

JANUARY 2007 CROW TRIBAL LEGISLATURE

BILL NO. CLB07-02

**INTRODUCED BY CARL E. VENNE, CHAIRMAN
CROW TRIBAL EXECUTIVE BRANCH
AND THE HEALTH AND HUMAN SERVICES COMMITTEE
OF THE CROW TRIBAL LEGISLATIVE BRANCH**

A BILL FOR AN ACT ENTITLED:

**"AMENDMENT OF THE CROW LAW AND ORDER CODE, TITLE 9, JUVENILES,
SPECIFICALLY SECTIONS 9-1-104, 9-3-105, AND ADDED SECTION 9-4-119; AND
TITLE 10, DOMESTIC RELATIONS, SPECIFICALLY SECTIONS 10-1-122 AND
10-1-136"**

WHEREAS, the Chairman of the Executive Branch has authority and responsibility pursuant to the "enumerated powers" in Article IV, Section 3(f) of the Constitution and Bylaws of the Crow Tribe of Indians to "**enforce all laws, ordinances, resolutions, regulations or guidelines passed by the Legislative Branch ...**;" and

WHEREAS, the Legislative Branch has authority and responsibility pursuant in its "powers and duties" in Article V, Section 2(d) of the Constitution "**to adopt legislation, not inconsistent with this Constitution, which is necessary in exercising the duties conferred upon the three branches of government;**" and

WHEREAS, protecting Crow children and keeping them with Crow families is vital to the continuity of the Crow nation; and

WHEREAS, there is a need to strengthen both the use of Crow custom and tradition and the Due Process afforded parents and other Crow family members in Tribal Court proceedings concerning children;

**NOW THEREFORE, BE IT ENACTED BY THE CROW TRIBAL
LEGISLATURE:**

**Section 1. TITLE 9 OF THE CROW LAW AND ORDER CODE, SPECIFICALLY
SECTION 9-1-104, IS HEREBY AMENDED TO READ AS FOLLOWS:**

9-1-104. Jurisdiction.

Presiding Judges on child custody, juvenile, child in need of care and adoption proceedings in the Crow Tribal Court must be members of the Crow Tribe of Indians and fluent in the Crow language. The Tribal Court shall have exclusive, original jurisdiction over the following:



- (1) Any child custody proceeding involving
 - (a) a child who is an enrolled member of the Crow Tribe; and/or
 - (b) a child who is eligible for such enrollment; and/or
 - (c) an Indian child residing or domiciled within the exterior boundaries of the Crow Reservation; and/or
 - (d) an Indian child having significant contacts with the Reservation community;
- (2) Proceedings in which a child in one or more of the categories (a) through (d) above is alleged to be a child in need of care;
- (3) Proceedings in which a child in one or more of the categories (a) through (d) above is alleged to be a juvenile offender;
- (4) Proceedings to appoint a legal guardian for a child in one or more of the categories (a) through (d) above;
- (5) Proceedings for the termination of parental rights, where the child is in one or more of the categories (a) through (d) above.
- (6) Proceedings for the adoption of a person of any age, either a child in one or more of the categories (a) through (d) above or a person of any age being adopted by a person or persons over whom the Tribal Court otherwise has jurisdiction.

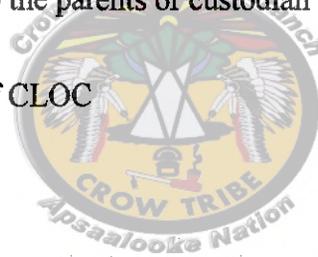
Section 2. TITLE 9 OF THE CROW LAW AND ORDER CODE, SPECIFICALLY SECTION 9-3-105, IS HEREBY AMENDED TO READ AS FOLLOWS:

9-3-105. Temporary Protective Care.

(1) Authorization and Duties of Law Enforcement and Social Services.

Whenever a Law Enforcement or Social Services worker has probable cause, as established by sworn affidavit that shall be filed with the Court, to believe that a child is in immediate danger of serious and imminent physical or emotional harm and that the removal of the child from the child's home residence is necessary to avoid harm, and if the Court is unavailable to issue a custody order, or if the issuance of a custody order would involve a delay that would contribute to the risk of harm to the child, the Law Enforcement or Social Services worker may take the child into temporary protective care. However, the following guidelines must be followed:

- (a) No child(ren) over whom the Crow Tribal Court has exclusive, original jurisdiction shall be placed in a home or facility outside the boundaries of the Crow Reservation without an Order from the Crow Tribal Court.
- (b) Prior to placement of any child(ren) off-reservation, the Court shall, within three (3) business days, conduct a "Due Process Hearing" providing Notice and all related documents to the parents or custodian and to extended family members of



the intent to place the child(ren) off-reservation. The time during which the Court is required to conduct a "Due Process Hearing" may only be extended by an order of the Crow Tribal Court for good cause shown.

- (c) A "Due Process Hearing" conducted pursuant to this Section shall be videotaped. Video records of hearings shall be sealed and kept confidential. Upon a child's eighteenth birthday, the child shall have the right to request a copy of records of any due process hearing conducted pursuant to this section. Records of due process hearings conducted pursuant to this section shall be destroyed six (6) months after the child's eighteenth birthday.
- (d) A child shall have the right to make a statement in any such hearing provided that the child is deemed by the Tribal Court to be competent.
- (e) In determining whether a child is competent, the Court shall take into consideration the child's age, maturity level, any mental, emotional, or cognitive disorder or disability, any history of juvenile delinquency, and any other factor(s) that the Court deems relevant.
- (f) The Court may conduct an in camera meeting with a child if:
 - (1) The child is unable to testify because of fear;
 - (2) There is a substantial likelihood that the child would suffer emotional trauma from testifying or from testifying in open court;
 - (3) There is a substantial likelihood that the presence of other parties in the courtroom would affect the child's ability to give accurate testimony;
 - (4) The child suffers a mental or other infirmity; or
 - (5) Conduct by parties to the hearing causes the child to be unable to continue testifying.
- (g) Crow Tribal custom, law, and tradition shall govern the Court's determination of who is an "extended family member." In conformance with established Crow Tribal law, custom and tradition, extended family members have party standing to this or any removal action in Crow Tribal Court. "Extended family members" include but are not limited to the following persons and their spouses: Adult Siblings, Grandparents, and Aunts and Uncles, and shall include both maternal and paternal family members. Furthermore, Crow customary family and clan relationships shall be used to determine who is an "extended family member."
- (h) The Court shall make positive, repeated, diligent efforts to identify and contact extended family members, both maternal and paternal sides of the child's family, and document these efforts.

(2) Procedure Upon Removal of a Child.



Upon the removal of a child into emergency protective care, the Law Enforcement or Social Services worker shall:

- (a) Immediately notify the child's parents or custodian of such removal, and the reasons therefore. If attempts to so notify the child's parents or custodian are unsuccessful, then best efforts shall immediately be made to notify the child's nearest relatives, including extended family members. The Law Enforcement or Social Worker shall keep a list of persons contacted and notified, as well as the time of such notification; and the list shall be filed with the Court.
- (b) Immediately notify the Director of Social Services, or the Social Services personnel designated to take such notice, of such removal.
- (c) The Law Enforcement or Social Services worker shall take and accomplish all reasonable and necessary steps to return the child to the parents or custodian. If return of physical custody of the child can be accomplished without immediate, imminent danger of harm to the child, the child shall be returned to the parents or custodian.
- (d) If the return of the child to the child's parents or custodian is impossible or would involve continued risk of such harm to the child, then the child shall be placed in the physical custody of a responsible non-custodial parent if such a person is available and if placement can be accomplished without risk of harm to the child.
- (e) If the return of the child to the child's parents or custodian or the placement of the child with the child's non-custodial parent is impossible or would involve continued risk of such harm to the child, then the child shall be placed in the physical custody of a responsible adult member of the child's maternal or paternal extended family in good standing with the community if such a person is available and if placement can be accomplished without risk of harm to the child.
- (f) If temporary protective care as set forth in sections (d) and (e) above is not available, then the child shall be placed on the Crow Reservation with a secure home, family, or foster parent or shelter care facility having been approved for such placement by Social Services.
- (g) Upon the placement of the child, the Law Enforcement or Social Services worker shall make and deliver a report to the Court and to the Director of Social Services containing a summary of the circumstances surrounding the temporary protective care and the basis therefore. If the placement by the Law Enforcement or Social Services worker has been without a Court Order, the Court shall conduct a "Due Process Hearing" with proper Notice, related documents and a copy of the Petition with the Law Enforcement or Social Services worker's affidavit to the parents, custodian, guardian and extended family members (as defined by Crow custom and tradition) within 24 hours following temporary placement.



Section 3. TITLE 9 OF THE CROW LAW AND ORDER CODE IS HEREBY AMENDED BY ADDING SECTION 9-4-119, TO READ AS FOLLOWS:

9-4-119. Transition to Permanent Custodianship

In compliance with Crow Tribal Law, custom and tradition, in cases where parents leave their child(ren) in informal custodianship with grandparents (as defined by Crow custom and tradition) for a minimum of six months, then the grandparents may ask for a Court-ordered transition to permanent custodianship, with suitable visitation by the parents. In making such a decision, the Court shall consider the level of parental interaction during the custodianship. At the very least, grandparents from whom parents have taken back children and terminated an informal custodianship shall be granted visitation privileges similar to those granted to noncustodial parents.

Section 4. TITLE 10 OF THE CROW LAW AND ORDER CODE, SPECIFICALLY SECTION 10-1-122, IS HEREBY AMENDED TO READ AS FOLLOWS:

- (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his/her support, without regard to marital misconduct, and after considering all relevant factors including:
 - (a) Financial resources of the child;
 - (b) Financial resources and needs of the custodial parent;
 - (c) The standard of living the child would have enjoyed had the marriage not been dissolved;
 - (d) The physical and emotional condition of the child, and his/her educational needs;
 - (e) The financial resources and needs of the non-custodial parent.
- (2) No order of child support will be valid or enforceable without due process, including notice and opportunity to be heard. Upon a showing that notice has not been served, support orders will be declared void.
- (3) Either parent has an absolute right to request of modification of child support given any substantial change in financial resources and/or need of either parent.
- (4) Trust land lease income payments and per capita/dividend payments from the Crow Tribe are protected from involuntary attachment or lien for child support payment. However, a parent may voluntarily consent to such attachment.
- (5) In all child support decisions, the Court shall order a fair equitable amount considering the totality of the circumstances.

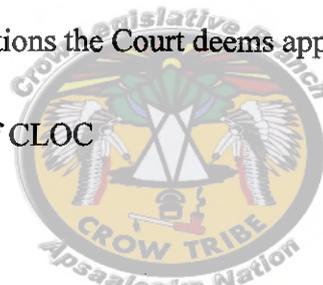


(6) Substantial failure of a custodial parent to use child support funds for the support of dependent children constitutes contempt of court and may constitute abuse. In cases where a custodial parent fails to use child support funds for the support of dependent children, the Court will order alternative payment methods, which might include vouchers, in-kind payment, or supervision of spending.

Section 5. TITLE 10 OF THE CROW LAW AND ORDER CODE, SPECIFICALLY SECTION 10-1-136, IS HEREBY AMENDED TO READ AS FOLLOWS:

10-1-136 Visitation.

- (1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds after a hearing that visitation would endanger seriously the child's physical, mental, moral, or emotional health.
- (2) In conformance with established Tribal law, custom and tradition, extended family members shall have standing as parties to the action and shall also have a right to visitation with the child(ren).
- (3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health.
- (4) The Court shall consider and examine the issue of whether upon demand by the other parent or by the Court's order there is an issue or question of return of the child to the Crow Reservation. In consideration of the matter of the return of the child(ren) upon demand, the Court shall make findings and conclusions to include the following:
 - (a) The requirements of the federal Indian Child Welfare Act (ICWA) for Full Faith and Credit to tribal court orders and other provisions;
 - (b) Whether or not the parent residing off--reservation should be required to post a security bond or provide some other form of assurance to the Court of return of the child(ren) to the Crow Reservation;
 - (c) Whether there is a Memorandum of Understanding or Agreement between the Crow Tribe and the foreign reservation, state or nation, or other evidence of that jurisdiction's application of Full Faith and Credit to the Crow Tribal Court Order;
 - (d) In the absence of these kinds of evidence, whether to require a full faith and credit order from the foreign court where the off-reservation parent resides; and
 - (e) Any other considerations the Court deems appropriate, just and proper.



- (5) If the Court concludes there is a danger of failure to return the child(ren) to the Crow Reservation upon demand by the other parent or the Court, the visitation with the child(ren) shall occur on the Crow Reservation only.

Section 6. Effective Date. Upon approval of this Bill by the Chairman of the Executive Branch, the Act shall become effective immediately and shall apply in all cases or proceedings that are pending or commenced after the effective date.

.Section 7. Codification Instructions. Upon approval of this Act, the amendments shall be codified in the appropriate sections of the Crow Law and Order Code.



CERTIFICATION

I hereby certify that this Bill for ""**AMENDMENT OF THE CROW LAW AND ORDER CODE, TITLE 9, JUVENILES, SPECIFICALLY SECTIONS 9-1-104, 9-3-105, AND ADDED SECTION 9-4-119; AND TITLE 10, DOMESTIC RELATIONS, SPECIFICALLY SECTIONS 10-1-122 AND 10-1-136**"" was duly enacted by the Crow Tribal Legislature with a vote of 13 in favor, 3 opposed, and 0 abstained and that a quorum was present on this 15th day of January, 2007.

Carlson Donald

Speaker of the House
Crow Tribal Legislature
~Servant of the Apsáalooke Nation~

ATTEST:

[Signature]
Secretary, Crow Tribal Legislature



EXECUTIVE ACTION

I hereby:

approve

veto

this Bill for ""**AMENDMENT OF THE CROW LAW AND ORDER CODE, TITLE 9, JUVENILES, SPECIFICALLY SECTIONS 9-1-104, 9-3-105, AND ADDED SECTION 9-4-119; AND TITLE 10, DOMESTIC RELATIONS, SPECIFICALLY SECTIONS 10-1-122 AND 10-1-136**"" pursuant to the authority vested in the Chairman of the Crow Tribe by Article V, Section 8 of the Constitution and Bylaws of the Crow Tribe of Indians, on this 26 day of July, 2007.

Carl E. Venne

Carl E. Venne, Chairman
Crow Tribal Executive Branch

SEE EXECUTIVE BRANCH ACTION "CLB07-02"



Bill or Resolution Number CB07-02 Introduced by Executive Date of Vote January 15, 2007
Branch

Representative:	Yes	No	Abstained
L. Plain Bull	✓		
O. Costa			
V. Crooked Arm	✓		
M. Not Afraid	✓		
R. Iron	✓		
B. House	✓		
E. Fighter	✓		
L. Costa		✓	
L. Hogan	✓		
S. Fitzpatrick	✓		
K. Real Bird			
M. Covers Up	✓		
L. Not Afraid	✓		
B. Shane	✓		
J. Stone		✓	
D. Wilson		✓	
R. Old Crow <i>Secretary of the House</i>	✓		
D. Goes Ahead <i>Speaker of the House</i>	✓		
Totals:	13	3	0

Result of Vote:

Passed Not Passed Tabled Veto Override

Signature Officer: Carlson Date: 1-15-07

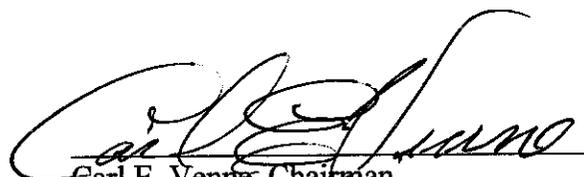


EXECUTIVE ACTION
FOLLOWING VETO AND OVERRIDE
CLB07-02

The foregoing Act, CLB07-02 "AMENDMENT OF THE CROW LAW AND ORDER CODE, TITLE 9, JUVENILES, SPECIFICALLY SECTIONS 9-1-104, 9-3-105, AND ADDED SECTION 9-4-119; AND TITLE 10, DOMESTIC RELATIONS, SPECIFICALLY SECTIONS 10-1-122 AND 10-1-136," (the "Act"), was passed by the Legislature on January 15, 2007. The Act was not approved by the Chairman of the Executive Branch within the time provided in Section 1-3-101 of the Crow Law and Order Code (as added by CLB06-08, "An Act to Establish a Time Limit for Executive Veto, a Veto Override Process, and a Referendum Process"), and was therefore deemed to have been vetoed. The veto was overridden by vote of two-thirds of the members of the Legislature during its next regular Session on April 9, 2007. No Referendum on the override having been held, the Act became effective on the first day of the next regular Session of the Legislature pursuant to CLOC Section 3-1-103, which was July 11, 2007. Pursuant to Section 1-3-103, the Executive Branch Chairman is required to sign the legislation, provided, however, that pursuant to Section 1-3-107, such signature shall not be interpreted to waive or prevent the exercise of any legal or equitable remedies to test the constitutionality of the legislation in the Crow Tribal Court.

Now, therefore, as required by Section 1-3-103 of the Crow Law and Order Code, and without waiving any right to challenge its constitutionality, I hereby affix my signature to this Act signifying its effectiveness as of July 11, 2007.

DATED this 26 day of July, 2007.


Carl E. Vennie, Chairman
Crow Tribal Executive Branch

