, or any of its subdivisions. Nothing herein shall constitute a waiver of the Tribe's right to subsequently request transfer of any child custody proceeding to tribal court.

XII. NO WAIVER OF SOVEREIGN IMMUNITY

Nothing in this Agreement waives the sovereign immunity of the Tribe for any purpose or for any action in any forum.

XIII. EFFECTIVE DATE

Upon execution by the State and the Tribe, this agreement shall be binding as to the State and the Tribe.

SIGNATURE PAGE FOR THE STATE OF OKLAHOMA

INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF OKLAHOMA AND THE CHEROKEE NATION REGARDING JURISDICTION OVER INDIAN CHILDREN WITHIN THE NATION'S RESERVATION

Pursuant to the authority provided by Okla. Stat. tit. 10, § 40.7, the following agree on behalf of the State to this Agreement:

Approved:

Justin Brown
Director, Oklahoma Department of Human Services

9/1/20
Date

Rachel Canuso Holt
Interim Executive Director, Oklahoma Office of Juvenile Affairs

Date

SIGNATURE PAGE FOR THE STATE OF OKLAHOMA

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Pursuant to the authority provided by Okla. Stat. tit. 10, § 40.7, the following agree on behalf of the State to this Agreement:

Approved:

Justin Brown
Director, Oklahoma Department of Human Services

Date

Rachel C Holt

Rachel Canuso Holt
Interim Executive Director, Oklahoma Office of Juvenile Affairs

9/01/2020
Date

SIGNATURE PAGE FOR THE CHEROKEE NATION

INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF OKLAHOMA AND THE CHEROKEE NATION REGARDING JURISDICTION OVER INDIAN CHILDREN WITHIN THE NATION'S RESERVATION

Approved:

08/28/2020
Date

Date