

Cherokee Nation Code Annotated

Title 10: Children

Chapter 3: Paternity

§ 104. Natural mother of child—Establishment of paternity

Cite as: 10 CNCA § 104

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 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 The statement may be rescinded by the mother or acknowledging father within the earlier of: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 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 Office of Child Support Services or the Court shall dismiss any pending court proceedings against the father and the father will be released from any 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 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 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).

Historical Data

LA 11–05, eff. March 21, 2005. Amended LA 08–11, eff. May 19, 2011; LA 04–17, eff. March 25, 2017.

2017 Legislation

LA 04–17, Section 2, provides:

"Section 2. Purpose. The purpose of the Act is to make technical amendments to the Cherokee Nation Paternity Code, codified at 10 CNCA § 100 et seq."