

CHILDREN'S CODE BENCHBOOK

OKLAHOMA STATUTES AND CASE LAW

2025 Edition

The Oklahoma Children’s Court Benchbook is designed to give judges and attorneys quick access to key provisions of the Oklahoma Children’s Code and related authority. The benchbook is divided into chapters and sections, which are listed in an index. Clicking on a heading in the index will take you directly to the corresponding chapter or section in the body of the benchbook.

Throughout the benchbook, statutory and case-law citations in both the body text and the footnotes are hyperlinked. Click on any underlined citation to open the relevant statute or case, then close that window or tab to return to the benchbook.

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Disclaimer. This benchbook reflects the author’s understanding of current law at the time of writing. It is intended as a practical reference, not as a source of binding authority. Judges and practitioners must independently interpret and apply the statutes, rules, and case law, and should consult the original sources where any question arises.

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INTRODUCTION

The state, in its role as *parens patriae* (protector of vulnerable individuals), has a compelling interest in the welfare of children, particularly when their health and safety may be at risk. This interest can justify governmental intrusion into the constitutionally protected autonomy of the family.

The Children's Code is the result of the legislature's effort to balance the interests of the state and families. The primary purpose of the Code is the protection of the safety and welfare of children. The law creates a range of state actions when abuse or neglect is suspected or confirmed, from emergency intervention to permanent placement of the child outside the home.

Under the Children's Code, both the Oklahoma Department of Human Services (OKDHS) and the District Attorneys' Office handle these cases, typically working together with social workers and attorneys trained in child protective services. Additionally, attorneys represent parents and children, CASA volunteers assist, Citizen Review Boards oversee cases, and extended family or substitute caregivers may be involved

The first goal of every proceeding under the Code is to protect the child's health and safety, then, in most cases, to preserve the unity of the family. If temporary removal from the home is necessary, OKDHS attempts to place the child in the most familiar setting possible. Siblings should stay together whenever possible, unless there are clinical indications to the contrary. For an Indian child, special procedures require consultation with the child's Tribe and its placement preferences. When family reunification fails, immediate measures must be taken to secure an alternative, permanent placement for the child. This is followed by legal action to modify or replace the parent-child relationship.

I. KEY PRINCIPLES

Legislative Purpose & Policy¹

- Parents have a fundamental right and duty to care for their children, and it is generally presumed best for children to remain with their parents unless abuse, neglect, or danger is shown.

Children have the right to be raised by their parents in safety and, if removed, to be placed in the least restrictive, most permanent setting possible.

- The state has a duty to protect children from abuse or neglect, and its interest in child safety can override parental rights when necessary to ensure the child's best interests.

¹ [10A O.S. §1-1-102](#)

Intent of the Code

- State intervention should occur only when necessary to protect a child.
- Proceedings should be timely and aim to preserve and strengthen family ties when in the child's best interests.
- Efforts must be made to prevent removal or to reunify families unless otherwise required.
- When reunification is not possible, permanency—such as adoption or other permanent arrangements—should be achieved quickly.
- Children are entitled to care that promotes their overall well-being.
- Out-of-home placements should ensure a nurturing, stable environment supporting the child's development.
- Foster parents should be able to treat the child as part of the family, and siblings should be placed together when possible or kept connected.
- Permanent placement should be secured as soon as possible.
- Foster parents and group homes have a recognized role in decisions affecting the child in their care.

Paramount Consideration

In all proceedings, the child's best interests are the highest priority.

The Oklahoma Supreme Court stated that the Code “is to be liberally construed to carry out its purpose, which includes unifying and strengthening family ties whenever possible in children's best interest and for the safety and health of children.”²

Civil – Not Criminal Proceedings

The 10th Circuit Court has determined that parental termination proceedings under the Code are civil in nature. It observed that the focus of the deprived child/termination hearing is whether custody should remain with a parent – not to determine the ultimate guilt or responsibility of particular custodians.³ Likewise, Oklahoma's appellate decisions have consistently held that proceedings under the Code are civil proceedings and as a result, as discussed below, certain constitutional guarantees in criminal proceedings do not apply in deprived/termination cases.⁴

Actions taken under the Code are in the nature of “special proceedings.” Oklahoma appellate courts have said the Children's Code controls over general civil procedure/statutes/rules when they conflict.⁵

² *In re BTW*, 241 P.3d 199, 205-206 (Okla. 2010)

³ *Smith v. Dinwiddie*, 510 F.3d 1180 (10th Cir. 2005) <https://case-law.vlex.com/vid/smith-v-dinwiddie-no-888811617>

⁴ *In Re: J.L.O.*, 428 P.3d 881 (Okla. 2018); *In the Matter of C.C.*, 907 P.2d 241 (Ok Civ App 1995)

⁵ *In the Matter of V.J.R.*, 556 P.3d 1010 (Okla. 2024); *In the Matter of J.L.M.*, 109 P.3d 336 (Okla. 2005)

Constitutional Protections

Oklahoma recognizes the following constitutional protections to be applicable in deprived/termination of parental rights proceedings:

Procedural Due Process (notice and meaningful chance to be heard). Every parent has the fundamental liberty interest in their child’s care and custody.⁶ Thus, parents have a constitutional right to an opportunity to be heard and a “meaningful and fair opportunity to defend” against a suit seeking to change parental status.⁷

Heightened burden of proof to terminate. The U.S. Constitution requires clear and convincing evidence to sever parental rights⁸; Oklahoma follows that rule.⁹

Right to a jury trial in TPR (state constitutional). The Oklahoma Supreme Court grounded a jury right in Art. 2, §19 of the Oklahoma Constitution and reaffirmed it after the 1990 amendment.¹⁰

Right to effective assistance of counsel at trial and appellate level (14th Amendment). Oklahoma recognizes this as a fundamental protection under state due process¹¹; ineffective-assistance claims are analyzed with criminal-case standards.¹²

Opportunity to confront/cross-examine adverse witnesses (as a due-process component). These are civil cases, so the Sixth Amendment Confrontation Clause doesn’t apply¹³, but due process guarantees a “meaningful” chance to cross-examine.¹⁴

Self-incrimination is limited like other civil proceedings. A parent can be called to the stand and may face adverse inferences for invoking the Fifth; these are **not** criminal prosecutions.¹⁵

Substantive Rights of Parties

Parents

Long-standing precedent of the United States Supreme Court holds that the Due Process Clause of the 14th Amendment protects the fundamental liberty interest of the parents in the care,

⁶ *In the Matter of K.H.*, 2021 OK 33, ¶ 26, 507 P.3d 647, 653

⁷ *Matter of Rich*, 1979 OK 173, ¶ 12, 604 P.2d 1248, 1253.

⁸ *Santosky v. Kramer*, 455 U.S. 745 (1982)

⁹ *In re J.L.O.*, 428 P.3d 881 (Okla. 2018)

¹⁰ *Gray v. Upp*, 943 P.2d 592 (Okla. 1997)

¹¹ *In the Matter of D.D.F.*, 801 P.2d 703 (Okla. 1990); *In re F.K.C.*, 609 P.2d 774, 776 (Okla. 1980); *Matter of S.T.G.*, 806 P.2d 636 (Okla. 1991); *Oklahoma v. Harris*, 976 P.2d 1117 (Ok Civ App 1999)

¹² *In re S.S.*, 90 P.3d 571 (Ok Civ App 2004)

¹³ *In re A.M. & R.W.*, 13 P.3d 484 (Okla. 2000)

¹⁴ *In re J.L.O.*, 428 P.3d 881 (Okla. 2018).

¹⁵ *Matter of C.C.*, 907 P.2d 241 (Ok Civ App 1995).

custody and control of their children. Subsequent cases applying this principle have explained that this constitutional liberty derives from the presumption that “natural bonds of affection lead parents to act in the best interests of their children.”¹⁶

In *Stanley v. Illinois*, the Supreme Court upheld the principle that an unwed father could not be presumed to be an unfit parent but was entitled to a hearing pursuant to the Equal Protection Clause of the 14th Amendment.¹⁷ This case marks the connection between the substantive rights of parents and the procedural requirements necessary to protect those rights.

Likewise, Oklahoma’s Supreme Court has consistently held that “parental rights are too precious to be terminated without the full panoply of protections afforded by the Oklahoma Constitution... We know that the best interest and welfare of the child is the primary consideration, but we also know that this goal is best achieved by full compliance with the law.”¹⁸

Children

A child has the right to be raised by her parents and there exists the presumption that a child’s best interests are served by remaining in the custody of its natural parents. But children also have the right to be free from physical and emotional harm at the hands of their caretakers and to be provided the essentials of food, shelter, education, and medical care.¹⁹

State

The state has an interest in its present and future citizens as well as a duty to protect those who, because of age, are unable to protect themselves from abuse and neglect.²⁰

Where a family’s circumstances currently or in the future threaten the welfare of the child because of abuse and neglect, the state’s interest takes precedence over the natural right and the extent necessary to protect the child.²¹

II. Federal Floors, State Ceilings: How Federal Law Shapes the Children’s Code

Federal child-welfare statutes create non-negotiable floors for judicial findings and timelines. Oklahoma’s Children’s Code (Title 10A) can add detail or higher protections, but it cannot dip

¹⁶ *Santosky v. Kramer*, [455 U.S. 745](#), 753-54 (1982)

¹⁷ *Stanley v. Illinois*, [405 U.S. 645](#), 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972)

¹⁸ *A.E.*, 743 P.2d 1041 (Okla.1987)

¹⁹ *In re Sweet*, 317 P.2d 231 (Okla.1957)

²⁰ *Matter of Sherol A.S.*, 581 P.2d 884 (Okla. 1978)

²¹ *Matter of Baby Girl Williams*, 502 P.2d 1036 (Okla. 1979)

below those federal minima. Well-crafted orders both unlock federal funding and withstand appeal. The ultimate goal is to enter timely and specific findings that (1) satisfy federal law, (2) protect parties' rights, and (3) preserve Title IV-E funding.

Title IV-E (Social Security Act, Title IV-E)²²

Title IV-E is the funding stream for foster care maintenance, adoption and guardianship assistance, as well as legal representation for the agency/state, parents, and children. To draw IV-E, states must meet state-plan requirements and, case-by-case, courts must make specific judicial findings on a timeline.

Federal acts or laws sets the policy floors and IV-E makes them enforceable through funding.

Adoption and Safe Families Act (ASFA) 1997²³:

ASFA amended Titles IV-E and IV-B to make safety paramount, speed permanency, and push accountability. It created the 15-of-22 months TPR filing rule (with exceptions), strengthened case-planning/review, and tied "reasonable efforts" to safety – with permitted bypass in aggravated circumstances. It requires certain judicial findings to unlock/retain federal funding. It further provides for a case plan and case review system. Reasonable efforts to finalize the permanency plan (reunification, guardianship, adoption, another planned permanent living arrangement where permitted), must be determined at each permanency hearing.

Four IV-E judicial findings reflect ASFA's safety/permanency goals:

- **Contrary to the welfare of the child** to remain in the home in the first order authorizing removal.
 - If it's missing, the duration of that stay in foster care ("episode") is IV-E ineligible.
- **Reasonable efforts to prevent removal²⁴** within 60 days (or that RE were **not** required due to an emergency or aggravated circumstances as defined by state law).
 - If the determination isn't made, or that RE weren't made by the agency and not excused, the child is IV-E ineligible for that episode.
- **Reasonable efforts to finalize the permanency plan²⁵** (reunification, guardianship, adoption, another planned permanent living arrangement where permitted) at least within 12 months of entry into foster care and at least 12 months thereafter.
 - If the determination isn't made on schedule, the child becomes IV-E ineligible at the end of that month and stay ineligible until the court makes the finding.

²² [42 U.S.C. §§671-675a; 54 C.F.R. pt. 1356](#)

²³ [Pub. L. No. 105-89](#)

²⁴ [45 C.F.R. § 1356.21\(b\)\(1\)\(i\)–\(ii\)](#)

²⁵ [45 C.F.R. § 1356.21\(b\)\(2\)\(i\)–\(ii\)](#)

- **Reasonable efforts not required**²⁶ when properly determined by the court (i.e., aggravated circumstances), the RE-prevent clock is excused. However, the case still needs the other federal floors (e.g., contrary to the welfare in the first order; RE to finalize on schedule).
- **The determinations must be explicitly documented in the court order.** A transcript is the only acceptable back-up. Affidavits and *nunc pro tunc* orders are not sufficient.²⁷

ASFA also encourages concurrent planning. IV-E expects the case plan and court orders to show it (e.g., reunification steps alongside adoption/guardianship preparations).

ASFA Program Compliance

Child and Family Services Review (CFSR) is the federal oversight system that the Children's Bureau (HHS/ACF) uses to monitor how well states are complying with federal child welfare laws – especially ASFA. It measures outcomes:

Safety – protect from maltreatment; safely maintained at home

Permanency – stability; preserve connections

Well-being – family capacity; education; health

It reviews systemic factors: case review system, training, quality assurance, service array, foster/adoptive parent recruitment, etc. It relies on case and court record reviews, statewide data and stakeholder interviews.

CFSR tests whether the agency and the courts:

- Have a written case plan that documents the steps to finalize a permanent placement;
- Conduct a periodic review at least every 6 months;
- Hold a permanency hearing by 12 months of entry and at least every 12 months thereafter;
- Have a process for TPR consistent with the 15/22 rule (or valid exceptions) and follow federal instructions on calculating “15 of the most recent 22 months”;
- Give foster/pre-adoptive/relative caregivers notice and a right to be heard at reviews/hearings.

The compliance with ASFA provisions is enforced through the reviews and statewide fiscal penalties or incentives, not per-child disallowances.

²⁶ [45 C.F.R. § 1356.21\(b\)\(3\)](#)

²⁷ [45 C.F.R. §1356.21\(d\)](#)

Other Federal Legislation Tied to IV-E Funding

- MEPA/Interethnic Adoption: States must prohibit delaying or denying foster/adoptive placements based on race, color, or national origin.²⁸
- Adam Walsh background checks: fingerprint-based criminal records checks and child abuse registries for prospective foster/adoptive placements and adult household members.²⁹
- Relative notification (30-day rule): Due diligence to identify and notify adult relatives within 30 days of removal.³⁰
- Sibling placement/visitation: Reasonable efforts to place siblings together or ensure frequent contact if not jointly placed.³¹
- Educational stability (Fostering Connections): Case plan for child must ensure the child remains in their school of origin and provide transportation if necessary; if not, provide for the immediate enrollment in a new school with prompt transfer of all educational records.³²
- Qualified Residential Treatment Program (QRTP): Within 60 days the court must review and approve that QRTP is appropriate, make ongoing review/hearing findings that the placement continues to meet the child's needs and document the transition or step-down plan. The day the child is physically placed in the QRTP is considered **Day 1**. Without this finding, the state loses IV-E reimbursement eligibility for that placement beyond the first two weeks.³³

Other Federal Hooks Affecting the Children's Code

- **Chaffee:** With youth input, transition planning for youth age 14+, independent-living services, aftercare and education vouchers.³⁴
- **IDEA/Section 504**³⁵, **ADA Title II**³⁶: Ensure that the agency and school provide timely evaluation/IEP or 504 plan.

²⁸ [42 U.S.C. §671\(a\)\(18\)](#)

²⁹ [42 U.S.C. §671 \(a\)\(20\)](#)

³⁰ [42 U.S.C. §671 \(a\)\(29\)](#)

³¹ [42 U.S.C. §671\(a\)\(31\)](#)

³² [42 U.S.C. §§671\(1\)\(G\), 671\(a\)\(30\)](#)

³³ [42 U.S.C. §675a\(c\)](#)

³⁴ [42 U.S.C. §677](#)

³⁵ [20 U.S.C. §§1400–1482](#); [29 U.S.C. § 794](#)

³⁶ [20 U.S.C. §1400](#) et seq.; [29 U.S.C. §794](#); [42 U.S.C. §12131](#)

- **Preventing Sex Trafficking & Strengthening Families Act:** Identification and services for sex-trafficked/at-risk youth; reasonable and prudent parent standards (normalcy).³⁷
- **Safe and Timely Interstate Placement:** Expedite ICPC home studies and interstate information sharing.³⁸
- **Special Immigrant Juvenile Status:** Allows certain undocumented children located in the United States to obtain lawful permanent residency upon court’s finding that the child is a deprived child, that reunification with one or both parents is not viable due to abuse, neglect, or abandonment, and that it is not in the youth’s best interests to return to the country of origin.
- **CAPTA:** Confirm appointment of a GAL or attorney for the child as required by state law. This is required as a federal grant condition.³⁹

Indian Child Welfare Act⁴⁰

The purpose of ICWA was succinctly stated by Congress in 25 U.S.C. § 1902 as “the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian Tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian Tribes in the operation of child and family service programs.” Oklahoma clarified its policies and procedures in implementing OICWA⁴¹ to cooperate with Indian Tribes in recognizing the valid tribal governmental interest in Indian children wherever those children are located.

When the child is an “Indian child,” the court must ensure inquiry and notice, require active efforts, and apply heightened burdens with qualified expert witness testimony: clear and convincing for foster-care placement, and beyond a reasonable doubt for termination. ICWA also provides an express invalidation remedy—orders may be set aside for violations of §§ 1911, 1912, or 1913 upon petition by a parent, custodian, Tribe, or the child—so clean records and explicit findings are essential. The Supreme Court recently reaffirmed ICWA’s constitutionality in *Haaland v. Brackeen* (2023).⁴²

³⁷ [P.L. 113-183](#)

³⁸ [P.L. 109-239](#)

³⁹ [42 U.S.C. §5106a\(b\)\(2\)\(B\)\(xiii\)](#)

⁴⁰ Indian Child Welfare Act of 1978, [Pub. L. No. 95-608](#), 92 Stat. 3069 (codified as amended at [25 U.S.C. §§ 1901–1963](#)); Indian Child Welfare Act Proceedings, [81 Fed. Reg. 38,778](#) (June 14, 2016) (codified at 25 C.F.R. pt. 23)

⁴¹ [10 O.S. §§40 – 40.9](#)

⁴² [Haaland v. Brackeen](#), [599 U.S. 255](#), 143 S. Ct. 1609, 216 L. Ed. 2d 254 (2023)

Application of Americans with Disability Act (ADA)

Title II of the ADA prohibits public entities from excluding or discriminating against qualified individuals with disabilities in their services, programs, or activities.⁴³ Title II covers all state and local governments in the United States, including child welfare agencies and courts.⁴⁴

The "services, programs, and activities" offered by public entities include investigations, assessments, provision of in-home services, removal of children from their homes, case planning and service planning, visitation, guardianship, adoption, foster care, and reunification services. These also encompass child welfare hearings, custody hearings, and proceedings to terminate parental rights.⁴⁵

Two principles that are fundamental to Title II of the ADA are:

- (1) individualized treatment; and
- (2) full and equal opportunity.

Both of these principles are of particular importance to the administration of child welfare programs.

- *Individualized treatment.* Individuals with disabilities must be treated on a case-by-case basis consistent with facts and objective evidence.²⁰ Persons with disabilities may not be treated on the basis of generalizations or stereotypes.⁴⁶
- *Full and equal opportunity.* Individuals with disabilities are to be given access to child welfare programs, services, and activities equivalent to those offered to individuals without disabilities. This may involve providing different aids, benefits, or services when needed to ensure the same result or benefit, including family reunification.⁴⁷

Under Title II of the ADA, a parent with a disability may only be excluded from child placement if they pose a significant, unmodifiable risk to the child's health or safety.⁴⁸ This aligns with child welfare agencies' duty to protect children. Decisions must rely on specific facts and an individualized assessment, considering the nature, duration, severity, and likelihood of harm. If reasonable changes or supports can reduce the risk, agencies must provide them. Safety rules must be legitimate and not founded on stereotypes about disabilities.

⁴³ [42 U.S.C. §12132](#)

⁴⁴ [42 U.S.C. §12131\(1\)\(A\), \(B\)](#)

⁴⁵ *Id.*

⁴⁶ See, e.g., [28 C.F.R. §35.130\(b\)](#); [28 C.F.R. pt. 35, App. B](#)

⁴⁷ See, e.g., [28 C.F.R. §35.130\(b\)\(1\)\(ii\)-\(iv\)](#).

⁴⁸ [28 C.F.R. §35.139\(a\)-\(b\)](#); *School Bd. of Nassau County v. Arline*, 480 U.S. 273 (1987).

What Constitutes a “Disability”

A “disability” is defined as a physical or mental impairment that substantially limits a major life activity, such as caring for oneself, performing manual tasks, breathing, standing, lifting, bending, speaking, walking, reading, thinking, learning, concentrating, seeing, hearing, eating, sleeping, or working.⁴⁹ Major life activities also include the operation of major bodily functions, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, or bladder, neurological, brain, and respiratory, circulatory, endocrine, and reproductive functions.⁵⁰

Who Are Protected?

Title II of the ADA prohibits child welfare agencies and courts from discriminating against qualified individuals with disabilities, including children, parents, guardians, caretakers, and those seeking to become foster or adoptive parents. They also protect anyone from being excluded from child welfare services because of their association with a person with a disability.⁵¹

Application to Courts

State court proceedings, such as termination of parental rights proceedings, are state activities and services for purposes of Title II.⁵²

Courts must reasonably modify policies and procedures to prevent disability discrimination, such as adjusting hearing schedules or providing assistive services when necessary. These accommodations should be made unless they would fundamentally alter court operations.⁵³

Child welfare agencies and courts are not permitted to require individuals with disabilities to provide their own interpreters or auxiliary aids and services.⁵⁴ Additionally, child welfare agencies and courts generally must not use minor children accompanying individuals with disabilities as interpreters, except in emergency situations involving imminent threats to the safety or welfare of an individual or the public where no interpreter is available.⁵⁵

⁴⁹ [42 U.S.C. §12102\(1\), \(2\)\(A\)](#)

⁵⁰ [42 U.S.C. §12102\(2\)\(B\)](#)

⁵¹ [28 C.F.R. §35.130\(g\)](#)

⁵² [28 C.F.R. §35.190\(b\)\(6\)](#) (designating to the DOJ responsibility for investigation of complaints and compliance reviews of “[a]ll programs, services, and regulatory activities relating to . . . the administration of justice, including courts.”).

⁵³ [28 C.F.R. §35.130\(b\)\(7\)](#)

⁵⁴ [28 C.F.R. §35.160\(c\)\(1\)](#)

⁵⁵ [28 C.F.R. §35.160\(c\)\(2\)\(i\), \(3\)](#)

Service/Case Planning

Agencies must ensure that investigators, social workers, supervisors, and others assess individuals with disabilities based on relevant facts, not assumptions or stereotypes. The child welfare agency is required to provide individualized assessments from the beginning and throughout any involvement with the system. Service plans for parents and prospective parents should address the individual's disability-related needs and the auxiliary aids and services the agency will provide to ensure equal opportunities.

Agencies must ensure that services for parents and prospective parents—such as visitation, parenting training, transportation help, counseling, respite care, and other support—are tailored to each individual's needs. For example, when providing training to parents, service providers should consider the individual learning techniques of persons with disabilities and may need to incorporate the use of visual modeling or other individualized techniques to ensure equal opportunity to participate in and benefit from the training.

Child welfare agencies and courts may not charge persons with disabilities for any costs associated with providing effective communication during visitation, meetings, and court hearings⁵⁶ and may be required to provide transportation to accessible facilities when needed to fulfill their program access obligations.

III. FOUNDATIONS OF THE CHILDREN'S CODE

General Overview

Article I of Title 10A, known as the Children's Code, provides the statutory framework for all child welfare and deprived child proceedings in Oklahoma. It is organized into seven parts, which follow the lifecycle of a case from the initial report of abuse through permanency and case closure.

This structure allows judges and practitioners to locate relevant provisions quickly and apply them consistently, ensuring compliance with state mandates, federal requirements, and due process protections.

⁵⁶ See [28 C.F.R. §35.130\(f\)](#)

Chapter / Part	Sections	Topic / Coverage
Chapter 1 – General Provisions	§§ 1-1-101 – 1-1-105	Short title, legislative intent, jurisdiction, definitions
Chapter 2 – Reporting & Investigations	§§ 1-2-101 – 1-2-111	Mandatory reporting, investigations, safe-haven provisions
Chapter 3 – Medical & Behavioral Health Treatment	§§ 1-3-101 – 1-3-103	Authorization to consent to medical/dental care, emergency treatment, immunity
Chapter 4 – Court Proceedings, Part 1	§§ 1-4-101 – 1-4-102	Jurisdiction and authority of juvenile court
Chapter 4 – Court Proceedings, Part 2	§§ 1-4-201 – 1-4-208	Protective and emergency custody, initial hearings
Chapter 4 – Court Proceedings, Part 3	§§ 1-4-301 – 1-4-306	Pleadings and process requirements
Chapter 4 – Court Proceedings, Part 4	§ 1-4-401	Discovery and pretrial procedures
Chapter 4 – Court Proceedings, Part 5	§§ 1-4-501 – 1-4-508	Conduct of hearings
Chapter 4 – Court Proceedings, Part 6	§§ 1-4-601 – 1-4-603	Adjudication procedures and findings
Chapter 4 – Court Proceedings, Part 7	§§ 1-4-701 – 1-4-716	Disposition orders, individualized service plans, guardianship, family drug court
Chapter 4 – Court Proceedings, Part 8	§§ 1-4-801 – 1-4-814	Placement, movement, review, and permanency hearings (including review every 6 months)
Chapter 4 – Court Proceedings, Part 9	§§ 1-4-901 – 1-4-909	Termination of parental rights (TPR) and post-TPR procedures
Chapter 5 – Appeals	§§ 1-5-101 – 1-5-103	Appeal procedures and scheduling
Chapter 6 – Records	§§ 1-6-101 – 1-6-108	Court records, confidentiality, inspection and redaction
Chapter 7 – Child Welfare Services & Placements	§§ 1-7-101 – 1-7-116+	DHS duties, placements, sibling connections, foster care, voluntary foster care agreements
Chapter 8 – Judicial / Program Support	§§ 1-8-101 – 1-8-112	Judicial training, CASA program, referees, transport, background checks

Timeline

The timeline for deprived child judicial hearings under Oklahoma Title 10A is designed to balance due process with the child's need for timely permanency. From the initial emergency removal through adjudication, disposition, ongoing reviews and permanency hearings, and TPR trial, each step has a statutory deadline to ensure cases progress without unnecessary delay. Reviews must be conducted at least every six months (with best practice recommending every three), and permanency hearings are required every six months after a child enters out-of-home care. These timelines help the court, DHS, and all parties stay accountable, promoting stability and permanency for children as quickly and safely as possible.

Event	Statute	Timeline
Emergency Custody Hearing	§ 1-4-203	Within 2 judicial days following the child's removal.
Petition Filing	§ 1-4-205	Within 7 judicial days; exception: within 15 calendar days if compelling reason exists.
Adjudication	§ 1-4-601	Within 90 days from petition filing; may extend to no longer than 180 days.
Aggravated Circumstances	§ 1-4-809	Judicial finding prior to or following adjudication hearing.
Disposition	§ 1-4-706	Same day as adjudication hearing or within 40 days.
Review Hearings	§ 1-4-807	No later than 6 months from removal and every 6 months thereafter.
Permanency Hearing	§ 1-4-811 ; § 1-4-809 ; § 1-4-908	No later than 6 months from the lesser of: date of adjudication or 60 days from removal; then every 6 months thereafter. Within 30 days after finding of aggravated circumstances. Within 30 days where trial result does not terminate parental rights.

TPR Petition/Motion	§ 1-4-902	Prior to end of 15th month of 15/22 months in foster care; within 60 days after aggravated circumstances finding.
TPR Trial	§ 1-4-502	Scheduling order within 30 days; jury within 6 months; non-jury within 90 days.
Appeals	§ 1-5-103	Petition in Error within 30 days from journal entry of judgment. Record on appeal completed within 60 days of journal entry. Appellate decision within 6 months from date briefing completed.

Parties and Participants

Parties have full standing in the case, including the right to present evidence, cross-examine witnesses, and appeal. Parties to a deprived action include:

- Child
- Parent(s), Adoptive parent(s), legal custodian, Indian custodian
- Alleged father for determination of paternity
- State of Oklahoma by and through the District Attorney's office⁵⁷
 - DHS, with consent of District Attorney, may represent the State when child is in DHS permanent custody
- Indian Child's Tribe – may intervene as a full party as a matter of right⁵⁸

Participants may appear at hearings, provide information, and be heard. Typically, however, they have very limited rights compared to parties. Participants may include:

- Resource Family (foster parent, relative, pre-adoptive placement)
 - Entitled to notice of review and permanency hearings⁵⁹
 - Right to be heard at review and permanency hearings⁶⁰
 - Right to object to child removal from foster home⁶¹

⁵⁷ [10A O.S. §1-4-501](#)

⁵⁸ [10 O.S. §40.4](#)

⁵⁹ [10A O.S. §1-4-811](#)

⁶⁰ [10A O.S. §1-4-811](#)

⁶¹ [10A O.S. §1-4-805](#)

- CASA Volunteer:
 - Appointed by the court to advocate for the best interests of the child.
 - Provides mandated reports and has standing to be heard⁶²
- Service Providers:
 - Therapists, teachers, or other professionals may be asked to testify or provide reports/evaluations
 - Based on individual court practice and discretion
- Extended Family:
 - May participate if relevant to placement or permanency planning.
 - Based on individual court practice and discretion

DHS – Hybrid Standing

While DHS is not represented by separate legal counsel as parents, children and state, DHS personnel are physically present and actively participate in court hearings. They testify, provide reports, and answer questions from the judge and other attorneys.

The Oklahoma Children's Code grants DHS specific duties and powers in deprived proceedings, including providing for the care and treatment of children, developing service plans, and providing notice to the court.⁶³ DHS determines placement and movement of the child, subject to the court's oversight.⁶⁴ Therefore, although DHS does not qualify as a "party" under the formal legal definition, its role in the proceedings extends well beyond that of a participant.

Jurisdiction & Authority of the Court

The Oklahoma district courts are given subject matter jurisdiction of proceedings arising under the Oklahoma Children's Code. Jurisdiction over the parent, legal guardian, or custodian of the child is based on the child's presence in the state or an allegation that the abuse or neglect occurred in the state. The court has broad discretion under the Code and has inherent equitable power to receive information and fashion remedies consistent with the best interest of the child.

Jurisdiction

The jurisdiction of the court in deprived child proceedings is set out in [10A O.S. § 1-4-101](#).

The district court obtains jurisdiction over any child who is deprived or alleged to be deprived, when:

- A deprived petition is filed;
- Custody is assumed; or
- An emergency custody order is issued.

⁶² [10A O.S. §1-4-306](#)

⁶³ See, e.g., [10A O.S. §1-7-103](#)

⁶⁴ [State v. Colclazier, 950 P.2d 824 \(Okla 1997\)](#)

The district court also has jurisdiction over the following individuals:

- a parent;
- legal guardian;
- custodian;
- any person living in the home of the child who
 - appears in court, or
 - has been properly served with summons.

The court retains jurisdiction until:

- the child turns eighteen (18) years of age, or
- the court dismisses the action.

Venue

Proper venue is established in the county where one or more of the following applies:

- The child resides or has resided for 6 months preceding the filing;
- The alleged incident occurred;
- The child is found at the time the action is filed;
- The parent or sibling has a deprived action pending.

Determination of Residence⁶⁵:

Scenario	Child's Residence (for venue)
Court ordered or legal custody	Custodian's legal residence
No Court order	County where both parents residing together OR County of the actual physical custodian if parents not residing together County of mother, regardless whether paternity has or has not been established
Newborn	County where mother legally resided at child's birth

⁶⁵ [10A O.S. §1-4-101\(B\)\(4\)](#)

Child in DHS custody

County where child resides when proceedings started

Permanent placement

County of court-approved permanent placement

The deprived action is NOT dismissed for improper venue; rather the case should be transferred to the appropriate county. Improper venue may be waived by the parties.

Transferring Venue

The process for transferring venue from one county to another is straightforward⁶⁶:

- Contact the judge in receiving venue;
- Ensure it will be accepted;
- Receive written confirmation of accepting judge;
- Transferring judge enters a written order transferring the case;
- Court clerk of transferring county transmits to accepting county:
 - Certified copies of documents filed in the case;
 - Names and addresses of all parties entitled to notice of future proceedings;
- Receiving court sets hearing within 30 days after the order of transfer has been filed.

Where a motion or petition to terminate parental rights has been filed, the case **cannot** be transferred until the termination proceeding has been concluded.

Subject Matter and Personal Jurisdiction

The district court obtains personal jurisdiction over any child who is deprived or alleged to be deprived, when:

- A deprived petition is filed;
- Custody is assumed; or
- An emergency custody order is issued.

The district court also has personal jurisdiction over the following individuals who have been properly served with the petition and summons⁶⁷:

- parent(s)
- alleged fathers
- legal guardian
- custodian
- any person living in the home of the child who:

⁶⁶ [10A O.S. §1-4-101\(B\)\(5\)](#)

⁶⁷ [10A O.S. §1-4-101](#) and [§1-4-304](#)

- voluntarily appears in court, or
- has been properly served with summons.

Exclusive vs. Concurrent Jurisdiction

The Children's Code establishes the district court's exclusive jurisdiction over all matters pertaining to deprived children. This jurisdiction encompasses the authority to issue emergency custody orders and to make determinations concerning individuals who have been properly served with petitions and summons. This includes parents, alleged fathers, legal guardians, custodians, and any person residing in the child's home who voluntarily appears or has been served.

All current and future child custody, support, or visitation actions are stayed. Orders from deprived proceedings take precedence over conflicting orders from other cases until the deprived proceedings end⁶⁸ - with two exceptions:

- Paternity orders
- Final permanency orders entered in deprived proceedings⁶⁹

These orders remain in full force and effect after the deprived proceedings have been dismissed.

The court's power extends to presiding over separate legal actions necessary to finalize a child's permanency plan, such as⁷⁰:

- Child Support⁷¹
- Uniform Parentage Act⁷²
- Guardianship of Minors⁷³
- Inpatient Mental Health and Substance Abuse Treatment of Minors Act⁷⁴
- Adoption
- Custody

The statutes governing these proceedings ensure that when a case is initiated under the Oklahoma Children's Code, all constitutional safeguards and termination procedures prescribed by law must be strictly followed, underscoring the court's pivotal role in safeguarding the welfare and future of deprived children.

⁶⁸ [10A O.S. §1-4-101](#)

⁶⁹ [10A O.S. §1-4-707\(A\)\(b\)\(1\)](#)

⁷⁰ [10A O.S. §1-4-101\(A\)\(2\)\(c\)](#)

⁷¹ [10A O.S. §1-4-702](#)

⁷² [10 O.S. §§7700-101](#) *et seq*

⁷³ [30 O.S. §§2-101](#) *et seq*

⁷⁴ [43A O.S. §§5-501](#) *et seq*

Concurrent Jurisdiction – Consent Required

While the district court generally exercises exclusive jurisdiction over deprived child matters under the Children’s Code, there are circumstances in which concurrent jurisdiction may arise. Concurrent jurisdiction refers to situations where more than one court has the authority, under statutory frameworks, to hear a particular matter or set of legal issues simultaneously – such as child support, parentage, guardianship or adoption. As previously noted, the Code provides that the ability of the deprived court to preside over separate legal actions to ensure that all procedural safeguards are met and that the child’s best interests remain paramount in finalizing the permanency plan.

However, there may be instances where the deprived court may wish to work in tandem with other courts. To mitigate inconsistent directives regarding the child’s permanency plan or parental rights, the Code provides that the deprived court has controlling jurisdiction over the child, thus prohibiting the other court from proceeding in a separate action without the deprived court’s written consent.⁷⁵

Exceptions to this requirement are child’s delinquency or youthful offender⁷⁶ proceedings and adult criminal proceedings.

Criminal proceedings often occur concurrently with deprived proceedings. Perpetrators may be charged with crimes arising from the same incident as alleged in the deprived petition. However, the deprived proceedings do not entitle a party to a continuance of the proceeding merely because there is a risk that the party might be required to invoke the right against self-incrimination in the deprived proceeding because of pending criminal charges. Further, there exists a strong public interest in proceeding with the deprived case expeditiously.⁷⁷

UCCJEA – Uniform Child Custody Jurisdiction and Enforcement Act

The UCCJEA⁷⁸ is a uniform state law drafted by the National Conference of Commissioners on Uniform State Laws (now Uniform Law Commission) and enacted in all states (except Massachusetts), District of Columbia, Guam, and the Virgin Islands.

The UCCJEA addresses a court’s subject matter jurisdiction in cases addressing child custody, specifically answering the question of whether a court has the power to decide a custody case in

⁷⁵ 10A O.S. §1-4-101(A)(2)(c); see e.g., *Matter of Adoption of L.F.*, 446 P.3d 1264 (Ok Civ App 2019)

⁷⁶ *Id.*

⁷⁷ *Matter of K.W. and V.W.*, 10 P.3d 244 (Ok Civ App 2000)

⁷⁸ 43 O.S. §551-101 et seq.

which more than one state or territory is involved.⁷⁹ It does NOT address HOW the court should decide the case.

UCCJEA provides a step-by-step approach in determining which court has jurisdiction over a custody case:

1. Is there an emergency? (temporary emergency jurisdiction)



2. Is there an existing custody order and/or custody proceeding in another state? If so, does this court have jurisdiction to modify any orders or issue a new order?



3. If there is no emergency or existing order/proceeding, does this court have initial child custody jurisdiction?



4. If this court has jurisdiction to enter an initial custody order or to modify an existing order, should this court decline to do so?



5. Are there any additional considerations?

Step 1 – Is there an emergency?

A court may exercise temporary emergency jurisdiction⁸⁰ where the child has been abandoned or there is evidence that the child (or a sibling of the child) has been abused or threatened with abuse and must find that the child is in this state. A court may do so even if another court has preferred jurisdiction for the long-term custody case. The temporary emergency jurisdiction remains until the other jurisdiction is notified and decides whether to issue an order or decline jurisdiction.

In limited circumstances the temporary emergency custody order can become permanent if the child custody proceeding has not been commenced in another state with jurisdiction and this state becomes the child's home state.

⁷⁹ Jurisdiction issue regarding an Indian child is determined by the application of OICWA. [43 O.S. §551-104](#)

⁸⁰ [43 O.S. § 551-204](#)

Judicial Communication⁸¹

Emergency jurisdiction by this state triggers mandatory immediate judicial communication between the issuing court and any court in another state that is hearing an existing custody case OR has issued a custody order involving the same parties. The purpose of this communication is to 1) resolve the emergency, 2) protect the parties and child, and 3) determine the duration of the protective order.

Step 2 – Is there an existing custody order and/or proceeding in another state? If so, does this state have the jurisdiction to modify any orders or to issue a new order?

The court that originally entered a custody order retains continuing exclusive jurisdiction over any modifications of that order. However, a court in different state may modify the order (provided it has jurisdiction) under four circumstances⁸²:

1. The issuing or new court determines that all parties have left the issuing state; or
2. The issuing court finds that the parties no longer have a significant connection with the state and that substantial evidence is no longer available there; or
3. The issuing court decides to decline exercising jurisdiction in favor of the other state; or
4. A finding by the new court that it has grounds to exercise temporary emergency jurisdiction.

Step 3 – If there is no emergency or existing order/proceeding, does the court have initial child custody jurisdiction?

Initial Child Custody Jurisdiction⁸³

The UCCJEA sets forth 4 jurisdictional bases to assist a court in determining whether it has “initial child custody jurisdiction” over a custody matter – in addition to the temporary emergency jurisdiction. These 4 bases, in order of priority, are:

1. Home state;
2. Significant connection;
3. More appropriate forum; and
4. No other state.

Presence of the child in a state alone is not enough to bestow jurisdiction in that state.

⁸¹ [43 O.S. § 551-204\(D\)](#)

⁸² [43 O.S. § 551-203](#)

⁸³ [43 O.S. § 551-201](#)

*Home State Jurisdiction*⁸⁴

The home state is defined as the state where the child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding.

Home state jurisdiction also exists in a state that was the child's home state within 6 months prior to the filing of the custody case PROVIDED that a parent continues to live in that previous home state. This "extended home state rule" often applies in a domestic violence case when a victim flees with the child to a new state. The home state retains jurisdiction to hear a custody case filed within 6 months of the child's move.

In a case where the child is less than 6 months of age at the time of filing, the home state is the state in which the child lived at birth.

If the family left and then returned to a state, the judge in this state will need to determine whether the time away was a "temporary absence". If so, this period of time away needs to be included in the calculation of the requisite 6 months for home state jurisdiction.

*Significant Connection Jurisdiction*⁸⁵

Jurisdiction may be exercised only if there is no home state and 2 conditions are met:

1. The child and parents, or at least one parent, must have a significant connection with the state other than mere physical presence; and
2. Substantial evidence must be available in the state concerning the child's care, protection, training, and personal relationships.

The court may consider such factors as length of time that the child has lived in the state and the nature and location of the relevant evidence (e.g., school teachers, relatives, counselors, health care providers). If one court already is exercising significant connection jurisdiction, a court in a different state, also having a significant connection, may not.

More Appropriate Forum

A court with home-state or significant-connection jurisdiction may decline to exercise jurisdiction if it determines that another forum is more appropriate.⁸⁶

⁸⁴ Definition found [43 O.S. § 551-102\(7\)](#)

⁸⁵ [43 O.S. § 551-201\(A\)\(2\)](#)

⁸⁶ *Id.*, [551-201\(A\)\(3\)](#)

No Other State

Jurisdiction of last resort is available when no state satisfies any of the three jurisdictional bases described above. When a family has traveled from state to state with only brief stays in any one place, it may be necessary for this court to exercise this form of jurisdiction.

Step 4 – If this state has jurisdiction to enter an initial custody order or modify an existing order, should this state decline to do so?

Inconvenient Forum

An “inconvenient forum” refers to a situation where the court that technically has jurisdiction under UCCJEA decides it is not the most appropriate place to hear the custody case.⁸⁷ When deciding whether this state is an inconvenient forum, the judge must consider all relevant factors, including (but not limited to):

1. Domestic violence and which state could best protect the parties and the child.
2. Length of time the child has lived outside Oklahoma.
3. Distance between the Oklahoma court and the other state’s court.
4. Relative financial circumstances of the parties.
5. Any agreement of the parties as to which forum is more appropriate.
6. Nature and location of the evidence required in the case (testimony, witnesses, records, etc.).
7. Ability of each court to decide the issue expeditiously and the procedures necessary to present evidence.
8. Familiarity of each court with the facts and issues of the pending litigation.

By Reason of Conduct – “Unclean Hands”

A court must decline to exercise jurisdiction if a party has engaged in unjustifiable misconduct that results in the court’s jurisdiction over the case.⁸⁸

Examples of unjustifiable misconduct are:

- Wrongful removal or retention of a child from another state to Oklahoma to try to establish jurisdiction.
- Concealing a child’s whereabouts from the other parent or the court.
- Forum shopping by misconduct (e.g., moving a child to Oklahoma to avoid an adverse custody order elsewhere).

⁸⁷ [43 O.S. §551-207](#)

⁸⁸ [43 O.S. §551-208](#)

It should be noted, however, that the Uniform Law Commission’s UCCJEA commentary specifies that a domestic violence victim should not be charged with unjustifiable conduct for conduct that occurred in the process of fleeing domestic violence, even if their conduct was technically illegal.

Step 5 – Are there any additional considerations?

Judicial Communication

The UCCJEA *mandates* that courts in different jurisdictions immediately communicate when one court exercises emergency jurisdiction and there is a pending custody proceeding in a court in another state, or if a court in another state has issued a custody order involving the same parties. Additionally, courts in different states must communicate when they become aware that simultaneous proceedings are pending in different jurisdictions.⁸⁹

Communication is *permissive* but strongly encouraged in other scenarios (e.g., deciding inconvenient forum, declining jurisdiction, or coordinating enforcement).

The statute sets forth requirements for judicial communication including⁹⁰:

- The parties may participate in the communication, but if not able to do so, must be given an opportunity to present evidence and make arguments prior to a jurisdiction decision by the court;
- A record of the communication must be made; and
- The parties must be given access to the record.

Exception: communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

Interstate Cooperation

The UCCJEA provides for interstate cooperation when a party does not reside in the forum state.⁹¹ For example, judges may request that a court in another state hold a hearing, order a party to produce evidence or appear at a hearing, conduct social studies regarding custody, or forward hearing transcripts.

A party may offer testimony of witnesses located in another state, or the court may order testimony be taken elsewhere.

Technologies such as telephones, audiovisual equipment, or other electronic means to facilitate the taking of depositions or testimony are urged to be utilized.

⁸⁹ [43 O.S. §551-204\(D\)](#)

⁹⁰ [43 O.S. §551-110](#)

⁹¹ [43 O.S. §551-112](#)

Protection Orders

The UCCJEA explicitly includes civil protection order cases in its definition of “child custody proceedings” that are subject to the Act’s provisions.⁹²

*Information to Submit to the Court by the Parties*⁹³

Parties are required to include the following information to the court in pleadings:

- Child’s current address;
- Places the child has lived during the past 5 years;
- Names and addresses of the persons with whom the child has lived;
- Information about other pending or completed custody cases involving the child; and
- Information about other persons with custody or visitation claims.

Key Enforcement Provisions⁹⁴

The UCCJEA establishes enforcement provisions for child custody orders across state and international lines to help ensure the safety of the parties and child.

1. Recognition of Orders
 - Custody determinations made consistently with the UCCJEA must be enforced in Oklahoma.
 - Oklahoma cannot modify another state’s valid custody order unless jurisdictional rules are met ([§ 551-203](#)).
2. Expedited Enforcement ([§ 551-308](#))
 - A party may file a petition for enforcement.
 - Court must issue an order directing the respondent to appear the next judicial day (or soon after) with/without the child.
3. Registration of Out-of-State Orders ([§§ 551-305, 551-306](#))
 - A custody determination from another state can be registered in Oklahoma.
 - Once registered and confirmed, it is enforceable as if issued in Oklahoma.
4. Warrant to Take Physical Custody ([§ 551-311](#))
 - Available if the child is likely to suffer serious physical harm or be removed from the state.
 - Allows law enforcement to immediately secure the child’s return.
5. Role of Prosecutors & Law Enforcement ([§ 551-315, § 551-316](#))
 - Prosecutors and law enforcement must assist in locating the child and enforcing orders, if requested by the court.

⁹² [43 O.S. § 551-102\(4\)](#)

⁹³ [43 O.S. § 551-209](#)

⁹⁴ [43 O.S. §§ 551-301 et seq](#)

International Orders

Courts are required to treat foreign countries as if they were states and apply the UCCJEA unless the child custody law of the country “violates fundamental principles of human rights.”⁹⁵

UCCJEA Jurisdiction Flowchart (Oklahoma)

This flowchart shows the sequence for Oklahoma jurisdiction determinations under the UCCJEA, beginning with Temporary Emergency Custody (§ 551-204) and then moving to the four bases of Initial Custody Jurisdiction (§ 551-206).⁹⁶

Emergency Custody / Temporary Emergency Jurisdiction (43 O.S. § 551-204) • Child is present in Oklahoma AND has been abandoned, or • It is necessary in an emergency to protect the child because of mistreatment or abuse. • State in the order when the emergency relief will lapse or be reviewed.
↓ Check for Existing Custody Case or Order in Another State (Simultaneous Proceedings – (43 O.S. § 551-206) • Determine whether another state already has a child-custody proceeding or existing custody order. • If yes: communicate with that court; Oklahoma’s role remains temporary and limited to emergency protection. • If no: proceed to initial custody jurisdiction analysis.
↓ Initial Custody Jurisdiction (43 O.S. § 551-201) • Home State – § 551-201(A)(1) • Significant Connection – § 551-201(A)(2) • More Appropriate Forum – § 551-201(A)(3) • Default – § 551-201(A)(4)
↓ Exclusive, Continuing Jurisdiction (43 O.S. § 551-202) • Once Oklahoma makes an initial custody determination consistent with § 551-201, it retains exclusive, continuing jurisdiction until the statute’s loss-of-connection criteria are met.
↓ Modification Jurisdiction (43 O.S. § 551-203) • Oklahoma may modify another state’s custody order only if § 551-203’s conditions are satisfied and the other state has lost or declined jurisdiction.
↓ Jurisdiction Established and Maintained • Oklahoma court now has authority to enter and enforce ongoing custody orders consistent with the UCCJEA.

⁹⁵ [43 O.S. §551-105](#)

⁹⁶ See [Matter of H.M.A., 563 P. 3d 312 \(Ok Civ App 2024\)](#) (excellent analysis for UCCJEA application).

IV. DEFINITIONS & KEY TERMS

Understanding the definitions and key terms in Title 10A is essential for interpreting and applying the Children’s Code accurately. Many terms in the statute have specific, technical meanings that differ from their ordinary usage. These definitions form the foundation for determining jurisdiction, parties, timelines, and procedural requirements in deprived child proceedings. Familiarity with these terms ensures consistent, legally compliant rulings and promotes clarity for all parties and participants in the courtroom.

Defining Parties and Participants

A “**child**” is an unmarried person under the age of 18.⁹⁷ An “**infant**” is a child 12 months of age or younger.⁹⁸ This distinction is critical for the required expeditious filing of the TPR petition/motion.

An “**Indian child**” is an unmarried or unemancipated person who is under the age of eighteen (18) 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.⁹⁹

A “**custodian**” means an individual to whom custody of the child has been awarded by the court. This is a person who is NOT a parent, legal guardian, or Indian custodian. This does NOT include DHS.¹⁰⁰

“**Guardian ad litem of the estate of the child**” is a person appointed by the court to protect the property interests of a child.

“**Indian 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.¹⁰¹

“**Kinship relation**” means relatives, stepparents, or other responsible adults who have a bond or tie with the child and/or has been ascribed a family relationship role with the child’s parents or the child.¹⁰²

⁹⁷ [10A O.S. §1-1-105\(8\)](#)

⁹⁸ [10A O.S. §1-1-105\(38\)](#)

⁹⁹ [10 O.S. §40.2\(2\)](#)

¹⁰⁰ [10A O.S. §1-1-105\(17\)](#)

¹⁰¹ [10 O.S. § 40-2\(8\)](#); [25 U.S.C. § 1903\(6\)](#)

¹⁰² [10A O.S. §1-1-105\(43\)](#)

“**Person responsible for a child’s health, safety, or welfare**”, includes a parent, legal guardian, custodian, foster parent, an adult person with whom the child’s parent cohabitates, an agent or employee of public/private residential home, institution, facility or daycare program, or an owner/operator/employee of a child care facility.¹⁰³

“**Putative father**” is an alleged father as defined in the Uniform Parentage Act.¹⁰⁴

“**Relative**” is a grandparent, great-grandparent, brother or sister of whole or half- blood, aunt, uncle, or any other person related to the child.¹⁰⁵

“**Sibling**” is a biologically or legally related brother or sister of the child. Termination of parental rights does not disrupt this relationship.¹⁰⁶

“**Third party**” means any non-kin individual who is not related to the child by blood, marriage, or legal adoption.¹⁰⁷

Defining What is a “Deprived Child”

Pursuant to Oklahoma law, the court obtains continuing jurisdiction, both personal and subject matter, only after making a formal determination that the child is classified as “deprived.” Before adjudication, the court’s jurisdiction is temporary and limited to protective purposes.

The definition of a “deprived child” contains both vague and narrowly tailored language.

However, the vague statutory definitions have withstood appellate review in Oklahoma.¹⁰⁸

- A child who has been **abused**. This includes both nonaccidental physical and mental injury, as well as sexual abuse and/or sexual exploitation.¹⁰⁹
 - **Physical injuries** usually result in cuts, welts, bruises, muscle sprains, or broken bones.
 - Exception to physical abuse: use of ordinary force such as spanking, switching, or paddling that does not result in injury.
 - **Mental injury** can include constant rejection, hostility, teasing, bullying, yelling, criticism and exposure to family violence.

¹⁰³ [10A O.S. §1-1-105\(53\)](#)

¹⁰⁴ [10 O.S. §§7700-102](#)

¹⁰⁵ [10A O.S. §1-1-105\(59\)](#)

¹⁰⁶ [10A O.S. §1-1-105\(67\)](#)

¹⁰⁷ [10A O.S. §1-1-105\(72\)](#)

¹⁰⁸ [Matter of Keyes, 574 P.2d 1026 \(Okla. 1977\)](#)

¹⁰⁹ [10A O.S. §1-1-105\(2\)](#)

- **Sexual abuse or exploitation** involves acts such as rape, incest, lewd acts or proposals, coercing a child into prostitution, or allowing or encouraging a child to participate in pornography or be photographed for pornographic purposes.
- A child who has been **neglected**.¹¹⁰ This term includes the failure to provide:
 - Adequate food, clothing, shelter, sanitation, appropriate education, and adequate nurturance and affection.
 - Mental, dental or behavioral health care.
 - Special necessary care based on the physical/mental condition of the child.
 - Supervision/appropriate caretakers to protect the child from harm.
 - Failure to protect a child from exposure to illegal activities, age- inappropriate sexual acts/materials, use/sale/manufacturing of illegal drugs.
 - Abandonment – willful intent, demonstrated by words, actions or omissions, not to return for a child OR failure to maintain a parental relationship through visitation or communication.¹¹¹

Neglect does NOT include letting a child do safe, age-appropriate independent activities—like walking or biking to school, going to nearby places, playing outside, staying home alone for a reasonable time, sitting in a safe vehicle, or doing similar things—unless the caregiver knowingly ignores harm or danger based on the child’s maturity, physical, or mental condition. Parents who rely in good faith on spiritual care through prayer, as allowed by their faith, are also not automatically considered neglectful.¹¹²

- A child with a mental and/or physical condition that is in need of **special care and treatment** and whose parents or guardians cannot or will not provide the needed care.¹¹³
 - This includes a child who is born testing positive for alcohol or drugs and is found, after screening and assessment, to be at risk of harm to their health or safety.
- A child with a **disability being deprived of food or life-saving medical care** that is normally given to other children, whether disabled or not, and this denial is meant to cause or allow the child’s death. However, medical treatment is not required if a doctor reasonably determines that the treatment would not save the child’s life.
- **Truancy** due to improper care and guardianship.¹¹⁴

¹¹⁰ [10A O.S. §1-1-105\(49\)](#)

¹¹¹ [10A O.S. §1-1-105\(1\)](#)

¹¹² [10A O.S. §1-1-105\(49\)\(b\)](#)

¹¹³ [10A O.S. §1-1-105\(21\)\(e\)](#) Note: lack of specialized care is defined as “neglect”. This definition include of deprived child includes lack of specialized “treatment.”

¹¹⁴ [10A O.S. §1-1-105\(21\)\(g\)](#); §70 O.S. 10-106

- Parent, legal guardian or custodian for good cause desires to be **relieved of custody**.¹¹⁵
- **Previous involuntary termination of parental rights** to another child and conditions that resulted in the TPR continue to exist.¹¹⁶
- Parent is currently a respondent in a deprived proceeding.¹¹⁷
- A **dependent child** is defined as a child who is homeless or without proper care/guardianship through **NO FAULT** of the parent, legal guardian, or custodian.¹¹⁸

Broad Definitions of “Deprived Child”¹¹⁹

- Destitute, homeless or abandoned.¹²⁰
- Does not have proper parental care and guardianship.
- Whose home is an unfit place by reason of parent’s depravity.
 - In this context, “depravity” is not just bad behavior; it signals a pattern of extreme, harmful, or immoral conduct that puts a child’s safety and well-being at serious risk.

What a Deprived Child is Not

A child is not considered deprived just because a parent or guardian, in good faith, chooses to rely on spiritual care and prayer for the child’s treatment, following their recognized religion.

Also, a child is not considered deprived simply because they have fewer material, educational, or cultural advantages than other children; the state must still prove the child meets the legal definition of “deprived.”

However, a court can take custody and order necessary actions, including medical care, if needed to protect the child’s health or safety.

Defining Levels of Threat/Harm

“**Threatened harm**” to the health or safety of a child is used in the definition of “abuse”¹²¹ meaning that a real credible risk of harm **will occur** if intervention is not taken – even if no injury has happened yet. It is not based on mere speculation, fear, or unfounded belief.

¹¹⁵ [10A O.S. §1-1-105\(21\)\(h\)](#)

¹¹⁶ [10A O.S. §1-1-105\(21\)\(i\)](#)

¹¹⁷ [10A O.S. §1-1-105\(21\)\(j\)](#)

¹¹⁸ [10A O.S. §1-1-105\(20\)](#)

¹¹⁹ [10A O.S. §1-1-105\(21\)\(a\), \(b\) \(d\)](#)

¹²⁰ Note that abandonment is statutorily considered as “neglect.”

¹²¹ [10A O.S. §1-1-105\(2\)\(a\)](#)

Threatened harm alone—if credible and present—can justify legal or protective intervention in Oklahoma. It allows courts, DHS, and law enforcement to act proactively to protect the child without waiting for harm to actually happen.

Examples:

- A parent repeatedly drives drunk with a child in the car, even if no accident or injury has occurred yet.
- A caregiver makes serious, credible threats of violence toward a child.
- A child lives with a known sexual offender who has unsupervised access.
- Conditions in the home (extreme neglect, hazardous substances, domestic violence) make injury or trauma highly probable.

“**Imminent threat of harm**” is used as the legal standard for the emergency removal of a child from the home. An imminent threat of harm means there’s a present, credible, and serious danger to a child's well-being—one that justifies swift court action, including emergency removal. It goes beyond mere suspicion or risk and requires a factual showing of immediate danger to the child.

Imminent Threat	Examples of Emergency Removal
Physical Abuse	Child injured, weapon threats, severe DV in home
Sexual Abuse	Child exploited, abuser in home, child pornographic material
Severe Neglect	No food/water, unsafe living conditions, medical neglect
Parental Incapacity	Arrest, overdose, mental health crisis with no caregiver
Third-Party Danger	Criminal activity, gang violence, unsafe visitors/housemates
Abandonment / Infant Risk	Drug-exposed newborns, unsafe abandonment situations

“**Risk**” means the likelihood that an incident of child abuse or neglect will occur in the future.¹²²

“**Safety threat**” is defined as the threat of serious harm due to child abuse or neglect occurring in the present or in the very near future and without the intervention of another person, a child

¹²² [10A O.S. §1-1-105\(62\)](#)

would likely or in all probability sustain severe or permanent disability or injury, illness, or death.¹²³

“Failure to protect” means that a parent, guardian, or other caregiver did not take reasonable action to prevent harm or threatened harm to a child, even though they knew or reasonably should have known the child was in danger.¹²⁴

A court can find a child deprived due to a parent’s failure to protect, even if that parent wasn’t the one who committed the abuse. Further, failure to protect can be the grounds to terminate that parent’s legal rights to the child.

Oklahoma appellate courts have consistently held that:

- A parent cannot remain passive when aware of abuse or imminent risk.
- “Failure to protect” doesn’t require intent to harm—inaction when action was reasonably possible is enough.
- Courts look at whether the parent’s lack of action allowed the harm to continue or escalate.¹²⁵

“Heinous and shocking abuse” and **“heinous and shocking neglect”** describe the most extreme forms of harm to a child. These definitions are important because they can:

- Support immediate emergency custody
- Trigger aggravated circumstances findings (which fast-tracks a case toward termination of parental rights)
 - Permits termination of parental rights immediately after a judicial finding that the child is deprived.
 - Reunification efforts not required.

“Heinous and shocking abuse”¹²⁶ includes, in part, one or more of the following:

- Serious bodily injury, including:
 - Risk of death
 - Extreme or prolonged pain
 - Permanent disfigurement
 - Loss or impairment of a bodily function
 - Bone fractures or internal injuries
- Torture or cruel treatment intended to terrorize or inflict suffering
- Chronic abuse — repeated acts of serious physical or emotional abuse
- Sexual abuse or exploitation

¹²³ [10A O.S. §1-1-105\(63\)](#)

¹²⁴ [10A O.S. §1-1-105\(26\)](#)

¹²⁵ E.g., *In the Matter of M.R.*, 548 P.3d 120 (Okla. 2024); *In the Matter of T.R.W.*, 722 P.2d 1197 (Okla. 1985)

¹²⁶ [10A O.S. §1-1-105\(35\)](#)

- Other conduct that shows an utter disregard for the child’s safety and welfare

“Heinous and shocking neglect”¹²⁷ includes, in part:

- Chronic neglect — an ongoing pattern of failing to provide basic care, causing harm or serious risk of harm
- Failure to thrive (medically diagnosed), caused by the caregiver’s neglect
- Neglect resulting in death, near-death, or serious injury
- Neglect that places the child in imminent danger of serious harm
- Any similarly extreme situation showing reckless disregard for the child’s welfare

“Near death” is a defined term used in child welfare, emergency custody, and termination proceedings. It refers to situations where a child’s condition was so critical that death was imminent but medical intervention or other action prevented the fatal outcome.¹²⁸

A finding of “near death” typically triggers:

- Mandatory reporting to law enforcement and child protective services.
- Heightened court scrutiny in deprived or emergency custody cases.
- Aggravated circumstances findings that support bypassing reasonable efforts to reunify and move toward termination of parental rights.

Custody Framework

Under the Oklahoma Children’s Code, custody refers to the court-ordered or statutory authority to care for a child at different stages of a deprived action, including protective, emergency, temporary, and, after termination of parental rights or parental death, permanent custody.

“Protective custody” of a child is assumed by law enforcement or designated employee of the court without the benefit of a court order when an imminent safety threat is present.¹²⁹

“Emergency custody” is the pre-adjudication judicial determination of custody issued at time of the *ex parte* emergency removal of the child from the home or at the emergency custody hearing.¹³⁰

“Temporary custody” is judicially determined after the adjudication of the child and at the dispositional hearing.¹³¹

¹²⁷ [10A O.S. §1-1-105\(36\)](#)

¹²⁸ [10A O.S. §1-1-105\(48\)](#)

¹²⁹ [10A O.S. §1-1-105\(55\)](#)

¹³⁰ [10A O.S. §1-1-105\(24\)](#)

¹³¹ [10A O.S. §1-1-105\(70\)](#)

“**Permanent custody**” is judicially determined when a parent-child relationship no longer exists due to termination of parental rights or the death of the parent or parents.¹³²

“**Voluntary custody**” occurs when parent or legal custodian voluntarily places the child in DHS care (or with an approved caretaker) **without a court order**, often to stabilize a family crisis or access services.¹³³

“**Trial Reunification**”¹³⁴ court allows the child to return home for a supervised trial period, while DHS retains legal custody and oversight.

Reasonable Efforts¹³⁵

“Reasonable efforts” operate in three lanes:

- (1) to prevent removal when it can be done safely,
- (2) to reunify when a child is in care, and
- (3) to finalize the permanency plan on schedule.

The court may, in aggravated-circumstances cases, enter a valid no-RE finding as to prevention/reunification; however, the court must still make the recurring finding that reasonable efforts are being made to finalize the permanency plan (e.g., adoption, guardianship) at least every 6 months.

“Reasonable efforts” is not defined in federal nor state law. Most judges apply a broad understanding of reasonable efforts as accessible, available, and culturally appropriate services and activities to help families provide safe and stable homes for their children.

Under ASFA, there are two types of reasonable efforts findings that are made during the course of the deprived proceedings:

1. **Reasonable Efforts to Prevent Removal**¹³⁶: When the child is removed from the home, judges have 60 days to decide whether the child welfare agency made reasonable efforts to prevent removal.¹³⁷ Judges use this finding to identify what activities or services the agency may have provided to keep the child safely at home. This finding is typically made at the initial emergency custody hearing but can be made at the adjudication or disposition hearing – as long as the finding is made within the 60-day window.

¹³² [10A O.S. §1-1-105\(51\)](#)

¹³³ [10A O.S. §1-7-112](#)

¹³⁴ [10A O.S. §1-4-806](#)

¹³⁵ [45 CFR § 1356.21\(b\)](#)

¹³⁶ [10A O.S. §1-4-201\(D\)\(2\)-\(3\)](#)

¹³⁷ [45 C.F.R. §1356.21\(b\)\(1\)](#); *In re M.R.*, 2024 OK 53, ¶ 32–33

- The finding focuses on the actions of the agency PRIOR to the removal although the court has within 60 days after the removal to make the finding.
- The efforts made by the agency after the removal but within the 60-day window focuses on the efforts to safely return the child home.

The court may also find that the agency's **inability** to provide prevention services or otherwise make efforts is reasonable due to circumstances involving an "emergency" – an immediate substantial safety threat. The efforts thereafter are focused on whether the child can safely be returned home.

If the court determines that reasonable efforts were made to prevent removal and **failed**, the agency's legal obligation changes. The focus moves to "reasonable efforts to reunify" the family or to make efforts toward another permanent plan, such as adoption.

2. **Reasonable Efforts to Finalize Permanency:** When a child enters foster care, judges have within 6 months and at least every 6 months thereafter while the child remains in foster care¹³⁸ to determine if the child welfare agency made reasonable efforts to reunify the child with their parents or to secure a different permanency option (i.e., adoption, guardianship, or placement in another planned permanent living arrangement. Judges can make this finding at review hearings, permanency hearings or both.
 - The child's foster care entry date is either the adjudication date or 60 days after removal from the home, whichever comes first.¹³⁹

Circumstances in which reasonable efforts are not required to prevent a child's removal from home or to reunify the child and family

Reasonable efforts to prevent a child's removal from home or to reunify the child and family are not required if the agency obtains a judicial determination at any time prior to or after adjudication that such efforts are not required because of aggravated circumstances, e.g., abandonment of an infant, murder of any child, involuntary parental termination of a sibling of the child, registered sex offender, shocking and heinous abuse/neglect.¹⁴⁰

The agency must still make efforts to place the child timely in accordance with the permanency plan.

¹³⁸ Federal law requires within 12 months.

¹³⁹ [10A O.S. §1-4-811](#)

¹⁴⁰ [10A O.S. § 1-4-809](#)

Other Required Reasonable Efforts Findings

Reasonable efforts to finalize an alternate permanency plan may be made **concurrently** with reasonable efforts to reunify the child and family.¹⁴¹

Reasonable efforts to place siblings together: at the emergency hearing, disposition, reviews, and permanency, determine whether reasonable efforts were made to place siblings together, and if not, to provide frequent visitation/ongoing interaction.¹⁴²

Types of Reasonable Efforts Findings

Reasonable efforts were made

The child welfare agency engaged in activities (e.g., relative searches, safety planning) that were reasonable under the circumstances of the individual case and sought to either prevent removal of the child from their home or find a permanent home for the child.

Reasonable efforts were not made

The child welfare agency's activities to prevent removal of the child from their home or to find a permanent home for the child (e.g., relative searches, safety planning) were not reasonable under the case circumstances.

Reasonable efforts were not possible (e.g., emergency situation)

The child welfare agency could not make reasonable efforts because of an emergency situation at the time of removal (e.g., imminent threats to the health or safety of the child). However, this does not eliminate the state's obligation to provide reasonable efforts to reunify the family.

Reasonable efforts were not required (e.g., aggravated circumstances)

The child welfare agency was not required to make reasonable efforts because the parent committed certain felonies against the child or another child of the parent; the parent previously had parental rights to another child involuntarily terminated; or the parent has subjected the child to aggravated circumstances as defined in state law, which may include but is not limited to abandonment, torture, chronic abuse, or sexual abuse. The state's obligation to provide reasonable efforts to reunify the family must continue until such time aggravated circumstances are found.¹⁴³

Reasonable efforts finding was withheld/continued

The judge chose to delay making a reasonable efforts finding to a future hearing. This may happen when a hearing is continued to allow the agency to gather or present more information about efforts that were provided. However, the finding is not intended to allow the agency more time to make reasonable efforts.

¹⁴¹ [10A O.S. §1-1-105\(14\)](#)

¹⁴² [10A O.S. §1-4-203](#), [§1-4-807](#), [§1-4-811](#)

¹⁴³ [42 U.S.C. §671\(a\)\(15\)\(D\)](#); [45 C.F.R. §1356.21\(b\)\(3\)](#)

V. ATTORNEYS AND GUARDIAN AD LITEMS

Judges rely on attorneys to ensure all critical information is brought to their attention to allow for fair and meaningful decisions about the family. High-quality legal representation for children and parents:

- Leads to more timely reunifications, use of kinship care, and timely permanency;
- Ensures that judges have the information needed to make informed decisions;
- Ensures that the parties' rights are protected, they are treated fairly, and their voices heard;
- Help ensure a well-functioning child welfare system
- Promotes a greater understanding of the court processes by parties;
- Promotes positive case outcomes by increasing presence and participation in court.¹⁴⁴

Children's Attorneys

The United States Supreme Court has not extended the right to counsel to children in child abuse and neglect proceedings. However, Oklahoma has determined that a child has a constitutional right to counsel, under the state's constitution, in a proceeding initiated by the state for the termination of parental rights.¹⁴⁵ Oklahoma statutorily requires the appointment of counsel for a child subject to the proceedings of the Oklahoma Children's Code, including the appeal.¹⁴⁶

The Code mandates appointment of counsel when the petition is filed. Counsel may be appointed and advocate for the child at the emergency custody hearing.¹⁴⁷ A reasonable compensation is provided by the state¹⁴⁸ and counsel may be allowed a reasonable reimbursement for mileage if required to travel to more than one district court location.

Statutory and Ethical Considerations

Child's counsel must be independent and represent the child's position. Oklahoma statute directs that the attorney represents the child's expressed interests; if the child is too young (e.g., an infant), or otherwise unable to express an interest, the attorney must substitute judgment and advocate a best-interests position. When two siblings require different advocacy (one expressed-interest, one substituted-judgment) and the outcomes point in **different directions**, one lawyer's representation is materially limited. Different permanency goals in the same proceeding (e.g.,

¹⁴⁴ [Children's Bureau, IM-17-02: High Quality Legal Representation for All Parties in Child Welfare Proceedings; January 17, 2017.](#)

¹⁴⁵ [Matter of T.M.H., 613 P.2d 468 \(Okla. 1980\)](#)

¹⁴⁶ 10A O.S. §1-4-306(A)

¹⁴⁷ Id.

¹⁴⁸ Court funds. But see subsequent discussion of Family Representation and Advocacy Program.

pushing TPR/adoption for the infant while advocating reunification for the older child) is the textbook example of a non-consentable conflict.¹⁴⁹

Best practices for ethically representing a child in a child welfare case include establishing an attorney-client relationship, conducting independent and thorough investigations, using developmentally appropriate communication, and advocating for the child's expressed wishes and legal interests through consistent and comprehensive participation in the case.¹⁵⁰ The representation should prioritize the child's strengths, needs, and wishes, and the attorney must be an independent and skilled advocate, ensuring the child's voice is heard.¹⁵¹ The attorney owes the same duties of undivided loyalty, confidentiality, and zealous advocacy to the child as they would to an adult client. The lawyer must be independent of the child protective services agency, the court, and the child's parents.

Parent/Legal Guardians/Indian Custodians Attorneys

Parents have a right to be represented by counsel in deprived cases. Although the U.S. Supreme Court has held that parents do not have a constitutional right to an attorney in termination of parental rights proceedings, the Oklahoma Supreme Court has held otherwise pursuant to the Oklahoma Constitution's Due Process Clause and state statute.¹⁵² This right also includes the right to court appointed counsel if the parent is indigent and the statutory right to appointed counsel on appeal.¹⁵³ The actual or constructive denial of assistance of counsel altogether is legally presumed to result in prejudice.¹⁵⁴

In an ICWA case, the Oklahoma Supreme Court held that 25 U.S.C. § 1912(b) requires, upon request and a finding of indigency, appointment of counsel for a parent "at all stages of the deprived child proceeding." The Court reversed because the trial court discharged the mother's appointed counsel after disposition, leaving her unrepresented for 798 days until TPR was filed.¹⁵⁵

Advisement of Right to Counsel

The parents or legal guardian are advised by law enforcement or OKDHS, in writing, of their right to consult with an attorney when:

- their child is the subject of a child abuse or neglect investigation;

¹⁴⁹ ORPC 1.7

¹⁵⁰ *In the Matter of N.L.*, 347 P.3d 301 (Ok Civ App 2015) where the child's counsel failed to appear for trial

¹⁵¹ American Bar Association; <https://www.americanbar.org> vol-36>mar-apr -2017

¹⁵² *Matter of D.D.F.*, 802 P.2d 703 (Okla. 1990); *In re F.K.C.*, 609 P.2d 774, 776 (Okla. 1980)

¹⁵³ *Matter of D.D.F.*, 784 P.2d 89 (Ok Civ App 1989)

¹⁵⁴ *In the Matter of S.S.*, 90 P.3d 571 (Ok Civ App 2004)

¹⁵⁵ *In the Matter of I.T.S.*, 490 P.3d 127 (Okla. 2021)

- their child has been removed from the home and placed in protective or emergency custody.¹⁵⁶

The parents or legal guardian are advised by the court, in writing, of their right to be represented by counsel at the emergency custody hearing.¹⁵⁷

A parent has the right to elect to proceed *pro se* provided that the election is made in a voluntary, knowing and intelligent manner.

Right of Indigent Parent/Legal Guardian/Indian Custodian for Court Appointed Counsel

If a parent or legal guardian requests an attorney and is found to be indigent, counsel shall be appointed upon the filing of the petition.

- An attorney may be appointed at the emergency custody hearing.
- The court may appoint counsel without request if necessary to protect the interest of the parent or legal guardian.

If a parent or legal guardian requests an attorney and is found to be indigent, counsel shall be appointed upon the filing of the petition.

No other adult individual, such as a step-parent or mere physical custodian, is entitled to court appointed counsel. However, pursuant to OICWA, **the Indian custodian** is entitled to be represented by counsel and, if indigent, the right to court-appointed counsel.¹⁵⁸

NOTE: The \$40 OIDS application fee in 22 O.S. § 1355A applies to criminal cases where a defendant seeks an OIDS attorney. The statute does not apply to indigent parties seeking court-appointed counsel in deprived child cases.

Ethical Considerations

In Oklahoma deprived cases, one lawyer representing both parents is almost always a conflict and the safer judicial practice is to appoint separate counsel. Parents' positions routinely diverge (e.g., domestic-violence dynamics, blame-shifting, incompatible case plans, or different permanency goals) creating a significant risk that advocacy for one will be materially limited by duties to the other¹⁵⁹, and confidentiality¹⁶⁰ makes joint strategy unworkable when one parent's statements would harm the other. Joint representation should be permitted only in the rare, on-the-record circumstance where there is no adverse posture, no DV, aligned goals/defenses, and

¹⁵⁶ [10A O.S. §1-2-106\(8\)](#); [§1-4-202](#)

¹⁵⁷ [10A O.S. §1-4-203](#)

¹⁵⁸ [10 O.S. §40.4](#)

¹⁵⁹ [ORPC 1.7](#)

¹⁶⁰ [ORPC 1.6](#)

the lawyer can credibly certify they can competently and diligently represent each client, with written informed consent from both. If a conflict later emerges, counsel must promptly withdraw (often from both). Defaulting to separate counsel protects due-process interests, avoids mid-case disqualifications, and reduces appeal risk.

Effective Assistance of Counsel

Parents are entitled to effective assistance of counsel. For the representation to be found to be ineffective, the test is the same as in criminal cases:

- the attorney's performance was deficient, and
- the deficient performance prejudiced the defense.¹⁶¹

Legal Interdisciplinary Team Representation of Parties

Interdisciplinary legal representation in child welfare cases uses a team of professionals, such as attorneys, social workers, and peer advocates, to provide holistic support to families. Studies show this approach improves outcomes for children and families, including faster and more stable reunifications.

A typical interdisciplinary team includes:

- Attorneys who handle all legal aspects, including motions, litigation, and court hearings.
- Social workers who provide non-legal support, such as helping parents access housing, employment, and mental health services. They can also attend court hearings, agency meetings and advocate for clients with providers.
- Peer advocates or mentors who have lived experience in the child welfare system and offer invaluable emotional support and guidance to clients. They help build trust and support families in engaging with services.

The key benefits of the interdisciplinary model are:

- **Reduced time in foster care.** Studies, particularly in New York City¹⁶², have found that interdisciplinary representation can significantly reduce the length of time children spend in foster care. This is linked to faster reunification outcomes.

¹⁶¹ *In the Matter of K.L.C.*, 12 P.3d 478 (Ok Civ App 2000); *In the Matter of A.F.K.*, 317 P.3d 221 (Ok Civ App 2014); *In the Matter of D.D.F.*, 801 P.2d 703 (Okla. 1990)

¹⁶² *Children and Youth Services Review, Effects of an interdisciplinary approach to parental representation in child welfare, Volume 102*, July 2019, Pages 42-55

- **Increased family reunification.** This model has been shown to increase the rate of successful reunifications and permanent placements with relatives (kinship care).
- **Improved client well-being and engagement.** With social workers and parent advocates handling non-legal support, attorneys are freed up to focus on legal strategy. The added support helps clients more effectively engage with court-ordered services.
- **Cost-effective.** Shorter foster care stays can lead to significant cost savings for government agencies.
- **More zealous advocacy.** Teams are better prepared for court and can file more motions, hold child welfare agencies accountable, and challenge improper practices.

Ethical Considerations

Social workers and peer mentors are covered by attorney-client privilege and confidentiality as **nonlawyer assistants** pursuant to ORPC 5.3. As such, neither the social worker nor the peer mentor may be called to testify or provide information directly to the court or parties.

The peer mentor's scope of responsibilities includes preparing client for hearings, debriefing with the client after the court hearing, and attending court hearings and DHS-led family meetings.

As part of the legal team representing the client – whether parent or child – the Children's Code permits a judge to admit persons with a direct interest and "others deemed to be necessary participants."¹⁶³

Guardian Ad Litem for the Child

A guardian ad litem may be appointed by the court after a petition is filed, based on a motion from the child, the child's attorney, or the court itself. The guardian ad litem acts as an officer of the court to objectively represent the child's best interests.¹⁶⁴

Under the Oklahoma Children's Code, "court-appointed special advocates" (CASA) and guardians ad litem have functionally the same roles, powers, and responsibilities - to investigate and advocate for the **child's best interests** and report to the court. When a CASA program is available, it should be prioritized for appointment as guardian ad litem.

A GAL **may not** be the child's attorney; the child must have separate counsel when a deprived petition is filed.¹⁶⁵

¹⁶³ [10A O.S. §1-4-503\(A\)\(1\)\(a\)](#)

¹⁶⁴ [10A O.S. § 1-4-306](#)

¹⁶⁵ [10A O.S. § 1-4-306\(B\)\(2\)](#)

Court Appointed Special Advocate (“CASA”)¹⁶⁶

CASA is defined as a responsible adult volunteer who has been trained and is supervised by a court-appointed special advocate program that is recognized by the court.¹⁶⁷ When appointed by the court, the CASA serves as an officer of the court in the capacity as a guardian ad litem and is not compensated.

The CASA objectively advocates on behalf of the child and acts as an officer of the court to investigate all matters concerning the best interests of the child.

Statutory responsibilities include:

- Review documents, reports, records and other information relevant to the case;
- Meet with and observe child in appropriate settings;
- Interview parents, foster parents, health care providers, OKDHS workers, and any other person with relevant knowledge to the case;
- Participate in the case by attending court hearings;
- Advocate for appropriate services, when necessary;
- Present written reports on the best interests of the child that include conclusions and recommendations and the facts upon which they are based.

CASA is granted access to court and agency files, as well as all documents, reports, records, and information relevant to the case. This includes reports and records pertaining to the child’s parent or other custodian.

What CASA Volunteers Should Not Do¹⁶⁸

The CASA should conduct activities consistent with their CASA program’s policy and the GAL role. The CASA should not conduct searches of homes, vehicles, devices, or person nor engage in surveillance or following of parties. They should not transport children unless expressly authorized by the program and court.

CASA volunteers are generally prohibited from transporting a child, taking the child into their homes or overnight outings, giving money or expensive gifts to the child or family, and giving legal or therapeutic advice.

¹⁶⁶ [10A O.S. §1-4-306](#)

¹⁶⁷ [10A O.S. §1-1-105\(15\)](#)

¹⁶⁸ <https://member.nationalcasagal.org/wp-content/uploads/2019/05/completevoluteermanual.pdf>

Guardian Ad Litem for Parent

Under 12 O.S. § 2017(C)¹⁶⁹ and *In re T.E.B.*¹⁷⁰, when a parent's competency is at issue, the court must take protective action—most commonly by appointing a guardian ad litem for the parent—so the case can proceed with due process safeguarded.

The Court of Civil Appeals determined that the criminal elements of incompetency is appropriate in a civil case to trigger 12 O.S. § 2017(C), although not the exclusive test¹⁷¹:

- Lacks the capacity to understand the nature or consequences of the proceeding, or
- Is unable to assist the attorney in the preparation of his/her case.

The appointment of a guardian ad litem is not considered an adjudication of incompetency; rather, it reflects the court's decision that, based on the record, intervention is necessary to protect a party. This action is an exercise of the court's common-law equitable authority.¹⁷²

VI. INDIAN CHILD WELFARE ACT

The Indian Child Welfare Act (ICWA) is a federal law designed to protect the best interests of Indian children and promote the stability and security of Indian Tribes and families. When a child subject to ICWA is involved in child welfare proceedings, special procedures and heightened standards apply. These include notifying the child's Tribe, seeking placement preferences that prioritize the child's extended family or Tribal members, and ensuring active efforts are made to prevent the breakup of the Indian family. Compliance with ICWA is essential to safeguard cultural connections and to honor tribal sovereignty throughout the child welfare process.¹⁷³

Codification

Federal Indian Child Welfare Act, 25 U.S.C. §§ 1901 – 1963.

Oklahoma Indian Child Welfare Act, 10 Okla. Stat. §§40 – 40.9.

¹⁶⁹ “The court shall appoint a *guardian ad litem* for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.”

¹⁷⁰ *Matter of T.E.B.*, 24 P.3d 900 (Ok Civ App 2001)

¹⁷¹ *Id.*

¹⁷² *Vance v. Federal National Mortgage Association*, 988 P.2d 1275 (Okla. 1999)

¹⁷³ See Rule 8.2, Rules for District Courts of Oklahoma, 12 O.S. ch. 2, app. (requiring that any decree, order, or judgment affecting an Indian child affirmatively demonstrate compliance with applicable Indian child welfare laws)

When Does ICWA Apply

ICWA applies when a state court child-custody proceeding involves an Indian child. "Child custody proceedings" include any state court action that results in foster care placement, termination of parental rights, preadoptive, or adoptive placement of an Indian child. This includes both voluntary and involuntary proceedings that prevent a parent from regaining custody upon demand.

ICWA can apply to proceedings involving status offenses ("CHINS") if the outcome is an out-of-home placement, such as a foster care, preadoptive, or adoptive placement, or a termination of parental rights.

Exclusion from ICWA's Application

The ICWA definition of "child custody proceeding" specifically excludes certain actions, even if a child is Indian:

- Divorce proceedings: An award of custody to one of the parents in a divorce proceeding is not covered.
- Delinquent acts.
- Voluntary placements that allow for return on demand, i.e., a temporary, voluntary placement made without the threat of a state agency removal, where the parent or Indian custodian can regain custody upon demand, is excluded.

Definition of "Indian Child"

An "Indian child" means:

A person, unmarried or unemancipated, under age 18 who is either:

- (1) a member of a federally recognized Tribe, OR
- (2) eligible for membership in a federally recognized Tribe AND the biological child of a member of that Tribe.¹⁷⁴

Both membership and eligibility are determined exclusively by the Tribe.

A parent's claim of "heritage," "ancestry," or DNA does not establish Indian child status.

The Trigger: "Reason to Know" Standard

"Reason to know" under ICWA triggers the legal requirement for a court and DHS to treat a child as an Indian child until it's proven otherwise. This means they must provide formal notice to the relevant Tribe(s) and undertake further inquiry to determine the child's tribal status.

Triggers include any party, officer, or agency informing the court the child is an Indian child, the child's domicile is on a reservation, or evidence like a tribal membership card is presented.

¹⁷⁴ [10 O.S. §40.2\(2\)](#)

Examples of "Reason to Know"

- A party, including the child or a Tribal organization, informs the court or agency that the child is an Indian child.
- The child's or parent's residence or domicile is on a reservation or in an Alaska Native village.
- An officer of the court or an agency involved in the case becomes aware that the child might be an Indian child.
- The child or a parent presents as a member of a federally recognized Tribe, or citizenship.
- The court is informed that the child has been or is currently a ward of a Tribal Court.

Procedural Implications

When the "reason to know" standard under the Indian Child Welfare Act (ICWA) is met, it has significant procedural implications for both the court and the Department of Human Services (DHS). Once triggered, the court must pause and investigate further to establish if the ICWA applies to the case. As a result, the court and DHS must provide formal notice to the relevant Tribe(s), BIA, and conduct a thorough inquiry to clarify the child's Tribal status. Notice must also be given to the child's parent(s) or Indian custodian about the pending proceedings.

A court's "reason to know" that a child may be an "Indian child" triggers the interim application of ICWA to ensure the case proceeds correctly from its earliest stages and to avoid later disruption if ICWA is ultimately confirmed to apply. For instance, when the court has reason to know, beginning with ICWA-compliant placement preferences is more appropriate than risking a later change in placement after Tribal verification. Applying ICWA's safeguards early—aimed at maintaining children's connections to parents, extended family, and Tribal communities—promotes stability even if the child is later determined not to be an "Indian child." If, after receiving information from the Tribe(s) or other sources, the court determines that the statutory definition is not met, the State may then proceed under its ordinary standards.¹⁷⁵

ICWA Applicability and Compliance Following Tribal Verification

In Oklahoma, the "reason to know" standard is the initial threshold that triggers the requirement for the state to investigate further and provide notice, while Tribal verification is the formal process of confirming a child's status as an "Indian child" to fully apply the comprehensive protections and placement preferences of ICWA.

Following Tribal verification, all subsequent court orders must fully comply with ICWA standards. This ensures that every action taken in the case adheres to the protections and placement preferences outlined under ICWA.

¹⁷⁵ [*Guidelines for Implementing the Child Welfare Act*](#), December 2016, page 12

Any orders issued prior to Tribal verification are not made retroactively invalid. Instead, they remain in effect, but future proceedings and orders must comply with ICWA once verification is established.¹⁷⁶

Identification of the Tribe

ICWA applies only to federally recognized Indian Tribes. The Bureau of Indian Affairs (BIA) annually publishes a list that can be found at www.bia.gov.

Citizenship with a Tribe may be unknown to the parent or child although having knowledge of some affiliation with a Tribe. The court and DHS should ask extended family members for additional information. If unsure which Tribe to contact, seek assistance from the BIA Regional Office.¹⁷⁷

Identifying the Tribe When There is More Than One Tribe

When a child is potentially eligible for membership in more than one Tribe, the court must send ICWA notice to every identified Tribe and request each Tribe's own determination of membership or eligibility, because only the Tribe—not the court—may decide those questions.

If more than one Tribe confirms that the child is an “Indian child,” the Tribes themselves must decide which Tribe should be designated as the child's Tribe for ICWA purposes.

If the Tribes cannot agree, the court must make that designation by applying the “significant contacts” test in 25 C.F.R. § 23.109(c), considering factors such as:

- Parent's preference;
- If the child and family have or are living on or near the reservation of each Tribe;
- Parent's or Indian custodian's Tribal membership;
- Whether there has been a previous adjudication of the child by a court with respect to a Tribe;
- Self-identification of the child if the child is of sufficient age and capacity.

Once the child's Tribe is designated, all ICWA and OICWA protections are applied using that Tribe.

Notice

ICWA/OICWA notice must be provided in every involuntary child-custody proceeding when the court knows or has reason to know an Indian child is involved.¹⁷⁸

¹⁷⁶ *In the Matter of J.W.E.*, 419 P.3d 374 (Ok Civ App 2018)

¹⁷⁷ There are two in Oklahoma: The Eastern Oklahoma Regional Office in Muskogee and the Southern Plains Regional Office in Anadarko.

¹⁷⁸ [10 O.S. §40.4](#); [25 U.S.C. §1912\(a\)](#); [25 C.F.R. §23.107](#)

Notice must be sent by certified mail, return receipt requested, to the child's Tribe, parents, Indian custodian, and the Regional Director of the BIA, if the Tribe cannot be ascertained. A **copy** of the notice should be sent to the BIA Regional Director even when the identity of the child's parents, Indian custodian, and Tribes can be ascertained.¹⁷⁹

Notice must include identifying family information, procedural rights, Tribal rights to intervene or transfer, and contact information.

No hearing may be held until **at least 10 days** after receipt of notice, and the Tribe, parent, or custodian may request **20 additional days**.

Proof of notice must be filed with the court.

Failure to provide notice is grounds for invalidation under [25 U.S.C. § 1914](#). OICWA mirrors ICWA's notice requirements and extends notice to voluntary placements under 10 O.S. §40.4.

Once a deprived case is underway and the court later learns or has reason to know that the child is an "Indian child," ICWA's notice regime is immediately triggered and must be satisfied before further foster-care or TPR hearings proceed.

Accordingly, late discovery of Indian-child status does not excuse notice; rather, it requires prompt ICWA/OICWA notice mid-stream and, if necessary, continuances to honor the statutory 10-plus-20-day waiting periods before the court may proceed on foster-care or TPR matters.

Notice of Subsequent Hearings/Reviews When Tribe Actively Participating as a Party

Once a Tribe has been properly noticed, has responded, and is actively participating as a party, OICWA provides that if the Tribe (or its representative) is present when a subsequent hearing is set (and consents on the record to the date), separate mailed notice of that hearing is not required.

If the Tribe is not present when the subsequent review hearing is set, the State must send notice of that review hearing by regular first-class mail, and the court must have a certificate of mailing filed before the review. A Tribe's right to this review-hearing notice does not depend on intervention; even a non-intervening Tribe must receive this mailed notice.¹⁸⁰

Notice of Subsequent Hearings/Reviews When Tribe Chooses Not to Intervene

The Tribe's decision not to intervene does not waive the child's status or ICWA's application; it simply means the Tribe is choosing not to appear as a party. The Tribe retains the right to intervene "at any point in the proceeding," [25 U.S.C. § 1911\(c\)](#), and should continue to receive

¹⁷⁹ [25 C.F.R. §23.11](#)

¹⁸⁰ [10 O.S. §40.4\(B\)](#)

notice of significant hearings (especially any TPR or permanency hearings) by certified mail or other reliable written method, so that it can change its position and enter the case if it chooses.

Tribe Received Initial Notice but Never Responded

If proper ICWA notice was sent and the Tribe never responds, the court should not treat silence as a waiver of ICWA unless and until it has a clear basis to determine the child is **not** an “Indian child.”

The BIA Guidelines also instruct that agencies and courts must continue to send notice of subsequent major proceedings, particularly any later TPR, because a Tribe may elect to intervene at a later stage even if it stayed silent early in the case. In other words, non-response affects *participation*, not the court’s obligation to honor ICWA’s standards while Indian-child status remains unresolved or confirmed.

Notice to TPR to Tribes

ICWA treats a TPR hearing as its own covered “child-custody proceeding,” so even if the Tribe has already intervened, providing formal written notice when TPR is set is fully consistent with [25 U.S.C. § 1912\(a\)](#) and [25 C.F.R. §§ 23.111–112](#) (notice of foster-care and termination proceedings). The 2016 Guidelines also specifically highlight that agencies and courts should send notice of any subsequent TPR proceeding, even where earlier notices were sent or the Tribe has been relatively inactive. Again, OICWA requires certified-mail notice.¹⁸¹

Tribal Verification

The Tribe alone determines membership or eligibility. Tribes use their own membership criteria—often lineage-based, sometimes residency-based, occasionally blood-quantum-based.

The Tribe’s determination may be written in many forms. Any of the following satisfies ICWA:

- a letter from the enrollment/citizenship office,
- a letter from the Tribe’s ICWA program,
- a verification form,
- an email or official communication from the Tribe.

The Tribe may verify membership or verify “eligibility and biological parent is a member.

Either one makes the child an “Indian child” under [25 U.S.C. § 1903\(4\)](#).

No documentation from the family is legally required—only what the Tribe needs to make a determination. However, sufficient and accurate information is necessary for avoid delay and disruptions. Tribes commonly request:

¹⁸¹ [10 O.S. §40.4\(A\)](#)

- child’s full name, DOB, birthplace;
- parents’ and grandparents’ names (including maiden and former names, aliases), DOB, dates of death, enrollment numbers (if any);
- family tree information;
- any documents already available (but not required by ICWA).

Whatever the Tribe decides—membership, eligibility, or not eligible—is final and binding. ([25 C.F.R. § 23.108\(b\)](#)). State courts cannot question or override Tribal verification.

If Tribal Response is Delayed

If a Tribe’s response is delayed, the court should contact the B.I.A. for assistance in ensuring the notice was routed to the correct place.

If a Tribe does not reply after multiple requests for verification of citizenship or eligibility—and the agency has also sought assistance from the BIA—a court may, based on the information available, make a temporary determination about whether the child should be treated as an “Indian child” for purposes of the current child-custody proceeding, preserving all potential ICWA rights until the Tribe provides a membership or eligibility determination. This finding applies only to the use of ICWA in that proceeding and does not establish Tribal membership or eligibility for any federal benefit outside the case.

If new information becomes available later, the court must consider it and revise its determination if appropriate.¹⁸²

Tribal Intervention

Federal law expressly provides that, in any state-court proceeding for the foster-care placement of, or termination of parental rights to, an Indian child, “*the Indian custodian of the child and the Indian child’s Tribe shall have a right to intervene at any point in the proceeding.*”¹⁸³

Oklahoma applies this federal right through OICWA, which requires notice to the Tribe of involuntary Indian-child proceedings and advises the Tribe of its right of intervention.¹⁸⁴

Oklahoma appellate decisions recognize that this intervention right is mandatory, continuing, and not forfeited by delay, holding that a Tribe may intervene even at a late stage, including at or near disposition or trial, absent an express waiver.¹⁸⁵

¹⁸² [Guidelines for Implementing the Child Welfare Act, December 2016, page 22](#)

¹⁸³ [25 U.S.C. § 1911\(c\)](#)

¹⁸⁴ [10 O.S. § 40.4](#)

¹⁸⁵ See, e.g., [In re Guardianship of O.G.M.](#), 808 P.2d 684 (Okla. 1991) (reversing denial of Tribal intervention on eve of trial); [Cherokee Nation v. Nomura](#), 2007 OK 40, ¶¶ 12–13, 160 P.3d 967, 975 (linking the Tribe’s right to intervene “at any point in the proceeding” under 25 U.S.C. § 1911(c) to the need for notice); [In re S.J.W.](#), 2023 OK

The Tribe’s decision not to intervene does not diminish the court’s obligation to fully apply ICWA and OICWA once the child has been identified as an “Indian child.” Even where the Tribe has not formally intervened, the state court must still provide notice, require active efforts, obtain qualified expert witness testimony, apply the heightened evidentiary standards of 25 U.S.C. § 1912(e)–(f), and follow ICWA/OICWA placement preferences absent a supported finding of good cause to depart. The practical effect of non-intervention is thus limited to who appears and advocates; it does not relax the legal protections owed to the Indian child.

Even if it does not formally intervene, a Tribe may send letters confirming membership/eligibility, recommending placements, or designating QEWs. The court should treat those communications seriously even without a formal intervention.

Emergency Proceedings¹⁸⁶

Authorizing the Emergency Removal

ICWA’s emergency-removal provision allows temporary action only to prevent or eliminate “imminent physical damage or harm” to the child. “Imminent physical damage or harm” requires an immediate, serious threat—NOT general neglect, poverty, or chronic conditions.

Under ICWA, an emergency removal must be “narrowly tailored,” meaning it may address only the immediate threat of imminent physical damage or harm and must last only as long as that emergency exists. The court must find that no less-intrusive alternative would have protected the child, avoid making any long-term custody or placement decisions, and limit the order strictly to resolving the specific emergency.¹⁸⁷

Emergency custody must terminate as soon as the imminent harm ceases.

The emergency cannot continue merely because:

- DHS is still investigating,
- services are not arranged,
- parents need time to participate, or
- paperwork is incomplete.

The only lawful basis for continuation is: “the emergency necessitating the removal has not ended.”¹⁸⁸

49, ¶ 14 (quoting § 1911(c) and reaffirming ICWA’s dual-jurisdictional scheme for Indian child-custody proceedings).

¹⁸⁶ [25 U.S.C. § 1922](#)

¹⁸⁷ Consistent with [25 C.F.R. § 23.113\(b\)–\(c\)](#)

¹⁸⁸ [25 U.S.C. § 1922](#); [25 C.F.R. § 23.113\(b\)](#)

DHS Affidavit for Removal

A court order authorizing emergency removal of an Indian child under Section 1922 of ICWA must be accompanied by an affidavit reciting:

1. The names, Tribal affiliations, and addresses of the Indian child, the child's parents and Indian custodians;
2. A specific and detailed account of the circumstances that resulted in removal of the child by the agency (DHS); and
3. A statement of the actions that have been taken to assist the parent/custodian in safely having the child returned to their custody.

The 2016 BIA Regulations require the petition for emergency removal or its accompanying documents (DHS affidavit) to contain ten listed items of information.¹⁸⁹ Placing the additional information in the DHS affidavit would be prudent. The additional items to include in the affidavit or the petition for emergency order would include:

- The steps taken to provide notice to the parents, custodians, and Tribe of the emergency proceeding;
- Efforts to locate unknown parents including contacting the appropriate BIA Regional Office;
- The residence and the domicile of the child;
- The name of the Tribe if the residence or domicile is on a reservation (including trust land);
- A statement of the efforts to contact the Tribe when the Tribe exercises exclusive jurisdiction over the child residing or domiciled on its reservation; and
- A statement of the risk of imminent physical damage or harm to the child and evidence that the removal of the child continues to be necessary to prevent such imminent physical damage or harm to the child.

Emergency Custody Order

The Emergency Custody Order is valid for 30 days without qualified expert witness testimony.¹⁹⁰ For good and sufficient cause, the show cause order can be extended an additional sixty (60) days without expert witness testimony. The emergency show cause order expires, unless **clear and convincing** evidence is presented and supported by qualified expert witness testimony, showing that "custody of the child by the parent or Indian custodian is likely to result in serious

¹⁸⁹ [BIA Regulation §23.113\(d\)](#)

¹⁹⁰ [10 O.S. §40.5](#)

emotional or physical damage to the child.”¹⁹¹ Federal ICWA also requires this expert testimony before a foster care placement is ordered.¹⁹²

Termination of Emergency Custody

An emergency proceeding can be terminated by one or more of the following actions:

- Initiation of a child-custody proceeding subject to the provisions of ICWA¹⁹³;
- Transfer of the child to the jurisdiction of the appropriate Indian Tribe; or
- Restoring the child to the parent or Indian custodian.

Transition from Emergency to Ongoing Custody Proceedings

Termination of the emergency proceeding does not necessarily require an immediate change in the child's current placement. If it is determined that an Indian child cannot be safely returned to the parents or custodian, the next steps must involve either transferring the child to the jurisdiction of the appropriate Indian Tribe or having the State initiate a child-custody proceeding.

Under these circumstances, the child may remain in the same living arrangement. However, the legal authority for the child's placement will shift; it will no longer be governed by the emergency proceeding provisions set forth in Section 1922. Instead, the placement must either adhere to Tribal law—if jurisdiction is transferred to the Tribe—or comply with all relevant ICWA statutory and regulatory requirements applicable to a formal child-custody proceeding, should the State retain jurisdiction.

Jurisdiction

An Indian Tribe has exclusive jurisdiction over child custody proceedings involving an Indian child residing or domiciled within the reservation of the Tribe.¹⁹⁴

The domicile for a parent is established by the individual's physical presence in a location that they consider to be their home. This means it is the person's true, fixed, principal, and permanent residence—the place to which they intend to return whenever they are away.¹⁹⁵

When determining the domicile of a child, the regulations distinguish between situations in which the parents are married and when they are not. If the child's parents are married, the child's

¹⁹¹ *Id.*

¹⁹² [25 U.S.C. §1912\(e\)](#)

¹⁹³ Filing deprived petition and setting adjudication date within 30 days of the order for receipt of qualified expert witness testimony.

¹⁹⁴ [25 U.S.C. §1911\(a\)](#)

¹⁹⁵ [25 CFR §23.2](#); [81 Fed. Reg. 38778, 38865](#)

domicile is the same as that of the parents. However, if the parents are not married, the child's domicile is considered to be that of the custodial parent.¹⁹⁶

In the case of an Indian child *not domiciled or residing* within the reservation of the child's Tribe, the state and the Tribe share concurrent jurisdiction.¹⁹⁷

A ward of a Tribal Court remains under the exclusive jurisdiction of that Tribal Court, regardless of the residence or domicile of the child.¹⁹⁸

Impact of *In the Matter of S.J.W.*

This decision¹⁹⁹ clarifies how ICWA jurisdictional provisions apply in Oklahoma post-*McGirt v. Oklahoma* (2020)²⁰⁰ and *Oklahoma v. Castro-Huerta* (2022)²⁰¹ terrain.

The Court held that the state and Tribe share concurrent jurisdiction under ICWA when the child is **not** domiciled or residing within their own Tribe's reservation. The case also draws attention to the distinction between subject-matter jurisdiction (which state courts retain under Oklahoma Constitution) and the notion of "jurisdiction" under ICWA (which addresses territorial/sovereign jurisdiction).

The Court reasoned that the key phrase "resides or is domiciled within the reservation of such Tribe" refers to the child's Tribe (in this case, Creek). Because the child is a Creek member but does **not** live on the Creek Nation reservation (i.e., resided on the Chickasaw reservation), §1911(a) does **not** apply. Rather §1911(b) does apply, giving concurrent jurisdiction to the state and Tribe.

Tribal/State Cooperative Agreements

25 U.S.C. §1919²⁰² allows Tribes and states to form agreements on the care and jurisdiction of Indian children. In Oklahoma, these agreements have grown in significance after cases like *McGirt v. Oklahoma* reaffirmed several Tribal reservations. While ICWA defines federal standards for jurisdiction, Tribal–State agreements detail practical arrangements such as applying exclusive or concurrent jurisdiction, case transfers, and roles in child-welfare proceedings. These

¹⁹⁶ *Id.*

¹⁹⁷ [25 U.S.C. §1911\(b\)](#)

¹⁹⁸ [25 U.S.C. §1911\(a\)](#)

¹⁹⁹ *In the Matter of S.J.W.*, 535 P.3d 1235 (Okla. 2023)

²⁰⁰ *McGirt v. Oklahoma*, 591 U.S. 894 (2020)

²⁰¹ *Oklahoma v. Castro-Huerta*, 597 U.S. 629 (2022)

²⁰² *Also see* [10 O.S. §40.7](#)

agreements support ICWA, helping coordinate authority and promote culturally appropriate services while upholding Tribal sovereignty.²⁰³

Transfer of Cases from State Court to Tribal Court

Transfers of child-custody matters from Oklahoma district court to tribal court occur under three separate but related legal authorities:

1. Concurrent jurisdiction under §1911(b),
2. Exclusive tribal jurisdiction under §1911(a), and
3. Tribal–State agreements under §1919, which Oklahoma courts now actively enforce.

These authorities operate differently and understanding their interaction is critical for judges and practitioners.

Concurrent Jurisdiction Under ICWA Section 1911(b)

When an Indian child does not reside or is not domiciled within *his or her own Tribe's* reservation, the State and Tribal Courts share concurrent jurisdiction.

In such cases any party, the child's Tribe, or the child's custodian may petition the state court to transfer the proceeding to Tribal Court.

Transfer must be granted **absent good cause to the contrary, unless** either parent objects.

Permissible “good cause” usually involves:

- Lack of Tribal Court.
- Parent objects to transfer.
 - A single parent's objection bars transfer absolutely.
 - No further good-cause analysis is needed.
- Tribe declines jurisdiction therefore requiring the state to retain jurisdiction.
- Tribe's unreasonable delay after receiving prompt notice + advanced stage of the case.²⁰⁴
- Extraordinary circumstances where transferring would cause severe prejudice and the Tribe is responsible for the delay.²⁰⁵ Examples (rare and fact-specific):
 - child has been in a long-term placement for years *and* would experience significant harm if the matter began anew.
 - witnesses or records essential to safety determinations are no longer available due to passage of time.

²⁰³ See *In the Matter of the Guardianship of K.D.B.*, 564 P.3d 83 (Okla 2025) (affirmed the district court's decision to transfer the guardianship proceeding to the Cherokee Nation District Court mandated by an Intergovernmental Agreement between the State of Oklahoma and the Cherokee Nation).

²⁰⁴ [25 C.F.R. § 23.118\(c\)\(4\)](#)

²⁰⁵ These situations only come into play if the Tribe is responsible for the delay. If the **State** caused the delay (by late notice), these cannot be considered.

Good-cause factors **must not** include²⁰⁶:

- Perception that Tribal Court is inadequate or unfamiliar. The state court cannot make comparative judgments about the Tribal Court’s sophistication, caseload, or capability.
- Parents or children having developed strong ties to foster parents, CASA, social workers, etc. This is prohibited because such ties form after state involvement, often during periods when ICWA notice was delayed.
- Inconvenience, travel, hardship, or witness location. Geography cannot justify denial.
- Case has proceeded far in state court *if the Tribe acted promptly*.²⁰⁷ If the Tribe requested transfer promptly *after receiving valid ICWA notice*, the advanced stage of the case may not be used to deny transfer.
- Socioeconomic conditions or perceived tribal resources. This is explicitly prohibited.

Exclusive Tribal Jurisdiction Under ICWA § 1911(a)

If the Indian child resides or is domiciled on the reservation of the child’s Tribe, or is a ward of the Tribal Court, then:

- State court lacks jurisdiction.
- No transfer analysis is needed because the State Court must dismiss the matter.

Transfers Under Tribal–State Agreements (25 U.S.C. § 1919)

Tribal-State agreements operate in addition to federal ICWA jurisdictional rules. They may require transfer even when ICWA §1911(b) might permit state retention (e.g., if parents object).

Judges must identify:

1. whether the child is domiciled/residing within that Tribe’s reservation, and
2. whether an applicable agreement mandates transfer.

Mechanics of Transferring a Case to Tribal Court

Transferring a child-custody proceeding from Oklahoma district court to Tribal Court involves six procedural steps—some derived directly from ICWA²⁰⁸, others from federal regulations²⁰⁹, and others from Tribal–state jurisdictional agreements when applicable.

STEP 1: Courts should first determine:

- If the child is an “Indian child”.
- The Tribe(s) required to receive notice.

²⁰⁶ [25 C.F.R. §23.118\(c\)](#)

²⁰⁷ i.e., delay by the State in providing ICWA notice cannot be used as a basis to deny transfer.

²⁰⁸ [25 U.S.C. §1911\(b\)](#)

²⁰⁹ [25 C.F.R. Part 23](#)

- If the child resides or is domiciled within the reservation of the child's Tribe.
- Is there a Tribal-State agreement governing the case.

STEP 2: The state court must provide:

- Written and on-the-record notice to the parents, Indian custodian (if any), and the Tribe(s) of their right to request transfer to tribal court.
- Notice must be active (not passive).
- ICWA requires notice as soon as the case begins.

STEP 3: Motion or Petition to Transfer may be filed by:

- A parent;
- The child's Tribe;
- The child's Indian custodian;
- In some Tribal-State agreements, the state itself (depending on the terms).

There is no statutory timeline, but transfer may be requested at any stage, including TPR, unless:

- the Tribal Court declines jurisdiction, or
- a parent objects.
 - Under § 1911(b), either parent's objection bars transfer.
 - But under a Tribal-State agreement, parent objection may not matter if the agreement mandates transfer.

The motion should include:

- Identification of Tribe and membership status;
- Domicile/residence facts;
- Whether a Tribal-State agreement governs;
- Whether parties object; and
- Whether the Tribe has a functioning court (required only for § 1911(b), not under an agreement that mandates transfer).

STEP 4: When jurisdiction is concurrent or when the agreement requires transfer, the court must hold a transfer hearing unless:

- no party objects, and
- Tribe consents, and
- the agreement dictates automatic transfer.²¹⁰

Good-cause analysis applies only if:

- § 1911(b) is the basis of transfer, and
- There is no Tribal-State agreement requiring transfer, and

²¹⁰ *In the Matter of the Guardianship of K.D.B.*, 564 P.3d 83 (Okla. 2025)

- Neither parent objects to the transfer, or
- A party opposes transfer and asserts “good cause” to keep jurisdiction.

The burden of proof is clear and convincing evidence and the burden is on the party objecting to the transfer.²¹¹

STEP 5: If the transfer is granted, the Oklahoma district court must enter a **written order** that includes:

1. Findings that the child is an “Indian child.”
2. Findings regarding domicile/residence or identification of the governing agreement.
3. Findings regarding notice to the Tribe(s).
4. Whether any party objected.
5. Whether ICWA § 1911(b) or a Tribal–State agreement is the basis for transfer.
6. Formal transfer of “jurisdiction and all related case records” to Tribal Court.
7. Direction to the clerk to transmit documents.

STEP 6: Transmission of the Record and Acceptance

Once the order is signed the Clerk’s duties are to send certified copies of:

- Petition(s)
- All orders
- Transcript(s) if available
- Exhibits
- ICWA notices and proofs
- Service returns
- Placement information
- Any court-ordered evaluations

STEP 7: Tribal Court’s Acceptance

- The Tribal Court must formally accept the case.
- Some Tribes issue a written order of acceptance; others notify by letter.

Once the Tribal Court accepts, Oklahoma district court loses jurisdiction; however, the state case remains open, but no further action is taken.

NOTE: In re M.S. & K.S., 237 P.3d 161 (Okla. 2010) is a pivotal Oklahoma Supreme Court decision addressing the right of a Tribe to transfer a state child-custody proceeding under ICWA. The case involved two children, M.S. and K.S., both enrolled members of the Puyallup Tribe of Indians (the “Tribe”). Eventually, the parents’ rights were terminated, and the children remained in foster care/homes out-of-state (the record notes placement with a great aunt in Florida). The

²¹¹ *In re M.S. & K.S.*, 237 P.3d 161 (Okla. 2010)

Tribe filed a motion to transfer the case from the Oklahoma state court to the Tribal Court of the Puyallup Tribe under ICWA's transfer provision (§1911(b)). The trial court denied the transfer motion, finding that "good cause" existed because the State had exercised jurisdiction for a lengthy period prior to the Tribe's motion, the children had developed relationships with foster parents, CASA, social workers, and medical providers in Oklahoma, and most relevant evidence was located in Oklahoma. COCA agreed with the trial court's denial of transfer.

The Oklahoma Supreme Court **reversed** the trial court's denial of the transfer request, as well as COCA's affirmation the denial, and remanded for further proceedings.

The Court held it was legal and timely for a Tribe to request transfer after parental rights have been terminated.²¹² The Tribe had supported the reunification efforts and there was an agreement with the State that should TPR occur the children would be placed with relatives. Because of this agreement, the Tribe waited to request transfer. The trial court delayed 2 months in filing the TPR order, and the Tribe was precluded from participating in foster parent's objection to moving the children (the trial court sustained their objection). The Court attributed these delays to the State – not the Tribe.²¹³ The Tribe had no choice but to file its request to transfer the case in light of the children remaining in a placement contrary to the agreement previously entered.

Further, the trial court improperly based its denial on factors that were not valid unless the Tribe failed to act promptly. "Good cause" must be evaluated under the proper federal standard, i.e.:

- Whether the Tribe acted promptly after receiving notice,
- Whether the reasons given were consistent with BIA Guidelines, and
- Whether the objecting parties met the burden of proof.

The Court announced that the party opposing transfer must meet a clear and convincing burden to show "good cause" not to transfer.

Based on the facts of the case, the Court determined that "...[T]he finding of "good cause" not to transfer was against the clear and convincing evidence in this case. The factual circumstances in this case should have worked in favor of the Tribe, not against it. COCA's holding that transfer was not allowed under §1911(b), as a matter of law, violated the purpose and intent of the ICWA to preserve the bond between Indian Tribe and child. Construing the statute in the manner it did, COCA effectively made the Tribe's protections under the ICWA unavailable to it."²¹⁴

Parent's and Child's Absolute Right to an Attorney

ICWA requires the court to appoint counsel for an indigent parent or child custodian in any child-custody proceeding covered by the Act, ensuring the parent can meaningfully participate in

²¹² The [2016 ICWA Guidelines, page 50](#) notes that "advanced state" refers to the specific proceeding, not the case as a whole. This interpretation permits the Tribe to request transfer at TPR stage or thereafter.

²¹³ Another unfortunate delay was the untimely death of the great-aunt considered by the Tribe for placement.

²¹⁴ [In re M.S. & K.S.](#), 237 P.3d 161, ¶36 (Okla. 2010)

a case involving foster-care placement or termination of parental rights. Under 25 U.S.C. § 1912(b), the court must provide counsel once indigency is established and may also appoint counsel for the child when necessary. This guaranteed representation is a core ICWA protection designed to safeguard due process and ensure compliance with ICWA’s heightened evidentiary standards.

Oklahoma’s Supreme Court held that under ICWA §1912(b), once an indigent parent requests counsel, the court must appoint counsel **at all stages** of the deprived-child proceeding—not just at trial or termination. The case involved a trial court discharging counsel after disposition and before later stages of the case, which was held to be reversible error.²¹⁵

Qualified Expert Witness Testimony and Burdens of Proof

ICWA requires testimony from a Qualified Expert Witness (“QEW”) at both the foster-care and termination stages to ensure that the court does not remove an Indian child or terminate parental rights based on cultural bias or misunderstanding. For foster-care placement, §1912(e) mandates clear and convincing evidence, including QEW testimony, that continued custody is likely to result in serious emotional or physical damage. For termination, §1912(f) requires proof beyond a reasonable doubt, supported by QEW testimony addressing the same danger standard at a higher level of certainty. In both contexts, the QEW provides independent, culturally informed, and case-specific evidence necessary to satisfy ICWA’s heightened substantive protections.

Role of the QEW in Foster Care Placement

The QEW's testimony must provide **clear and convincing evidence** that the child's continued custody with the parent or Indian custodian would **likely cause serious emotional or physical harm**.²¹⁶ This assessment must consider the cultural standards of the child's Tribe, not just the dominant culture. The QEW assists the court in understanding Tribal family structures and child-rearing customs, assessing genuine risks versus cultural differences, and evaluating the effectiveness of "active efforts" to keep the family together within a cultural context.

Role of QEW in TPR

At the termination of parental rights stage, the expectations for the QEW’s testimony are significantly heightened. The expert must present evidence that not only identifies risk but also demonstrates—**beyond a reasonable doubt**—that returning the child to the parent would expose the child to such a substantial degree of danger that termination of parental rights becomes necessary. This testimony must be detailed, conclusive, and culturally informed, showing that the risk is ongoing and cannot be mitigated even with available tribal supports. The QEW must

²¹⁵ *In the Matter of I.T.S., I.M.S. and R.E.S.*, 488 P.3d 1268 (Okla. 2021)

²¹⁶ 25 U.S.C. §1912(e)

explain how the parent's conduct violates Tribal safety norms and why long-term harm to the child is likely, thereby meeting the elevated legal standard required at this stage.

Who Qualifies as a QEW?

While ICWA doesn't have a strict definition, the Federal Regulations prioritize individuals with knowledge of Tribal culture.²¹⁷ Potential QEWs include:

1. A member of the child's Tribe recognized as knowledgeable in Tribal customs

Examples:

- Tribal child-welfare worker
- Tribal ICWA representative
- Tribal elder or cultural expert
- Tribal social services program specialist
- A cultural authority recognized by the Tribe

2. A layperson with *substantial experience* in Indian child and family services

Examples:

- Tribal or BIA caseworkers
- Experienced ICWA coordinators
- Tribal social workers
- Former Tribal foster-care or preservation staff

3. A professional with substantial education & experience in the area of the child's needs IF they also understand tribal cultural child-rearing practices.

Examples:

- Psychologists with ICWA experience
- Licensed counselors or therapists familiar with Tribal norms
- Social workers with extensive Indian child-welfare experience
- Pediatricians specializing in trauma and Tribal-family contexts

The Tribe may formally designate an individual as their QEW — and Oklahoma courts generally accept this designation unless the person lacks basic knowledge of the child's Tribe.

The only other BIA requirement is that the expert witness should have more qualifications than an average social worker, whether the social worker is employed by the Tribe or employed by the State.

²¹⁷ [25 C.F.R. § 23.122\(a\)](#); also see [2016 BIA Guidelines, Section I.7](#)

The DHS social worker regularly assigned to the Indian child may **not** serve as a qualified expert witness in child-custody proceedings concerning the child.²¹⁸

ICWA and the Federal Regulations do not limit the number of QEW that may testify. The court may accept expert testimony from any number of witnesses.

It is also recommended by the Guidelines that the QEW be familiar with the particular child and family in order to provide a more complete picture to the court.

Cultural Testimony

Cultural testimony shapes the ICWA danger analysis by helping the court distinguish true risk from culturally normative parenting practices. A Qualified Expert Witness explains the Tribe's child-rearing standards so the judge can determine whether the parent's conduct represents actual "serious emotional or physical damage" under § 1912(e), rather than a misunderstanding of Tribal customs, extended-family caregiving, or culturally rooted discipline. This ensures that foster-care placement is based on real danger—not cultural bias or misinterpretation of Indigenous parenting norms.

Many behaviors that appear unconventional to non-Native practitioners are normal within the child's Tribe and do not constitute danger. Multigenerational living arrangements, shared caregiving among extended kin, sibling supervision in community settings, communal sleeping arrangements, traditional healing practices, and culturally rooted discipline methods are customary in many Tribal communities. Under ICWA, these culturally normative practices cannot be treated as neglect or risk of harm; they reflect the Tribe's social standards and must not be misinterpreted as grounds for foster-care placement.

ICWA always requires QEW testimony, but the cultural component of the testimony may be unnecessary if the alleged or proven harm is the type of conduct that every culture, including the child's Tribe, recognizes as severely dangerous, e.g., sexual abuse, severe physical abuse or torture.²¹⁹

Serious Emotional or Physical Harm

QEW testimony about likelihood of serious emotional or physical harm must be precise, culturally informed, and directly tied to the ICWA standard.

QEW testimony regarding danger must be specific, fact-based, and grounded in both professional expertise and Tribal cultural knowledge. The expert must clearly articulate *why* the parent's current conduct—when evaluated in the context of the Tribe's child-rearing norms—creates a real and identifiable likelihood of serious emotional or physical damage to the child. General statements about risk, unsupported clinical impressions, or testimony that merely echoes

²¹⁸ [25 C.F.R. §23.122\(c\)](#)

²¹⁹ [2016 BIA Guidelines, G.2](#)

the DHS caseworker’s concerns are insufficient. The QEW must identify concrete facts, describe how those facts would be perceived within the Tribe, explain why the behavior exceeds acceptable cultural variation, and connect those facts to a clear causal link showing the child faces serious danger if returned home.

A Tribal worker who lacks expertise in the specific issues creating alleged danger may testify as the cultural expert under 25 C.F.R. § 23.122(a)(1), but the court may (and often must) receive additional qualified expert testimony from a professional trained in the relevant risk areas—such as domestic violence, addiction, child psychology, or medical harm—to satisfy ICWA’s requirement that continued custody is likely to result in serious emotional or physical damage.

A QEW may rely on hearsay evidence—including medical records, DHS case files, treatment reports, or statements from other professionals—just as any expert may under [12 O.S. § 2703](#). However, the QEW must provide an independent, culturally informed analysis and cannot merely repeat the DHS worker’s statements. Their testimony must show how the hearsay materials support an informed opinion about whether continued custody is likely to result in serious emotional or physical harm under ICWA §1912(e).

Procedural Issues Relating to QEW Testimony

- Cross-examination of a QEW is fully permitted and required under ICWA and Oklahoma law.
- A parent may obtain a separate QEW to challenge the State’s or the Tribe’s expert, and courts routinely allow multiple experts where cultural and clinical expertise are held by different individuals.
 - If the parent is indigent, the court may authorize State funds to pay for the parent’s QEW as a necessary cost of representation under 25 U.S.C. § 1912(b).²²⁰ If not indigent, the parent pays for the expert. Tribal QEWs are typically funded by the Tribe.
- Telephonic or video QEW testimony may be necessary when distance, cost, scheduling constraints, or the witness’s tribal and professional duties make in-person appearance impractical while timely ICWA compliance is still required.
- Under ICWA, the statutory requirement is for “testimony of qualified expert witnesses” supporting the danger finding at both foster-care placement and termination. That language presumes a witness who is sworn and subject to cross-examination, even if appearing by telephone or video.

²²⁰ Other state courts interpret “services” as **including what counsel reasonably needs** to provide effective assistance. This is not a statutory entitlement. It is a due-process-based judicial practice, not a right created by ICWA.

- An affidavit or written report, standing alone, does not satisfy that expectation because it deprives the court (and the record) of adversarial testing of the expert’s qualifications, cultural foundation, and danger analysis.

Parent’s Voluntary Consent to Termination of Parental Rights

Voluntary termination of parental rights to an Indian child is governed by [25 U.S.C. § 1913](#) and the binding federal regulations found at [25 C.F.R. §§ 23.124–23.128](#), which impose requirements more stringent than state law. A voluntary consent to termination is valid only if all ICWA requirements are met, and any deviation renders the consent invalid. ICWA preempts conflicting state procedures.

Under [25 U.S.C. § 1913\(a\)](#), a parent may not consent to termination until at least ten (10) days after the child’s birth. Any earlier consent is void. The consent must be in writing, must be executed before a judge, and the judge must certify on the record that the parent fully understood the meaning and consequences of the termination. During the hearing, the court must personally question the parent and ensure that the consent is knowing, voluntary, and not the product of threats, coercion, or promises. The consent document must identify the child, the parent, the Tribe, and the proposed placement, and must state that the parent was advised of the right to withdraw consent.²²¹

Under [25 U.S.C. § 1913\(c\)](#), a parent may withdraw consent to termination “*for any reason*” at any time before the court enters an order terminating parental rights. Withdrawal of consent invalidates the voluntary termination and restores the parent’s legal parental rights, but it does *not* require the child to be physically returned to the parent if there is any independent legal basis for continued State custody—such as an existing deprived adjudication, safety findings, or a valid removal order under state law. ICWA does not compel the return of a child to an unsafe environment, and federal regulations recognize that state child-protection laws continue to operate alongside ICWA.

After entry of a termination order or an adoption, a parent may withdraw consent on grounds of fraud or duress, and an adoption may be vacated within two years if the court finds that consent was obtained through fraud, duress, or violation of ICWA’s procedural requirements.²²²

Courts must provide the Tribe with notice and an opportunity to participate, conduct a full judicial colloquy, and ensure voluntariness. If the parent withdraws consent prior to the TPR order, the voluntary relinquishment becomes void, the parent’s rights are restored, and the case proceeds under the existing deprived-case framework.

²²¹ See [25 U.S.C. § 1913\(a\)](#); [25 C.F.R. §§ 23.124–23.125](#)

²²² See [25 U.S.C. § 1913\(d\)](#)

Placement Priorities Under ICWA and OICWA

ICWA and OICWA require courts to follow mandatory placement priorities for Indian children in all foster-care, preadoptive, and adoptive placements.²²³ In the absence of good cause, preference must be given to the child's extended family, the child's Tribe, or other Indian families, and to any alternative order of preferences formally adopted by the Tribe.

Foster-care and Pre-adoptive Placements

ICWA requires that an Indian child be placed in the *least restrictive setting* that most approximates a family, can meet the child's special needs, and is in reasonable proximity to the child's home, extended family, or siblings.²²⁴

In the absence of good cause to the contrary, preference must be given, in descending order, to placement with:

- (1) a member of the Indian child's extended family;
- (2) a foster home licensed, approved, or specified by the Indian child's Tribe;
- (3) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (4) an institution for children approved by an Indian Tribe or operated by an Indian organization that has a program suitable to meet the child's needs.²²⁵

Adoptive Placement Priorities

In any adoptive placement of an Indian child under state law, ICWA requires that, in the absence of good cause to the contrary, preference be given, in descending order, to placement with:

- (1) a member of the child's extended family;
- (2) other members of the Indian child's Tribe; or
- (3) other Indian families.²²⁶

The court must also consider, where appropriate, the preference of the Indian child or the parent, although a consenting parent's desire for anonymity must be given due weight.²²⁷

Under OICWA, a parent's request for anonymity in a consent (typically in a voluntary adoption) may be considered in applying ICWA/OICWA placement preferences, **but only after** the child's Tribe has been given formal notice and twenty (20) days to intervene and request a hearing to

²²³ [25 U.S.C. §1915\(a\)–\(c\)](#); [10 O.S. §40.6](#)

²²⁴ [25 U.S.C. § 1915\(b\)](#); [25 C.F.R. § 23.131\(a\)](#)

²²⁵ [25 U.S.C. § 1915\(b\)](#); [25 C.F.R. § 23.131\(b\)](#)

²²⁶ [25 U.S.C. § 1915\(a\)](#); [25 C.F.R. § 23.130\(a\)](#)

²²⁷ [25 U.S.C. § 1915\(c\)](#); [25 C.F.R. §§ 23.130\(d\), 23.132\(c\)](#)

identify Tribal or Indian placements that could protect the parent’s confidentiality. During that hearing, of which the consenting parent must also receive notice, the court considers any such proposed placements; only then may the court “give weight” to the parent’s desire for anonymity in deciding whether and how to apply the statutory placement preferences.²²⁸

Tribal Reordering of Preferences

ICWA expressly authorizes a child’s Tribe, by resolution, to establish a *different order* of placement preference for foster-care, preadoptive, and adoptive placements; if such a resolution exists, the Tribal order governs so long as the placement remains the least restrictive setting appropriate to the child’s needs.²²⁹

“Good Cause” to Deviate from Placement Preferences

“Good cause” is a narrow exception that permits a court to depart from the federal ICWA placement preferences in 25 U.S.C. § 1915 when the party seeking the deviation meets its burden by clear and convincing evidence.

The analysis must be case-specific, must be made on the record, and cannot rely on factors federal law has barred.

Under 25 C.F.R. § 23.132(c), the court may find good cause to deviate if one or more of the following are established by **clear and convincing evidence**:

1. The parent’s request²³⁰
 - One or both biological parents may request a different placement.
 - The court must ensure the parent’s request is informed, voluntary, and free from coercion.
 - Parent must attest they reviewed ICWA-compliant placement options.
2. The request of the Indian child
 - Child must be of sufficient age and capacity to understand the placement decision.
3. The presence of a sibling attachment that can be maintained only through a particular placement
 - Applies when maintaining sibling unity requires the deviation.
4. The child’s extraordinary physical or emotional needs
 - Must be specific, documented, specialized, and beyond ordinary needs.

²²⁸ [10 O.S. §40.6](#)

²²⁹ [25 U.S.C. § 1915\(c\)](#); 25 C.F.R. §§ [23.130\(b\)](#), [23.131\(c\)](#)

²³⁰ [In re M.K.T.](#), 368 P.3d 771, ¶55 (Okla. 2016) “Parental preference is one factor the trial court considers, but that preference does not control the decision made by the trial court.

- Must be supported by a qualified expert witness (QEW) or other professional expertise.

Sufficient examples:

- Severe medical fragility requiring highly specialized foster home
- Acute psychiatric needs requiring a treatment setting not available within preference
- Significant disability requiring a particular trained caregiver

Not sufficient examples:

- Generalized statements of bonding
- “The child is doing well in current placement”
- Typical behavioral/developmental issues

5. The unavailability of suitable placements after a diligent search

- The search must be thorough, documented, and culturally appropriate.
- All ICWA-compliant options must be explored in collaboration with the Tribe.

Under [25 C.F.R. §23.132\(d\) & \(e\)](#) the following are expressly prohibited as good cause:

1. Ordinary bonding or attachment caused by non-ICWA-compliant placement

States cannot rely on:

- child’s attachment to current foster home
- time spent in a non-preferred placement
- child’s lack of prior relationship with extended family

when the State’s own failure to comply with ICWA created the circumstances.

2. Socioeconomic comparison

Homes cannot be compared based on:

- income
- housing
- neighborhood
- perceived “quality of life” differences

The party urging deviation must prove good cause by **clear and convincing evidence**.²³¹

Note: *In re M.K.T.* is a leading Oklahoma Supreme Court decision interpreting ICWA “good cause” standards, holding that clear and convincing evidence supported deviation from ICWA’s placement preferences where expert testimony showed the child’s deep emotional attachment to

²³¹ [In re M.K.T.](#), 368 P.3d 771 (Okla. 2016)

her non-ICWA foster caregiver was essential to her healthy development and moving her would preclude timely formation of a normal attachment to the proposed ICWA-preferred placement.

The case centers on S.A.W., a Cherokee child in foster care with a non-ICWA-compliant foster mother. About a year after the State took custody, the Cherokee Nation moved for an ICWA-compliant placement with a Cherokee-approved family who hoped to adopt. The parents' rights had not yet been terminated. The State, foster mother, and both biological parents opposed the move and asked the court to find good cause not to follow the ICWA placement preferences. The trial court granted the Tribe's motion and ordered a transition to the ICWA-preferred home. On appeal, the Oklahoma Supreme Court reversed and held that good cause existed to keep the child with the non-ICWA foster mother based on the child's emotional needs and attachment.

The Court noted that although the appellants argued for best-interests analysis for a finding of "good cause", an ICWA-compliant placement preference is presumed to be in a child's best interests. The appropriate consideration for placement deviation, based on the evidence presented in the trial court, is the ground of "extraordinary physical or emotional needs of the child" as established by the testimony of a qualified expert witness. The child's therapist testified that removal would likely be "another trauma," and that given multiple prior traumas this child would "have difficulty attaching" to a new family. The Court interpreted this as evidence of a serious emotional need, not just ordinary bonding.²³²

Other facts that influenced the Court's decision were:

- Despite that 2½ years had passed after removal there was still no available ICWA-compliant family, pointing out that the Tribe's efforts must be consistent with timely permanency.
- The initially selected Cherokee family wanted the child only if adoption would follow, and adoption was not yet legally possible as termination had not occurred.
- By the time of the appeal, the Cherokee-preferred placement was not definitively available as they wanted a guaranteed path to adoption before they would confirm placement. The instability and fading viability of the preferred home weighed heavily in the Court's analysis.
- The child viewed the home as her "safe" and stable environment.
- The Tribe's preferred placement was not timely identified, and this delay contributed to the child's deep reliance on the foster mother as her primary caregiver.

Interestingly, although the Court did not specifically decide the interplay between ICWA's and ASFA's intent and mandatory provisions, it expressly invoked federal ASFA policy:

- Children are entitled to **timely permanency**,

²³² Id., ¶72 "In the case before us today, there was no evidence... that the child was emotionally disturbed as in the Alaska opinion. But there was a showing that the child's attachment to her foster mother was of such a nature that it precluded the possibility of a normal and timely emotional attachment to the proposed ICWA-compliant family who is apparently no longer being considered for placement."

- The system must avoid “foster care drift,”
- The child’s attachment to her caregiver was vital in achieving stable permanency.

This assisted the Court to justify deviation even though ICWA preferences normally have priority.

Active Efforts

Among ICWA’s core requirements is “active efforts” before foster-care placement or termination of parental rights.

“Any party seeking to effect a foster care placement or termination of parental rights of an Indian child must show that *active efforts* have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that those efforts were unsuccessful.”²³³

“Active efforts” means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with the family; when an agency is involved, it must assist the parent/custodian through the case plan and help access or develop resources to meet it.²³⁴

Active efforts apply to every foster-care placement and every termination of parental rights, and because the requirement is mandatory, neither action may proceed without a documented finding—on the record—that active efforts were made before the foster placement or the TPR.

In ICWA cases, the burden of proof for “active efforts” rests entirely on the party seeking foster-care placement or termination of parental rights—almost always the State—and must be established by clear and convincing evidence.²³⁵

The responsibility to provide active efforts likewise falls on the State child-welfare agency, not the Tribe; the Tribe may assist but has no legal obligation to supply or fund services.

Active efforts must be determined by the court at every critical stage of the deprived case: at the time of any foster-care placement, at each review and permanency hearing while the child remains in care, immediately after an emergency removal once safety permits, and again before the court may proceed to termination of parental rights. Because active efforts are a mandatory legal prerequisite under 25 U.S.C. § 1912(d) and must be shown by clear and convincing evidence under [25 C.F.R. § 23.121\(b\)](#), the judge—not the jury—must make a supported, on-the-record active-efforts finding before a TPR jury trial can even be submitted. A termination proceeding cannot lawfully move forward unless the court first determines that the State provided active, affirmative, and culturally appropriate remedial services and that those efforts were unsuccessful.

²³³ [25 U.S.C. § 1912\(d\)](#); [25 C.F.R. § 23.2](#),

²³⁴ [25 C.F.R. § 23.2](#)

²³⁵ [25 U.S.C. § 1912\(d\)](#); [25 C.F.R. § 23.121\(b\)](#)

What Constitutes Active Efforts

*In re J.S. & M.C.*²³⁶ is an Oklahoma Court of Civil Appeals decision clarifying the meaning of “active efforts” under ICWA, famously explaining that active efforts require caseworkers to “lead the horse to water,” not merely point “in the direction” of the necessary services.

The Federal Regulations²³⁷ sets out what active efforts should minimally include and the BIA Guidelines expand those examples, clarify expectations, and emphasize hands-on, culturally grounded, and trauma-informed assistance involving both the family and the Tribe.²³⁸

Active Efforts Examples: Regulations vs Guideline

Regulations

Help parents identify and access services

Conduct family assessments

Assist with services (transportation, scheduling)

Invite Tribe to participate

Consult with Tribe for culturally appropriate services

Support visitation

Guidelines

Adds financial assistance and hands-on help completing tasks

Adds trauma-informed assessment considerations

Adds in-home services and intensive caseworker involvement

Adds family-engagement meetings and deeper collaboration

Adds use of Tribal cultural services directly identified by Tribe

Adds adjusting visitation plans and providing coaching

²³⁶ [*In re J.S. & M.C.*, 177 P.3d 590 \(Ok Civ App 2008\)](#)

²³⁷ [25 C.F.R. § 23.2](#)

²³⁸ [2016 BIA ICWA Guidelines, §E](#)

Monitor progress; modify plan	Adds expectations to remove barriers and re-engage parent
Search for extended family	Adds comprehensive, early family-finding and sibling placement efforts
Offer community-based services	Adds trauma-informed and culturally grounded services

Invalidation of State Court Proceedings Under ICWA

Under ICWA, certain state child custody orders may be invalidated when federal protections have been violated. Section 1914 authorizes the Indian child, the parent or Indian custodian from whose custody the child was removed, or the child’s Tribe to petition any court of competent jurisdiction to invalidate a **foster-care placement** or **termination-of-parental-rights** action upon a showing that the proceeding violated any provision of 25 U.S.C. §§ 1911, 1912, or 1913. The implementing regulation clarifies that the petitioner need not demonstrate a violation of that particular petitioner’s own rights, and that if a violation is proved, the court must determine whether it is appropriate to invalidate the state-court action in light of the circumstances of the case.²³⁹

Examples of ICWA Violations that May Support Invalidation

- **Jurisdiction and transfer errors (25 U.S.C. § 1911).**
 - State court exercised jurisdiction despite the Tribe’s **exclusive jurisdiction** over a reservation-domiciled Indian child.
 - Failure to honor a **proper transfer request** to Tribal Court absent good cause, parental objection, or Tribal declination.
 - Failure to permit the **Tribe to intervene** at any point in the foster-care or TPR proceeding.
- **Notice and participation defects (25 U.S.C. § 1912(a); § 1911(c)).**
 - Lack of proper **ICWA notice** to the parent/Indian custodian and the Tribe by registered mail, return receipt requested, before a foster-care or TPR hearing.
 - Proceeding to foster-care placement or TPR without affording the Tribe a meaningful opportunity to participate.

²³⁹ See [25 U.S.C. § 1914](#); [25 C.F.R. § 23.137](#) (authorizing the Indian child, parent or Indian custodian, or the Indian child’s Tribe to petition a court of competent jurisdiction to invalidate a foster-care placement or termination-of-parental-rights action upon a showing that the proceeding violated any provision of 25 U.S.C. §§ 1911–1913).

- **Failure to appoint counsel or provide “active efforts” (25 U.S.C. § 1912(b), (d)).**
 - Failure to appoint **counsel** for an indigent parent or Indian custodian when required by § 1912(b).
 - Failure to provide and prove **active efforts** to prevent the breakup of the Indian family, or to show that such efforts were unsuccessful, before ordering foster care or TPR.
- **Insufficient evidence / QEW testimony (25 U.S.C. § 1912(e), (f)).**
 - Foster-care placement ordered without **clear and convincing evidence**, including QEW testimony, that continued custody is likely to result in serious emotional or physical damage to the child.
 - Termination of parental rights ordered without proof **beyond a reasonable doubt**, including QEW testimony, of likely serious damage.
- **Defects in voluntary consents (25 U.S.C. § 1913).**
 - Purported consent to foster-care placement or TPR taken **before the child’s birth**, or not executed in writing **before a judge** with the ICWA advisement required by § 1913(a).
 - Failure to honor a parent’s right to **withdraw consent** prior to entry of TPR/adoption, or to seek to set aside an adoption decree within the statutory time frame where consent was obtained by **fraud or duress**.
- **Scope of remedy.**
 - Invalidation under § 1914 and 25 C.F.R. § 23.137 is available only as to **foster-care placement** and **TPR** actions.
 - Vacatur of an **adoption** based on fraud or duress in a voluntary proceeding is addressed separately in **25 U.S.C. § 1913(d)** and 25 C.F.R. § 23.136, but may be closely related in practice to prior defects in the TPR or foster-care stages.

VII. INITIATION OF THE CHILD WELFARE PROCESS

The child welfare process begins well before the courtroom, with the reporting and investigation of suspected abuse or neglect. When a concern is reported, the responsible agency must determine if the information meets the threshold for further review. Initial screening, safety checks, and fact-gathering set the stage for deciding whether a child is at risk and what level of intervention is appropriate. This early phase is critical: it balances the duty to protect children from harm with the obligation to respect family integrity, laying the foundation for any services or court involvement that may follow.

Reporting²⁴⁰

Every person who has reason to believe a child is a victim of abuse or neglect must immediately report to DHS via the centralized child-abuse/neglect hotline (county offices must route to the hotline). No legal privilege or contract excuses non-reporting. The recordings are maintained for 12 months and are confidential. If the report is released, the reporter information is required to be redacted, unless otherwise ordered by the court.

When the alleged perpetrator is **not** a “person responsible for the child’s health, safety, or welfare”, hotline supervisors must ensure that a written report is made to local law enforcement for criminal investigation and DHS must retain a transmission record.

Specified Reporters’ Requirements

Schools. Every school employee who suspects a student under the age of 18 is abused/neglected must report to both OKDHS and local law enforcement; if the student is over 18, the school employee is required to report suspicions of abuse/neglect to law enforcement. The reporter’s identity is protected, subject to court order or investigation needs.

Health-care prenatal/newborn exposure. Health professionals and midwives must promptly report infants who test positive for alcohol/controlled substances, including diagnoses of NAS or FASD.

Criminal Liability & False Reports

Failure to report. Knowingly/willfully failing to promptly report (or interfering with reporting) is a misdemeanor. If a person has “prolonged knowledge” (longer than 6 months) of ongoing abuse/neglect and fails to report, it is a felony.

False reports. Knowingly/willfully making a false report (or one known to lack factual basis) is a misdemeanor; family-court false accusations can carry up to a \$5,000 sanction plus fees.

Referral for Investigation in Domestic Relations & Custody Cases²⁴¹

If allegations of abuse/neglect are raised in a divorce or custody case, the judge (and attorneys, if they have reason to believe) must **report to DHS** for an assessment or investigation.

DHS conducts the assessment/investigation per its priority guidelines and must submit its report to the DA and send a copy to the referring court within 30 days and notify the parties that the report was submitted. Within 3 days of receiving DHS’s findings, the district attorney must advise the court whether a deprived petition will be filed.

If no petition is filed, the referring court may take appropriate action on custody/visitation.

²⁴⁰ [10A O.S. §1-2-101](#)

²⁴¹ [10A O.S. §1-4-102](#)

Emergency custody is not precluded. The court may enter an emergency custody order, per the requirements of the Children’s Code, if the evidence shows the child is in endangering surroundings.

If, during a child custody or visitation proceeding, evidence shows that a child has experienced abuse or neglect, the court is required to appoint an attorney to represent the child for that case and any related matters. The court may also appoint a guardian ad litem for the child as allowed by law.

Nothing limits **any court** from referring allegations to DHS. Judges and court personnel are not exempt for mandatory reporting of child abuse or neglect.

The court may also issue temporary custody/visitation restrictions and appoint an attorney for the child. DHS’s investigative findings then inform whether the matter stays in domestic court or shifts into the child welfare/deprived docket.

Report of Suspected Trafficking of Child

When applied to children, “trafficking in persons” has a particularly clear standard: any commercial sex act involving a minor is considered trafficking, regardless of whether force, fraud, or coercion can be proven. This means a child cannot legally consent to prostitution or commercial sexual activity. In practice, the law treats children in these circumstances as victims of exploitation, not offenders, and prioritizes protective interventions, services, and prosecution of the traffickers.²⁴²

Suspected child trafficking triggers mandatory protective custody, a DHS-law enforcement joint response, and quick court review. Children are treated as victims in need of protection, not offenders. They may only be returned home if safety is assured.

- **Immediate protective custody:** If any peace officer, court employee, Juvenile Bureau staff, or Office of Juvenile Affairs employee reasonably suspects that a minor is a victim of human trafficking and needs immediate protection, they must assume protective custody of the child and immediately notify DHS. The child is then transferred to the emergency custody of DHS.
- **Joint investigation:** Law enforcement and DHS must conduct a joint investigation into the trafficking claim.
- **Temporary custody limit:** The child remains in DHS custody until the investigation is completed, but for no more than 72 hours or two judicial days, whichever is longer, before a show-cause hearing must be held.
- **Safe release option:** DHS may release the child back to a parent or legal guardian if it determines the child will be safe and not subjected to further exploitation.

²⁴² [10A O.S. §1-1-105\(73\)](#)

- **If unsafe:** If returning home would place the child at further risk, the case proceeds as a deprived child proceeding under Title 10A, and the child is entitled to child welfare services and court oversight.

A child who has been trafficked cannot be prosecuted for prostitution or other nonviolent misdemeanors if those acts happened because of the trafficking. For more serious crimes — felonies or other offenses — the fact that the child committed them as a direct result of being trafficked can be raised as an affirmative defense in court.²⁴³

Protective Custody – Pre-Adjudication

A peace officer or court employee may take a child into custody **without a court order** if there is reasonable suspicion that:

- (a) The child needs immediate protection because of an imminent safety threat;
- (b) The child’s home environment or current caregiver situation presents an imminent safety threat if the child remains there; or
- (c) The child—whether or not the child has a disability—cannot effectively communicate about abuse, neglect, or other danger, making the child especially vulnerable and in need of immediate protection.²⁴⁴

Statutory Requirement for Joint Response²⁴⁵

Oklahoma law requires that DHS and law enforcement work together in responding to reports of child abuse or neglect. While only law enforcement has authority to take a child into protective custody, DHS is responsible for conducting a safety evaluation to decide:

- Whether the child is facing an imminent safety threat, and
- Whether the child can be safely protected by placing the child with relatives or other appropriate caregivers, which may avoid the need for DHS to assume emergency custody.

DHS may carry out this safety evaluation either at the scene where law enforcement assumed custody or at a designated reception center. The child may remain in protective custody while DHS completes the evaluation, which must be finished within 23 hours of the child being taken into custody. After completing the evaluation, DHS must either:

- Return the child home,
- Obtain the parent’s consent to place the child temporarily with another responsible individual until the investigation is completed, or

²⁴³ [21 O.S. §748.2\(E\)](#)

²⁴⁴ [10A O.S. §1-4-201\(A\)\(1\)](#)

²⁴⁵ [10A O.S. §1-4-201\(B\)](#)

- Seek a court order to assume emergency custody of the child.

Voluntary Consent Upon Arrest

A parent who is arrested on a charge or warrant **unrelated to** child abuse, neglect or child endangerment may designate another person to take physical custody of the child. Upon this request, the law enforcement officer may release the child to the physical custody of that designated person.

Emergency Custody Order²⁴⁶

A child may be removed from the home and placed in emergency custody **by order of the district court** upon application of the district attorney. The application may be supported by a sworn affidavit, made on information and belief, and must set forth facts showing that continued placement of the child in the home or with the current caretaker is contrary to the child's welfare.

The court may issue the order if there is reasonable suspicion that:

- (a) the child requires immediate protection due to an imminent safety threat;
- (b) the child's home environment or the care provided by the parent, legal guardian, or custodian presents an imminent safety threat if the child remains there; or
- (c) the child—whether or not the child has a disability—is unable to communicate effectively about abuse, neglect, or other danger, making the child especially vulnerable and in need of immediate protection.

The Court may also enter an emergency order when a child is in need of medical or behavioral health treatment that is necessary to protect the child's health, safety, or welfare and the parent, guardian, or custodian is unwilling or unavailable to give consent. In such circumstances, the court's emergency order must specifically authorize the medical or behavioral health evaluation or treatment it finds necessary.²⁴⁷

Verbal Application and Order²⁴⁸

An application and order may be given verbally during courthouse closures (e.g., weekends, holidays, after-hours), and once the district attorney or the court issues the verbal order, law enforcement must act on it. If the order is verbal, the district attorney must file a written application and proposed order with the district court within **1 judicial day**. After the court approves it, the application and order are filed with the court clerk.

²⁴⁶ [10A O.S. §1-4-201\(A\)\(2\)](#)

²⁴⁷ [10A O.S. §1-4-201\(A\)\(3\)](#)

²⁴⁸ [10A O.S. §1-4-201\(A\)\(2\)](#)

Contents of Emergency Order²⁴⁹

Statutory basis & who applied: Recite that the order issues on the district attorney's application for pre-petition emergency custody under 10A §1-4-201(A)(2) (or, if applicable, on the court's authority for necessary medical/behavioral treatment under §1-4-201(A)(3)). If the order was first given verbally, note that a written application and order will be filed within one judicial day of the verbal order.

IV-E required findings (removal standard):

1. Imminent safety threat exists and continuation in the home is contrary to the child's welfare; AND
 - a) Reasonable efforts made: The Department of Human Services (DHS) made reasonable efforts to prevent removal, but despite those efforts, removal was necessary to protect the child; or
 - b) Reasonable efforts not possible: Due to the emergency nature of the circumstances, it was not possible for DHS to make reasonable efforts to prevent removal prior to taking custody of the child; or
 - c) The Court finds that aggravated circumstances exist as defined by 10A O.S. § 1-4-904, and that reasonable efforts to reunify the family are therefore not required (specify the aggravated circumstance); or
 - d) DHS did not make reasonable efforts to prevent removal, and those efforts were not excused by emergency or aggravated-circumstances findings.

Federal law urges specificity to be included as the basis of the reasonable efforts findings.²⁵⁰

Determine Emergency Custody placement pending the emergency custody hearing, either with DHS or another suitable person or entity.

Designate who is authorized to execute the order (peace officer or court employee; DHS employee may execute only if the child is in a hospital/school/daycare and it can be done safely).

Set the emergency custody hearing within two (2) judicial days of the child being taken into custody.

²⁴⁹ [10A O.S. §1-4-201](#)

²⁵⁰ E.g., - The Court finds DHS made the following reasonable efforts to prevent removal— [list services/steps: e.g., in-home safety plan, kinship placement search, domestic-violence safety planning, rapid substance-use assessment]—but they were insufficient to ensure the child's safety because [brief reason].

- The Court finds DHS did **not** make reasonable efforts to prevent removal because [specific omission/barrier], and no emergency or aggravated-circumstances exception applies.

- The Court finds an emergency existed on [date/time] because [specific event/condition], creating an imminent safety threat such that pre-removal services could not be safely attempted or would have been ineffective in the time available.

Where medical/behavioral health treatment is necessary and a parent/guardian is unwilling/unavailable to consent, the order should specifically authorize the evaluation or treatment the court deems necessary.

Direct that written notice be given to the parent/guardian including: the fact of the hearing within 2 judicial days, date/time/place, the allegation leading to custody, agency contact info, and the right to contact an attorney. The written notice must also include the following language:

"FAILURE TO RESPOND TO THIS NOTICE OR TO APPEAR AT THE EMERGENCY CUSTODY HEARING MEANS YOUR CHILD WILL REMAIN IN CUSTODY. YOUR FAILURE TO RESPOND OR COOPERATE MEANS YOU MAY LOSE CUSTODY OF THIS CHILD OR YOUR RIGHTS AS A PARENT MAY BE TERMINATED."²⁵¹

Emergency Custody Hearing²⁵²

An emergency custody hearing (sometimes called a “show-cause hearing”) is the very first court hearing after a child has been taken into emergency custody prior to adjudication. Its purpose is to give judicial oversight to the emergency removal and decide whether the child should remain in custody pending further proceedings.

Timing for the Hearing

An emergency custody hearing must be conducted within two (2) judicial days from the date that the child was removed from his/her parents or custodian. The hearing may be continued upon the request of the parents for good cause.

Appellate courts strongly discourage delays in emergency custody hearings. COCA criticized the trial court for failing to conduct the emergency custody hearing within two judicial days as required by [10A O.S. § 1-4-203](#). However, because Title 10A provides **no statutory penalty or remedy** for failing to comply with this timeline, the delay did not invalidate the emergency order or subsequent adjudication.²⁵³

Who Should be Present

Parents/custodian, parents’ attorneys, if appointed, DHS, DA, child’s attorney, if appointed. Children are entitled to be present.

Relatives, parents’ partners, and extended family may be allowed to attend the initial hearing. These individuals can provide relevant information about family functioning and may offer placement options that keep the child within the community or maintain connections with the family, rather than placing the child with strangers.

²⁵¹ [10A O.S. §1-4-202](#)

²⁵² [10A O.S. §1-4-203](#)

²⁵³ [In the Matter of C.R.G., 276 P.3d 1114, 1120 \(Ok Civ App 2012\)](#)

Due Process and Due Diligence Considerations

Note on the record who received proper written notice and ensure that the notice was in a language and form understandable to the parent/guardians. If notice has not been provided, direct immediate service. This may be accomplished by handing the written notice to the party who is present in court.

Determine whether the identity and location of all parents and/or guardians have been determined.

Ask whether paternity of the children has been determined and established and, if so, how.

Determine what has been done to identify and locate fathers.

It may be necessary to direct DHS to discuss identify and location of the father with the mother, mother's relatives, locating father's relatives, as well as contacting the local jail or the Department of Corrections. Asking the children often proves to be beneficial in obtaining this information.

Advisements

Although the Code provides that the parents/legal guardians/custodians receive a written advisement of rights in court, best practices recommend that the rights be discussed with the parties by the judge, specifically:

- Right to legal representation²⁵⁴;
- Right to present information/evidence and testify at court hearings (including emergency custody hearing);
- Consequences if fails to attend court hearings;
- Right to appeal and the procedure to appeal a court's order.

Establishing Paternity

Before adjudication, disposition, or permanency planning, the court needs to know *who the legal parents are* so notice, representation, and rights attach properly.

Oklahoma law requires inquiry into paternity and orders genetic testing when necessary.²⁵⁵

Core Authorities: Paternity work in deprived cases draws from the Children's Code for juvenile-court duties and timing, the Oklahoma Uniform Parentage Act²⁵⁶ for

²⁵⁴ Determine eligibility for court-appointed counsel so that counsel can be noticed, prepared and present for adjudicatory hearing

²⁵⁵ [10A O.S. §§ 1-4-201, 1-4-204, 1-4-205](#)

²⁵⁶ UPA, [10 O.S. § 7700-101](#) et seq.

acknowledgments, presumptions, testing, and adjudication, and ICWA/OICWA where applicable to define “parent,” notice obligations, and placement preferences.

Judicial Inquiry: On the record, the mother and other parties should be asked about any alleged, putative, or presumed fathers, including marital status, prior adjudications, acknowledgments or denials, existing child-support or parentage orders, and any parallel proceedings, and directs DHS/DA to exercise diligence to locate and serve all necessary persons.

Notice & Party Status: The court ensures timely service on alleged or putative fathers and clarifies when an individual attains party status by acknowledgment, presumption, or adjudication; where multiple candidates exist, the court retains necessary respondents to avoid inconsistent rulings until paternity is resolved.

Genetic Testing: When paternity is disputed or unclear, accredited genetic testing should be ordered with clear instructions on who must appear, deadlines, chain-of-custody, and initial cost allocation subject to later reallocation, and sets a prompt return date for results and status review.

Acknowledgment/Denial Path: If a valid Acknowledgment of Paternity exists (and any required Denial by a presumed father), the court recognizes legal paternity unless properly challenged; if no valid acknowledgment exists or the matter is contested, the case proceeds to adjudication of parentage.

Adjudication of Parentage: Upon competent proof—such as genetic testing or other admissible evidence—the court either dismisses an excluded respondent or enters an Order Adjudicating Parentage, amends the caption, confers full party rights and responsibilities, and directs that the case plan, services, and visitation be updated.

ICWA/OICWA Considerations: Because ICWA treats a biological father as a “parent” only when paternity is acknowledged or established, the court expedites paternity to finalize tribal notice and to implement any applicable placement preferences and active-efforts requirements.²⁵⁷

Effects on the Deprived Case: Once paternity is established, the father’s right to counsel, notice, participation, and services attaches; the ISP and visitation plan are updated; paternal relatives are assessed for preferential placement as permitted by law; and any support matters are coordinated without undermining reunification efforts.

Special Situations: Tailor orders for presumed husbands, multiple claimants, deceased or incarcerated fathers, minor fathers, or out-of-state parties, and addresses safety by

²⁵⁷ [25 U.S.C. § 1903\(9\)](#)

specifying supervised settings or other protective conditions for testing or contact when needed.

Timing & Case-Management: Set a date certain—typically within 30–45 days—to complete acknowledgments, testing, and adjudication, and require DHS/DA status updates on diligence, service, and laboratory progress.

Legal Threshold for Removal

The nature of the emergency custody hearing is limited to emergency safety of the child.

The court’s findings may be based on information provided in the form of oral or written reports, affidavits, or testimony. Any probative information may be considered by the court. **The Oklahoma Evidence Code is not applicable to this hearing.**

The court must determine whether the emergency custody order should continue pending the conclusion of the investigation, based on the determination that:

- There is reasonable suspicion to believe that the child is in need of **immediate** protection due to abuse or neglect; or
- That the continuation of the child in the home or the care of the parent, legal guardian, or custodian would present imminent danger to the child.

The court should assess the **present** risk and determine appropriate measures to mitigate or eliminate that danger.

What Testimony a Judge Should Hear

DHS should provide the following facts/testimony:

- **When/why removed** (specific, recent facts).
- **Imminent safety threat** (what made removal necessary **now**).
- **Contrary-to-welfare** facts (why staying home was unsafe).
- **Reasonable-efforts** status at removal:
 - what was tried, **or**
 - why efforts were not possible, **or**
 - aggravated circumstances (if alleged).
- **ICWA** facts (tribal identity/contacts if any; steps taken).²⁵⁸
- **Placement** chosen and **relative/kin search** done; sibling placement/contact.
- **Medical/behavioral** needs and any **consent** sought/needed.
- **Visitation** proposal and safety conditions.

²⁵⁸ ICWA requirements are set out in separate chapter.

Allow the parent/legal guardian/custodian to provide response or clarifying information/facts.

Determine Whether Remaining in the Home is Contrary to the Child's Welfare

Although this was determined at the time the Emergency Custody Order was issued, the Code requires this determination be and documented at the Emergency Custody Hearing.²⁵⁹ If the home is not contrary to the child's welfare at the time of the hearing, then the child should be returned home.

Determine Whether Reasonable Efforts Were Made to Prevent Removal²⁶⁰

Although this determination may be made within 60 days of removal, it is intended to occur at the hearing where the removal can be contested. The evaluation of reasonable efforts allows the judge to review the actions taken to involve the family in services and supports aimed at addressing safety concerns **before** placement or facilitating the child's prompt return home.

Past efforts that were unsuccessful do not relieve the agency from making reasonable efforts should a new allegation arise.

Questions to ask:

- What were the specific safety risks that led to removal?
- What services were considered and offered to allow the child to remain home? Were these services rationally related to the safety threat?
- Was a safety plan created to allow the child to remain at home or in the home of another without court involvement?
- Have non-custodial parents and relatives been identified and explored?
- Were there any DHS-led family conferences/meetings where family was included? What was the outcome?

Finding that Reasonable Efforts were not made (when not excused by law) does NOT release the child from emergency custody if the home remains an imminent safety threat to the child.

Custody Determination

At the end of the hearing, the court is required to issue one of the following custody decisions:

- Release of the child to the custody of their parent, legal guardian, or custodian from whom the child was removed, under conditions determined by the court as necessary for the child's health, safety, or welfare; or

²⁵⁹ [10A O.S. §1-4-205](#)

²⁶⁰ *Id.*

- Placement of the child with a responsible adult or licensed child-placing agency, subject to conditions set by the court to ensure the child's health, safety, or welfare; or
- Continue to maintain the child in, or place the child into, emergency custody with the Department of Human Services.

When a child is placed in DHS custody, the court cannot require DHS to choose a specific home or placement. However, the court can approve or reject a particular placement if it does not meet statutory requirements or is not in the child's best interests.²⁶¹

Other Orders/Decisions/Directives

Visitation: Set parent-child contact (supervised/therapeutic/no contact) with safety terms.

Relative Search: Direct the parent, legal guardian, or custodian to submit an affidavit that details the names and contact information of each relative, along with any remarks regarding the suitability of placing the child with those individuals.

Direct DHS to continue to make reasonable efforts to identify and notify all grandparents, legal custodial parents of siblings, and other adult relatives (unless there is a history of family domestic violence), including those named by parents or ordered by the court. DHS must exercise due diligence to identify and notify all adult relatives within **30 days** of the child's removal.²⁶²

Birth Certificates: Order the parent, legal guardian, or custodian to furnish to DHS a copy of the child's birth certificate within fifteen (15) days from the hearing if a petition is filed.

Sibling Placement/Visitation: Determine whether reasonable efforts were made to place siblings together or to provide for frequent contact between the siblings.²⁶³

Services/Safety steps: Outline urgent safety services (DV safety plan, UA, in-home supports, protective orders, etc.).

ICWA: If the court has reason to know that the child is an Indian child, order tribal notice, status verification, and confirm temporary nature of emergency custody.

Set Next Hearing Date and Time: Announce the date – 7 judicial days from date of removal – that a Petition is required to be filed. Note any compelling reason(s) announced by the DA to extend the filing date to 15 calendar days from date of removal. Set a timely adjudication hearing.

²⁶¹ [10A O.S. §1-4-803](#)

²⁶² [10A O.S. §1-7-106\(A\)\(3\)](#); 42 U.S.C. §671(a)(29)

²⁶³ [10A O.S. §1-7-107](#); [10A O.S. §1-4-204](#)

Restraining Orders

If a child is allegedly physically or sexually abused, the Court may order the alleged abuser to avoid contact with the child and leave their home. This allows the child to remain in the their home with the non-abusive parent.²⁶⁴

The Protection from Domestic Abuse Act allows for emergency protective orders (EPOs) to be issued during deprived proceedings. EPOs may be granted at an emergency custody hearing or after a petition is filed, staying in effect until the case is dismissed or the court rules otherwise. These orders are confidential and only available to law enforcement for service on the defendant.²⁶⁵

Procedure for Issuance of Restraining Order Under the Children's Code²⁶⁶

When a Restraining Order Can be Issued:

- The judge must find:
 - (1) reasonable suspicion that abuse happened and this person did it, and
 - (2) the order is in the child's best interest.
- The court may add other limits (e.g., regulating contact with other children or other persons in the home).
- The order should include the restrained person's identifying info (name, DOB, sex, physical descriptors, tattoos, etc.).
- The court may allow a peace officer to accompany the person briefly to retrieve personal items.

Service (how the order is delivered):

- The clerk gives certified copies to law enforcement for service at no charge.
- The sheriff (or server) must personally serve the restrained person unless they were present in court.
- If service can't be completed within 10 days, the server files a return explaining why.

Right to a Hearing After Service:

- The restrained person can request a hearing in writing within 30 days after being served.

²⁶⁴ [10A O.S. §1-4-206](#)

²⁶⁵ [22 O.S. §60.19](#)

²⁶⁶ [10A O.S. §1-4-206](#)

- If requested, the court must:
 - Notify the parties of the date/time, and
 - Hold the hearing within 21 days.
 - The court may cancel or modify the order after the conclusion of the hearing.

Notice of the Order to Law Enforcement:

- Within 24 hours after proof of service, the clerk sends certified copies of the order (and any later extensions/modifications/cancellations) to the law-enforcement agencies the court designates.
- Law enforcement must make the order available 24/7, which may include NCIC entry.

Duration, Termination, and Renewal:

- The order lasts up to 1 year unless modified or ended sooner.
- The issuing court may renew it for up to 1 additional year if there's probable cause renewal is in the child's best interest (on motion by the state or the child's attorney).
- If the order is terminated early, the clerk promptly sends the termination to the sheriff, and the sheriff removes the order from NCIC.

Penalties for Violating the Order:

- If a person who has been served violates the order, it's a misdemeanor: up to \$1,000 fine, up to 1 year in county jail, or both.

VIII. MEDICAL HEALTH TREATMENT FOR CHILD

Chapter 3 of the Oklahoma Children's Code²⁶⁷ addresses medical and behavioral health care for children. It establishes who may authorize treatment, what types of care can be consented to, and the protections for those making such decisions. Parents or guardians may delegate authority in writing to another adult to consent to medical or dental treatment, and the statutes distinguish between "routine and ordinary" care and "extraordinary" procedures. The chapter also provides immunity from civil liability for those who, in good faith, authorize necessary treatment or evaluations. In situations where a child is subject to a DHS safety plan and the parent is unavailable, a designated safety-plan monitor may consent to needed medical or dental services to protect the child's well-being. Collectively, these provisions ensure that children in the child-welfare system can receive timely and appropriate health care, while clarifying the scope of authority and responsibility among adults involved in their care.

²⁶⁷ [10A O.S. §§1-3-101](#) to -104

The following chart summarizes the rules for authorizing medical and behavioral health care for children under the Oklahoma Children’s Code. It distinguishes between routine and extraordinary treatment, outlines when DHS, foster parents, or the court may consent, and clarifies emergency authority to ensure children receive timely care while protecting parental rights.²⁶⁸

Routine vs. Extraordinary Medical Care

Routine & Ordinary Care

- ✓ Checkups, physicals, health assessments
- ✓ Dental exams & treatment
- ✓ Screenings & lab tests (including blood work)
- ✓ Immunizations
- ✓ X-rays, stitches, casts
- ✓ Treatment for illness/injury
- ✓ Psychotropic medications (continuation/management)

Extraordinary Care

- ✓ Surgery
- ✓ General anesthesia
- ✓ Blood transfusions
- ✓ Invasive procedures
- ✓ Experimental procedures

Emergency Authority

- If a child in protective custody without a court order requires emergency care:
 - A peace officer, court employee, or the court may authorize treatment to safeguard the child’s health or life.
 - Applies if treatment is related to suspected abuse/neglect or the parent/guardian is unavailable or refuses.
 - Law enforcement must exercise diligence to locate the parent/guardian before acting on unavailability.

DHS Custody

- DHS may consent to routine care and should make reasonable attempts to notify and involve the parent/guardian.
- DHS may **not** consent to abortion, sterilization, withdrawal of life support, or DNR. These require a court order after a physician’s written recommendation, notice to the parties, and a hearing.
- Extraordinary care (e.g., surgery) generally requires court authorization; DHS cannot approve on its own.

²⁶⁸ [10A O.S. §1-3-102](#)

- DHS may delegate in writing to foster parents/caregivers the authority to consent to routine care on a physician's advice.

Extraordinary Care (General Rule)

- Parent/guardian consent is required **unless**:
 - Emergency with physician recommendation → court may enter an *ex parte* order authorizing the procedure.
 - The care is related to abuse/neglect or the parent/guardian is unavailable/refuses → court may authorize to protect the child's health or life.
- If not an emergency → District Attorney applies, notice to all parties (including parents), and the court holds a hearing before authorizing the recommended extraordinary care.

Special Scenario: Abuse-Related Surgery After Adjudication

- Facts: Parent's physical abuse created the need for surgery; child has been adjudicated deprived.
- Decision-maker: The court (not DHS; not the offending parent).
- Emergency: Court may act *ex parte* on a physician's recommendation to prevent serious harm; notice follows promptly.
- Non-emergency: DA files application; the court provides notice to all parties (including parents) and holds a hearing before authorizing surgery.
- Order should specify: the procedure(s) authorized, provider/facility, medical basis/physician recommendation, any limits/conditions (e.g., consent for anesthesia, blood products), and who must be notified of scheduling/results.

Other Custody Arrangements

- If a child is placed with someone other than DHS, or in an institution/agency, the court determines who has authority to consent to routine and extraordinary care.
- The parent/guardian or legal custodian remains financially responsible for medical costs as determined by the court.

Parental Delegation of Consent for Medical and Dental Care of Child

The Code permits a parent or court-appointed legal guardian to **delegate**, in writing, another competent adult to consent to a child's medical or dental care so the child can receive timely treatment when the parent/guardian is absent or needs assistance.²⁶⁹

Therefore, at emergency hearings (or other hearings, if necessary), confirm whether a written delegation exists and, if treatment authority is disputed, require a copy to be filed with the court.

²⁶⁹ [10A O.S. §1-3-101](#)

Clarify whether the case posture—such as DHS custody or a DHS safety plan²⁷⁰—changes who may consent to care (see §§ [1-3-102](#) and [1-3-104](#)). Ensure that court orders specify who holds consent authority, any limits on that authority, and the expectations for parental notification.

Religious Objections to Medical Treatment

Parents or guardians may rely solely on spiritual care through prayer for a child's medical treatment, according to recognized religious practices. However, courts can take emergency custody and order necessary medical care to protect the child. The child will **not** be deemed deprived based solely on this reliance.²⁷¹

IX. INITIAL CUSTODY AND PLACEMENT PRIORITIES

Understanding placement priorities in child welfare is critical for children's safety, well-being, and permanency, as research shows placement stability is linked to positive developmental outcomes and trauma reduction. Emphasizing kinship care supports the preservation of family relationships and stability. Careful placement decisions, informed by the child's individual needs and trauma history, are essential to reducing additional disruptions and mitigating adverse consequences such as mental health issues and academic difficulties.

Baseline Rule—Best Interests & Safety

The placement decision, whether made by DHS or the court, must be governed by the best interests and safety of the child. The child may state a placement preference, and this may be done outside of the presence of parents, parties, foster parents, or any other interested persons. Although the child's preference should be considered, the decision-makers are not bound by it as other factors may need to be considered.²⁷²

Noncustodial Parent Priority²⁷³

When appropriate in emergency/protective custody, give priority to the noncustodial parent unless not in the child's best interests; otherwise follow [§1-4-204](#) preferences as set forth below.

²⁷⁰ [10A O.S. §1-3-104](#)

²⁷¹ [10A O.S. §1-1-105\(21\)](#)

²⁷² [10A O.S. §1-7-110](#)

²⁷³ [10A O.S. §1-9-106\(B\)](#)

Likewise, at disposition the statute puts placement with a non-custodial parent first, subject to a home assessment and the child's best interests. Only if the court cannot place with a parent does it then give preference to relatives under §1-4-204.²⁷⁴

Statutory Preference—Kin²⁷⁵

The Children's Code gives preference to relatives and kinship relationships with the child for emergency/temporary custody or placement. This includes parents of a child's siblings (when the parent has legal custody of the sibling).²⁷⁶ DHS must exercise due diligence to identify and notify adult relatives, within **30 days** of the child's removal, must continue to search for and assess relatives over the life of the case, and must report its relative-search and placement efforts to the court at review and permanency. If not placed with a considered relative, DHS must file written reasons in the record.

Relative Search & Notice (timelines and consequences)

- Upon removal and within 30 days, DHS must promptly consider kinship/relative placement and exercise due diligence to identify and notify adult relatives—including any parent with legal custody of a sibling—about the child's removal and the need for a temporary and potentially permanent placement. Relative search and assessment are **continuing obligations** and should be revisited throughout the case whenever new information or relatives emerge.
- Notified relatives should be advised of: (1) the child's removal and current status; (2) options to serve as a temporary or permanent placement; and (3) the importance of maintaining current contact information with DHS and the court. A relative who fails to stay in contact or to keep address information current may, in practice, limit or forfeit meaningful consideration when the court later determines a permanent plan.
- A relative's decision not to come forward early in the case—or to decline to cooperate with timely home studies, background checks, or other requirements—can weigh against that relative when the court considers permanency options. The court may give greater weight to the child's need for stability and continuity in a safe existing placement when a relative only seeks placement late in the proceedings.

What DHS May Disclose to Relatives During Assessment

To secure a suitable placement, DHS may disclose to relatives: that the child is in custody, the alleged reasons, the projected date for return home or other permanency, and other confidential information DHS deems necessary/appropriate for placement.

²⁷⁴ [10A O.S. §1-4-707\(A\)\(1\)\(b\)](#)

²⁷⁵ [10A O.S. §1-4-204](#)

²⁷⁶ [42 U.S.C. §671\(a\)\(29\)](#)

Re-consideration of Relatives After an Initial Relative Placement

If an initial relative placement changes, DHS must again give consideration (as above) to approved relatives who can meet reunification/permanency needs and should consider whether the relative has maintained a relationship with the child.

Written Reasons if a Considered Relative is Denied

If a considered relative is not chosen, DHS must advise the court in writing of the reasons for denial; those written reasons must be made part of the court record.

Scope

These statutory rules for relative/kinship preference apply to all custody or placement proceedings for a child alleged or adjudicated deprived, including guardianship and adoption proceedings.

Reasonable Efforts to Place Siblings Together²⁷⁷

When siblings enter care, every reasonable effort should be made to place them in the same home, and at permanency they should be placed in the same permanent home.

Siblings may be separated only if there is a finding by the court and DHS that living together would be contrary to the safety or well-being of any sibling and one of the following applies:

- one sibling has lived in a foster home for six months or more and formed a significant relationship with that family;
- the siblings have never lived together;
- there is no established relationship between them; or
- it is in a child's best interests to remain in the current foster home. If separation is ordered, the court should still ensure appropriate sibling contact or visitation consistent with each child's best interests.²⁷⁸

Placement Factors the Court/DHS Must Consider²⁷⁹

When weighing who should have custody/placement, consider at least:

- The person's ability to keep the child safe, including willingness to honor contact limits and prevent improper influence;
- The person's support for DHS's permanent plan;
- The person's capacity to meet physical, emotional, and educational needs (including keeping the child in the same school when appropriate);

²⁷⁷ [10A O.S. §1-4-204\(A\)\(2\) and \(A\)\(3\)](#)

²⁷⁸ [10A O.S. §1-7-107](#)

²⁷⁹ [10A O.S. §1-4-204 \(B\)](#)

- If multiple people ask for placement, who has the closest personal relationship with the child;
- The wishes of the parent, the relative, and (as appropriate) the child;
- The person's ability to care for the child as long as needed and to provide permanence if necessary;
- The best interests of the child.

Least Restrictive / Proximity / School Stability²⁸⁰

The placement should be the least restrictive and as close as possible to the home when reunification is the plan. It should support the child's needs, visitation, and educational stability (i.e., school of origin or immediate enrollment if a change is needed).

Religious Preference²⁸¹

When feasible, select a caregiver/agency of the same religious faith as the parents or the child.

Disqualifiers²⁸²

Do **not** place a child with:

- A person if they – or anyone living in their home - are on the Sex Offender Registry;
- A person if they—or anyone living in their home—has been convicted of any of the following felonies:
 1. **Within the past 5 years:** any felony for physical assault, battery, or a drug-related offense.
 2. Any felony for child abuse or neglect.
 3. Any felony for domestic abuse.
 4. Any felony against a child (including child sexual abuse material).
 5. Any other violent felony (e.g., rape, sexual assault, homicide) excluding the offenses listed in item 1.

Court Inquiry Past Convictions/Relevant Misdemeanors if Determining Placement²⁸³

Before the court places a child in the custody of any individual, the judge must ask whether that person has any past felony or relevant misdemeanor convictions or any pending felony or misdemeanor charges.

²⁸⁰ [10A O.S. §1-4-704\(E\)\(9\)](#)

²⁸¹ [10A O.S. §1-4-705\(A\)](#)

²⁸² [10A O.S. §1-4-705\(C\)-\(D\)](#)

²⁸³ [10A O.S. §1-4-705\(D\)\(4\)](#)

A **relevant misdemeanor** (e.g., assault and battery, alcohol- or drug-related offenses, domestic violence, or other offenses involving the use of physical force or violence against the person or property of another) does not create an automatic bar to placement, but it is a negative factor the court and DHS must weigh in deciding whether the home is safe and appropriate. Depending on the nature, recency, and pattern of the offense—and any rehabilitation—the court may deny placement with that individual or require additional safeguards or supervision to protect the child.

For this rule, “individual” does not include the child’s parent or legal guardian.

Court/DHS Roles

If the child is in DHS custody, the court cannot order a specific placement. It may approve or disapprove a placement that fails to meet statutory requirements or the child’s best interests.²⁸⁴

X. DISCOVERY, PRE-TRIAL PRACTICE, CONDUCT OF HEARINGS IN GENERAL

Confidentiality

In Oklahoma, deprived child proceedings are confidential and closed to the public. These juvenile court matters protect the child's privacy and sensitive information involved in the case. A deprived child hearing can be opened to the public only by a specific order from a judge, and the legal grounds for doing so are limited. The default procedure is for these proceedings to be private to protect the child's privacy and sensitive information.²⁸⁵ The judge has significant discretion to determine who may be admitted to a deprived child proceeding. The statute allows the judge to admit only those with a "direct interest in the case" and to exclude even those individuals if the court determines it's necessary.

Applicability of Evidence Code

Adjudicatory hearings and termination of parental rights must be conducted according to the Oklahoma Evidence Code.

Note: In any case that comes from a child-abuse/neglect report—or where that report (or its contents) is offered as evidence—the report and related facts, including the child’s condition, cannot be kept out of evidence just because of the physician-patient privilege or any similar privilege rule.²⁸⁶

²⁸⁴ [10A O.S. §1-4-803](#)

²⁸⁵ [10A O.S. §1-4-503\(A\)\(1\)](#)

²⁸⁶ [10A O.S. §1-4-507](#)

All other hearings under the Children’s Code may be conducted in an informal manner with the court considering relevant reports, written materials, or testimony that might not meet strict evidentiary requirements. However, even in informal hearings, the court must protect the parties’ rights and make sure the evidence considered is fair and reliable.²⁸⁷

Discovery

The Oklahoma Discovery Code and Rules for District Courts do not apply to juvenile/deprived proceedings. The Children’s Code **does intend** that there be an exchange of core materials prior to the adjudication/TPR hearings that are non-privileged, non-work-product information, that includes, but not necessarily limited to:

1. DHS assessment/investigation records (with the reporter’s identity redacted);
2. Law-enforcement reports;
3. Any audio/video of the child’s interview;
4. Any exhibit a party intends to introduce at trial; and
5. Witness lists with a brief synopsis of expected testimony.²⁸⁸

Any audio/video of a child’s interview that was made prior to the initiation of the deprived child proceedings and intended to be introduced as evidence in a trial **must** be produced to all parties and a copy of a written transcript of the recording transcribed by a licensed or certified court reporter must be made available to the parties.²⁸⁹

All information produced, exchanged, or used during the pendency of the deprived action is confidential and shall be subject to a protective order.

Case Management Tools

The Court may issue a scheduling order, require mediation, and hold status or settlement conferences to facilitate timely resolution of the case.

A scheduling order is **mandated** for TPR trials within 30 days of the demand for a jury trial, or within 30 days that the jury trial is waived.²⁹⁰

Hearings Held Utilizing Teleconferencing Tools

With the court’s permission, hearings under the Oklahoma Children’s Code may be held by teleconference. If a parent or the child appears remotely, that person’s attorney must still appear in person.

²⁸⁷ [10A O.S. §1-4-503](#)

²⁸⁸ [10A O.S. §1-4-401](#)

²⁸⁹ [10A O.S. §1-4-505](#)

²⁹⁰ [10A O.S. §1-4-502](#)

“Teleconference” means any interactive technology—including telephone—that lets the absent party, people in the courtroom, the lawyers, and other necessary participants (like foster parents or facility staff where the child is being treated) take part.²⁹¹

Use of Uniform Orders

The Children’s Code **mandates** the use of Uniform Order forms that are prescribed and published by the Administrative Office of the Courts. The orders are required to be completed and distributed, upon approval of all parties as to the form and content, to all parties.²⁹²

XI. FROM FILING TO FINDING: PETITION THROUGH ADJUDICATION

The Petition

A deprived-child case formally begins when the district attorney files a verified petition setting out, in plain terms, the specific facts that, if true, make the child “deprived.” The petition should identify the child (name/DOB/residence/placement); parents, legal guardian, and any custodian (with addresses if known); the court’s venue/jurisdiction; whether ICWA may apply (and the child’s Tribe, if known); any reasonable-efforts findings sought or exceptions claimed; and the relief requested (e.g., adjudication, termination of parental rights if aggravated circumstances, restraining orders, medical authority, child support, paternity determination).²⁹³

Timing for Filing

If the child was previously removed on an emergency basis, the petition must be filed promptly within statutory deadlines: within **7 judicial days from removal**, or 15 calendar days if requested by the DA at the emergency custody hearing. If the petition is not timely filed, the child **must** be released from custody, and the DA must enter a written record as to why the petition was not filed and to whom the child was released.

Note: The Court of Civil Appeals has determined that failing to file the petition within the statutory time causes the emergency custody order to expire, but the statutes provide no further remedy. The State is **not** barred from seeking a new emergency order and refiling based on the same abuse allegations because there was no judgment on the merits in the first case.²⁹⁴

²⁹¹ [10A O.S. §1-4-503\(A\)\(4\)](#)

²⁹² [10A O.S. §1-4-503\(A\)\(3\)](#)

²⁹³ [10A O.S. §1-4-301](#)

²⁹⁴ [In the Matter of C.R.G., 276 P.3d 1114, 1120 \(Ok Civ App 2012\)](#)

Amendment

A petition may be amended without leave of court any time up to **7 days before the adjudication hearing** to add, modify, or supplement factual allegations. Within 7 days of the hearing, an amendment requires leave of court upon a showing of good cause.

If the amendment is based on new evidence or allegations, the court must give the respondent sufficient time to prepare for adjudication. The court may also allow an amendment at any time before its adjudicatory ruling to conform the pleadings to the evidence presented. However, the adjudicatory category may not be amended (e.g., from deprived to delinquent child).²⁹⁵

Responsive Pleadings

None are required. As a matter of law, the petition is deemed controverted in all respects upon its filing due to the legal presumption that best interests of children are served by their parents.²⁹⁶

Post Adjudication Petition

Under [10A O.S. § 1-4-302\(D\)](#), a post-adjudication petition is used to present newly discovered conditions or allegations that further support a finding that the child is deprived. It applies only when the new information is discovered after the child has already been adjudicated deprived on the original petition and does not apply if the juvenile court's jurisdiction terminated before the discovery. The petition is filed in the same case as the original, and the court must follow the same procedures and hearing requirements that governed adjudication of the original petition when adjudicating the new allegations.²⁹⁷

Notice after filing of Petition

Once the petition is filed, the court sets a hearing and issues a summons to the parents, legal guardian, custodian, alleged fathers, stepparents who reside in the home, and the child if age 12+. The court may also direct service on any other person determined to be a necessary and proper party to the proceedings.²⁹⁸

The summons must be attached to the petition, advise of the right to counsel (including appointed counsel if indigent), and state the relief requested by the state (e.g., child support/paternity, immediate termination of parental rights). The date, time and place of the adjudicatory hearing must be set out.

²⁹⁵ [10A O.S. §1-4-302](#)

²⁹⁶ [Matter of Christina T.](#), 590 P.2d 189 (Okla 1979); [Matter of Miller](#), 876 P.2d 747 (Ok Civ App 1994)

²⁹⁷ E.g., child adjudicated for neglect. Later, during therapy session the child reveals that she was sexually abused. A post adjudication petition may be filed alleging sexual abuse and must be adjudicated before the court can proceed to address this condition of abuse to the child.

²⁹⁸ [10A O.S. §1-4-303](#)

The following language must be contained in the summons – in large type:

"FAILURE TO RESPOND TO THIS SUMMONS OR TO APPEAR AT THIS HEARING CONSTITUTES CONSENT TO THE ADJUDICATION OF THIS CHILD (OR THESE CHILDREN) AS DEPRIVED CHILDREN AND MAY ULTIMATELY RESULT IN LOSS OF CUSTODY OF THIS CHILD OR THE TERMINATION OF PARENTAL RIGHTS TO THIS CHILD."

Service of Summons²⁹⁹

Service can be completed by personal delivery, mail, or publication, following the procedures outlined in the Oklahoma Pleading Code for Process for personal service.³⁰⁰

Waiver of Service of Summons³⁰¹

Service of summons may be waived in writing or through voluntary appearance at the hearing by a party other than the child. Counsel representing the child is authorized to waive service of summons on behalf of the child.

Publication³⁰²

The State must make a **distinct and meaningful search** of reasonably available sources to locate and notify parents/guardians; the case should not be delayed solely because someone can't be found.

If, after that search, a parent/guardian cannot be identified or located, the State files an affidavit detailing its efforts and may obtain a court order authorizing publication.

A copy of the petition and summons must also be mailed by first-class to the person's last-known address.

The publication notice can be directed to known or unknown parents/guardians, must include the court/case number, child's initials, date/place of birth, parents' names (if known), hearing date/time/purpose, and must contain this warning in at least the same size type as the rest of the notice:

"FAILURE TO APPEAR AT THIS HEARING CONSTITUTES CONSENT TO THE ADJUDICATION OF THIS CHILD AS A DEPRIVED CHILD AND MAY ULTIMATELY RESULT IN LOSS OF CUSTODY OF THIS CHILD OR THE TERMINATION OF PARENTAL RIGHTS TO THIS CHILD."

²⁹⁹ [10A O.S. §1-4-304](#)

³⁰⁰ [12 O.S. §2004](#)

³⁰¹ [10A O.S. §1-4-303\(B\)](#)

³⁰² [10A O.S. §1-4-304](#)

The notice is published one time at least 25 days before the hearing in a legal-notice newspaper in the filing county (or an adjoining county if none exists there); service is complete on the date of last publication.

Publication may proceed at the same time as continued efforts at personal or mail service if the court finds those methods are unlikely to succeed. Costs are paid from the court fund and later assessed as court costs against the parents/guardian as applicable.

Note: Necessity for due diligence/meaningful search and sufficient court findings before publication can be authorized.

- A sheriff's failure to effect personal service at a party's residence or place of employment in five attempts does not excuse the state to request publication where certified mailing has not been attempted. Tammie v. Rodriguez, 570 P.2d 332 (Okla 1977).
- Upholds publication only after due diligence and urges trial courts to include specific findings of the search. Dana P. v. State, 656 P.2d 253 (Okla. 1982).
- Publication notice was insufficient to proceed to trial where the record lacked the required affidavit and court determination of location efforts with the required affidavit prior to an order authorizing such publication notice. In the Matter of L.H., 213 P.3d 783 (Ok Civ App 2010).
- E.g., see Okla. Dist. Ct. R. 16, 12 O.S. Ch. 2, app. Default Judgment Against Defendant Served Solely by Publication.
- Publication notice was defective where it misspelled parties' names and misidentified the subject matter of the case; the trial court failed to conduct a judicial inquiry regarding a "distinct and meaningful" search; parental rights are fundamental and that publication requires strict compliance; the multiple notice defects denied due process. Poppinga v. Wallace, 565 P.3d 413 (Okla. 2025).

Adjudication Timing by Service Method — 10A O.S. (Deprived Cases Only)

Use filed returns/affidavits to compute deadlines. These timeframes are specific to adjudication.³⁰³

IN-STATE SERVICE (PERSONAL OR MAIL)

Day 0: Parent/legal guardian is served with summons in Oklahoma.

↓ (court must wait at least 48 hours)

Day 2+: Earliest date the court may hold an adjudication hearing.

OUT-OF-STATE SERVICE (BY MAIL)

Day 0: Summons is mailed to parent/legal guardian outside Oklahoma.

↓ (court must wait at least 5 days after mailing)

Day 5+: Earliest date the court may hold an adjudication hearing.

SERVICE BY PUBLICATION

³⁰³ 10A O.S. § 1-4-304

- Day 0: Publication of summons (after diligent search and court order).
↓ (publication at least 25 days before hearing date)
Day 25+: Earliest date the court may hold the adjudication hearing, with service deemed complete of the date of the publication.

The child, and their parents, guardian, or other legal custodian, are entitled to receive at least 20 days' prior notice of the hearing. This gives them time to prepare for the hearing.³⁰⁴

Serving a Foreign National Not Living in the U.S.

Courts must also consider the parental rights of a foreign national, which are protected by due process rights under U.S. law.³⁰⁵

To serve a foreign national not living in the US with documents related to a child welfare case, you must use an internationally recognized method such as the Hague Service Convention, if applicable, or a letter rogatory. The specific method depends on whether their country is a signatory to the Hague Convention. You can find the country's status and required forms on the [U.S. Department of State's website](#) or through an international process server.

Step 1: Determine the Country of Residence

The first step is to confirm the parent's country of residence, as this dictates the proper international procedure for service of process.

Step 2: Check for Hague Service Convention Status³⁰⁶

The Hague Service Convention (Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters) is the preferred and most common method for international service.

- If the country is a signatory: You must follow the convention's requirements. The process typically involves submitting a formal request to the Central Authority of the receiving country.
- If the country is not a signatory: You must use a different method. The most common alternative is a Letter Rogatory (Letter of Request).

Method 1: Using the Hague Service Convention

The Hague Convention provides a standardized process for serving documents abroad.

³⁰⁴ [10A O.S. § 1-4-601\(A\)](#)

³⁰⁵ See [Mathews v. Diaz](#), 426 U.S. 67 (1976)

³⁰⁶ For a listing of all countries that are parties to the Hague Service Convention, see: <https://www.hcch.net/en/instruments/conventions/status-table/?cid=17>

1. Complete the forms: Fill out the official Request for Service Abroad form (USM-94) and other required documents.³⁰⁷
2. Translate the documents: The documents may need to be translated into the official language of the country where service will be made.
3. Submit the request: The documents are sent to the Central Authority of the foreign country.
4. Local court review and service: The foreign Central Authority reviews the documents and arranges for a local court or designated officer to serve the parent.
5. Receive proof of service: Once the service is completed, the Central Authority sends documentation back to the U.S. to verify that service was effectuated.

This process may take months, but it is generally simpler and more reliable than alternatives.

Method 2: Using Letters Rogatory

If the foreign country is not a party to the Hague Service Convention, Letters Rogatory can be used.³⁰⁸ This method is more time-consuming and expensive.

1. Draft the request: A letter is sent from the U.S. court to the foreign court, usually through diplomatic channels, requesting assistance in serving the document.
2. Embassy involvement: This request is sent via the U.S. Department of State to the foreign country's government.
3. Local court service: The foreign country's court will then carry out the service.

Method 3: Consular Arrangements and Memoranda of Understanding

For child welfare cases, many U.S. state and county child welfare agencies have established special agreements, or Memoranda of Understanding (MOUs), with foreign consulates. Oklahoma is not listed as having an MOU; however, it may be beneficial to contact the nearest consulate for assistance.

- Consular notification: These agreements often involve notifying the relevant foreign consulate when a child who is a national of that country enters the U.S. child welfare system.

³⁰⁷ The Request Form is found at <https://www.hcch.net/en/publications-and-studies/details4/?pid=6560&dtid=65>
Instructions for completing out the form can be found here: <https://www.hcch.net/en/publications-and-studies/details4/?pid=27>; the names and address for the Central Authority for the Receiving State can be found here: http://www.hcch.net/index_en.php?act=conventions.authorities&cid=17

³⁰⁸ Service made by letters rogatory are sent through diplomatic channels that can be found here: <https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/international-judicial-assistance/obtaining-evidence/Preparation-Letters-Rogatory.html>

- Cooperation: The consulate can assist with locating the parent, bridging language barriers, and facilitating the service of process. It is a good practice to contact the parent's consulate to see if such an arrangement exists.

Adjudication

The adjudicatory hearing is held to determine whether the evidence presented supports the allegations set out in the petition that the child is deprived, as defined in §1-1-105(21), and should be made a ward of the court. This is the “first stage hearing”. It is the status of the child that is of concern and not that of a parent.³⁰⁹ Deprived proceedings are civil and protective; the court’s focus is the child’s welfare and safety in the context of the family, not punishment of a parent.³¹⁰

Timeline³¹¹

The hearing must be held **within ninety (90) calendar days** following the filing of the petition. If not held within this time frame, the child must be released from emergency custody.

Exception: The hearing may be extended up to **180 calendar days** from the actual removal of the child if the court issues a written order setting out the mandatory findings that:

There exists reasonable suspicion that the health, safety and welfare of the child would be in imminent danger if the child was returned to the home, **and**

There exists either an exceptional circumstance to support the continuance of the child in emergency custody, or

The parties and GAL agree to the continuance.

If an adjudication hearing is not conducted after the extended 180 calendar days, the emergency custody order expires, and the child is released from emergency custody.

The child’s release from emergency custody does not deprive the court of jurisdiction over the child and parties as well as the ability to enter certain temporary orders necessary to provide for the child’s health, safety and welfare pending the adjudication hearing.

Note: §1-4-601 provides that the parties are entitled to at least twenty (20) days’ notice of the adjudication hearing. However, §1-4-304 provides that the court shall not hold the adjudication hearing until at least 48 hours after the service of summons, if the party is within the state or at least 5 days after the mailing of the summons if the party is being served outside the state.

³⁰⁹ [In the Matter of CT, 983 P2d 523 \(Okla Civ App 1999\)](#)

³¹⁰ [Okla. Admin. Code § 340:75-1-14](#)

³¹¹ [10A O.S. §1-4-601](#)

Statutory construction requires interpreting related laws together to ensure each is effective and consistent.³¹² Hence, it could be interpreted that §1-4-304 applies to the initial appearance hearing and not to the adjudication trial itself if a party requests an additional 20 days for preparation.

Burden of Proof

The state has the burden to prove the petition's allegations by a preponderance of the evidence.³¹³ Proof of facts not alleged in the petition may be admitted either by consent or upon motion to amend the petition to conform to the evidence presented, if done so prior to the adjudicatory ruling of the court.³¹⁴

Parent's Options at Adjudication Hearing

At the adjudication hearing, a parent has several options for how to proceed. The parent may enter a **stipulation**, which is an agreement with the State on certain facts or conditions in the petition. Alternatively, the parent may admit that there exists sufficient evidence to permit a finding that the factual allegations contained in the petition are true and correct (i.e., no contest).³¹⁵ Finally, if the parent does not agree to a stipulation, the matter proceeds to an **adjudicatory non-jury trial**, where the court hears evidence and determines whether the State has met its burden of proof to establish that the child is deprived.³¹⁶

Failure of a person properly summoned to respond or appear without reasonable cause constitutes that person's **consent** to an adjudication that the child is deprived.³¹⁷ "Consent" is, in essence, a stipulation to the State's allegations contained in the petition and that the child is a deprived child. The Oklahoma Children's Code does not provide procedures for vacating adjudication orders. However, §1-4-905 specifically addresses vacating an order terminating parental rights by "consent". It is suggested that the procedure contained in that section be utilized for adjudication orders keeping in mind Oklahoma's disfavor of defaults in juvenile matters.³¹⁸

³¹² *Letteer v. Conservancy Dist.*, 385 P.2d 796 (Okl. 1963)

³¹³ [10A O.S. §1-4-601\(D\)\(3\)](#)

³¹⁴ [10A O.S. §1-4-302\(B\)](#)

³¹⁵ Similar in intent to a no contest plea in criminal proceedings

³¹⁶ [10A O.S. §1-4-601](#)

³¹⁷ [10A O.S. §1-4-305](#)

³¹⁸ See, e.g., *In re H.R.T.*, 362 P.3d 666 (Ok Civ App 2013)

Accepting the Stipulation

A parent may choose to proceed by stipulation rather than contest the petition; that decision is often made before the hearing but can be made at any time, including mid-trial. If no stipulation is entered, the case proceeds to a non-jury adjudicatory trial.

Before accepting a stipulation, the court should address the parent personally, in open court and **on the record**, and confirm the stipulation is knowing, intelligent, and voluntary. At minimum, the court should establish that the parent:

- understands the petition's allegations;
- understands the range of dispositions the court may order if the child is adjudicated deprived;
- understands the right to deny the allegations and have a trial; and
- understands that by stipulating they waive the right to trial, and that the decision is voluntary—not the product of force, threats, or promises.

The court should also ensure a factual basis exists for the stipulation if the stipulation is in the form of a no contest plea. The court may make a limited on-the-record inquiry or take brief offer of proof from the State to establish that basis; formal rules of evidence do not bar this colloquy.

A stipulation by one parent does not prove allegations against, or bind, the other parent who does not agree.³¹⁹

Partial Stipulation and Proof of Allegations

If a parent stipulates to some, but not all, of the allegations in the petition, the State retains the option to proceed with proving the remaining, unadmitted allegations. The decision to pursue these allegations depends on their nature and the significance of securing specific findings. Since the disposition is directly linked to the adjudicatory findings, it may be essential to obtain a particular finding to determine the appropriate outcome.

Adjudication Non-Jury Trial

The parties are entitled to a non-jury trial for the determination of whether the child is deprived. When the initial petition also requests the immediate termination of parental rights, the court is required to determine whether the child should be adjudicated deprived, and, if so, the jury determines whether parental rights should be terminated.³²⁰

The adjudication trial is conducted according to the Rules of Evidence. Witnesses must be sworn and all parties, including the child, must have the opportunity for cross-examination.

³¹⁹ *In re J.C.*, 417 P.3d 1218 (Ok Civ App 2018)

³²⁰ 10A O.S. §1-4-502

The child shall not refuse to be a witness and may provide testimony using methods authorized by statute for the protection of child witnesses, such as prerecorded statements or testimony via closed-circuit television.³²¹

The trial may be conducted by means of teleconference communications. This is a useful provision where:

- A parent is incarcerated and unable to personally attend the trial;
- The child is hospitalized or currently residing out of county and unable to personally attend the trial.

However, the attorney representing that parent or child must be present in person at the hearing.³²²

Insufficient Evidence

If the court finds that the evidence presented does not support the allegations of the petition by the preponderance of the evidence, then the petition is dismissed, the child discharged from custody, and the parent(s) discharged from any restriction or other temporary order issued by the court.

Dismissal vs. Disposition When One Parent Is Safe

In re J.C., Id., stands for the proposition that adjudication findings can—and often must—be made parent-specifically, and that one parent’s posture doesn’t short-circuit the other’s procedural rights.

Assume that after the adjudication trial the non-offending parent is determined to be a fit parent and was not on notice that his or her child was living with the offending parent in an unfit home. Is the child “deprived?” Can a child be deprived with respect to one parent and not the other? *In the Matter of CT.*, 983 P.2d 523 (Ok Civ App 1999), held that at adjudication the focus is the **status of the child**, not the parent; “a child is either deprived or not deprived.” A finding that a child is “deprived as to mother” and “not deprived as to father” has no legal foundation in Oklahoma.

Although several state jurisdictions hold that finding that one parent is safe and willing to assume sole custody of the child is a jurisdictional issue³²³ (i.e., the child is not deprived), Oklahoma requires a court to assert jurisdiction, although based on the evidence presented against the offending parent, with a preference for placing the child at the dispositional hearing

³²¹ [10A O.S. §1-4-503\(B\)](#)

³²² [10A O.S. §1-4-503\(A\)\(4\)](#)

³²³ See e.g., *In re ML*, 757 A2d 849 (Pa. 2000)

in the legal custody of the other non-offending parent and closing the case. However, the court can enter an alternative disposition if in the best interests of the child.

Order of Adjudication³²⁴

The court must find that the factual allegations contained in the petition are supported by the preponderance of the evidence. The petition can be sustained in part so long as the sustained facts are sufficient to support a deprived finding. The unsupported allegations should also be identified as failing to meet the state's burden of proof and should either be dismissed or stricken. The petition can be amended to conform to the proof so that the unsustained allegations are not lingering in the case as live grounds.

The court must find the specific jurisdictional/legal grounds that the proven allegations support that the child is "deprived" as defined in §1-1-105(21), e.g., physical abuse, sexual abuse, neglect, etc.

The court must find that it is in the best interests of the child to be declared a deprived child and made a ward of the court.

Oklahoma case law is clear that parents must be judicially put on notice of the "conditions to be corrected," and the best practice is to announce them on the record as well as providing the identified conditions (e.g., failure to provide safe/stable housing, substance abuse, domestic violence, failure to protect from physical abuse) to be corrected in the order.³²⁵

The order must include a statement advising the parent that failure to appear at any subsequent hearing or comply with the requirements of the court may result in the termination of the parent's rights to the child.

Deferred Adjudication

The Children's Code does **not** provide for deferred adjudications in deprived actions.

Costs

Costs are assessed against the parent or both parents and collected by the court clerk after the child is adjudicated. Legal Guardians or any state or private agency having custody of any child subject to deprived proceedings are not to be assessed court costs.³²⁶

³²⁴ [10A O.S. §1-4-603](#)

³²⁵ *In the Matter of C.G.*, [637 P.2d 66](#), 68 (Okla 1981)

³²⁶ [28 O.S. §162](#)

Determination of Aggravated Circumstances

“Aggravated circumstances” are statutory findings that permits the court to bypass reasonable efforts to prevent removal or to reunify. They may be made at any time **before or after adjudication** on the court’s own motion or a party’s motion.³²⁷

Burden of Proof

Aggravated circumstances must be proved by the preponderance of the evidence. This means that the evidence must show that it is more likely than not that the claim is true.

Grounds

- Infant abandonment: The parent or legal guardian abandoned a child who is 12 months old or younger.
- Serious crimes or extreme maltreatment against a child:
 - Murder or manslaughter of any child (including attempting, helping, conspiring, or soliciting it);
 - Felony assault on any child causing serious bodily injury; or
 - Aggravated circumstances, such as heinous and shocking abuse or neglect of any child.
- Prior involuntary TPR: The parent’s rights to the child’s sibling were involuntarily terminated.
- Sexual abuse finding: A court has found the parent committed sexual abuse against this child or another child of the parent.
- Sex-offender status: The parent is required to register as a sex offender under federal law.

ICWA note: ICWA’s **active efforts** requirement does **not have a bypass**. If ICWA applies, continue to make **active efforts** even where state-law aggravated circumstances are found (tailor the scope to child safety).

Expedited Permanency Hearing

If aggravated circumstances found, reasonable efforts to reunify are not required and the **permanency hearing must be set within 30 days** and the case moves forward consistent with the permanency plan.

XII. DISPOSITION HEARING AND ORDER

Once the court determines that a child falls within its jurisdiction as a deprived child, it must decide who will have custody and control of the child. The court may also impose additional

³²⁷ [10A O.S. §1-4-809](#)

conditions regarding the child’s placement and may issue specific directions to the involved parties.

The dispositional hearing is a pivotal stage in the proceedings. During this hearing, the court decides whether the child should remain in an out-of-home placement or be returned home. If the child continues to be placed outside the home, the court will address the terms for appropriate visitation. Additionally, the court will specify services necessary to assist the child in coping with the separation from their parents and to address any special needs the child may have.

The court’s decisions at this stage should include a plan tailored to correct the specific problems or “conditions” that led to state intervention. While the adjudication hearing identifies the conditions justifying court involvement, the dispositional hearing focuses on how the parties will work together to resolve those issues.

The dispositional hearing also establishes the framework for subsequent review hearings. The purpose of these reviews is to evaluate progress on the case plan. If the family’s issues are clearly defined, services are identified, and objectives are unambiguous, the focus and effectiveness of future review hearings are greatly enhanced.

Timeframe for Hearing

The court may hold the disposition hearing on the same day as adjudication or, if not, it must be held **within 40 days** after adjudication. The hearing can go forward even if the adjudicatory order is on appeal, unless the appellate court issues a stay. Any continuance requires good cause and a finding that it serves the child’s best interests, and the court must state its specific reasons for the continuance on the record.

Requirements Prior to and in Preparation for Disposition Hearing

Before disposition, DHS must complete the necessary groundwork to support informed judicial decision-making. This includes preparing a written Individualized Service Plan (ISP), reassessing the parent’s home and safety conditions, evaluating the child’s needs, and identifying appropriate services or placement options so that the court’s order is based on current, reliable information.

Post-Petition Investigation of the Home and Parent Circumstances

After adjudication, DHS must investigate the home and parent/guardian’s circumstances on the judge’s request.³²⁸ Circumstances since the initial investigation may have changed and this information may be relevant to the court’s decision regarding placement of the child as well as needs of the parent(s).

³²⁸ [10A O.S. §1-4-703](#)

Preparation of the Individualized Service Plans (ISP)³²⁹

DHS, working with the family, creates an Individualized Service Plan (ISP) for each adjudicated-deprived child in DHS custody. The ISP is a case plan that spells out the specific outcomes, goals, and tasks needed to reduce the risk of maltreatment and correct the conditions that led to adjudication.³³⁰ Legally, it is how the court and DHS advise parents of the conduct and changes expected of them. A parent's compliance—or non-compliance—may be used as evidence in any later termination proceeding to show whether those conditions have been corrected. The plan must also detail services to improve the home or, if reunification is not feasible, to secure a permanent placement, focusing on the most efficient path to safe reunification or timely permanency.

- **Who & when:** DHS must prepare a written ISP for every adjudicated deprived child and file it within **30 days of adjudication**; it must be available to counsel and any Tribe.
- **Development & approval:** The ISP is built from a comprehensive assessment with participation of the parent/guardian, child's attorney, GAL, Tribe, and the child (as appropriate). Disputes may be resolved by evidentiary hearing; once approved it is incorporated into the dispositional order and signed by listed parties.
- **Form & flexibility:** The ISP must be individualized and consider the family's realities, including parent work schedules, transportation, and distance to service providers. Plans must be in simple English and, if the parent can't read English, in the parent's principal language when possible. Plans must be modifiable, measurable, and consistent with court orders.
- **Core contents:** Family/child history; conditions leading to adjudication and the specific changes the parent must make; identified reunification services for the family; child's services (medical/educational/behavioral), plus current health/education records; frequency and how delivery will be ensured; assigned worker; projected completion date; and performance criteria/time frames to measure progress; child's attorney and assigned worker information.
- **Child safety clause:** The ISP must specifically provide for the child's safety, spelling out the actions/precautions needed.
- **For youth age 14 and older:** the plan should describe how it will support a successful transition to adulthood by addressing education, vocational training or employment, health care planning and insurance coverage, transportation needs (including help obtaining a driver's license), money management and budgeting, safe and stable housing, development of social and recreational skills, and the establishment and maintenance of connections with the youth's family and community.

³²⁹ [10A O.S. § 1-4-704](#)

³³⁰ [In the Matter of S.A., 169 P.3d. 730 \(Ok Civ App 2007\)](#)

- **If out-of-home:** Add timelines for services to facilitate return/permanency; describe placement (least restrictive, proximity); note services requested/denied; document return-home efforts; transition planning for youth 14+; behavioral health/medical needs; visitation plan; educational stability assurances. Include the permanency plan and steps (e.g., recruitment for adoption/guardianship).
- **Time-limited reunification services (15-month window)**³³¹: The ISP must identify reunification services and make them part of the plan for the 15 months starting when the child entered foster care. The services **must be available and accessible** to the parent within the 15-month window. If, after that period, the parent hasn't corrected the circumstances and the court makes the finding under [§1-4-904\(B\)\(16\)](#), the DA shall file (or join) a TPR petition under [§1-4-902](#).
- **Mandatory warning:** The ISP must include the statutory warning to the parent that this document is critical, its purpose is to help provide a safe home within a reasonable period, and that failure to do so can lead to TPR.
- **Special notes:** If the child enters inpatient behavioral-health/substance-abuse treatment, the ISP must be amended to cover treatment and discharge planning. Pre-adjudication voluntary services by a parent are not an admission and may not be used as evidence for adjudication/disposition.

Other circumstances may require attention to ensure the child's safe placement in the home; however, unless such circumstances are legally adjudicated to be the cause of the child's deprivation, failure to address them should not serve as grounds for terminating parental rights.

Evidence at Disposition Hearing

At the dispositional hearing, the court may consider any oral or written report relevant to the child's disposition, and hearsay is admissible. All written reports must be provided to every party before the hearing, and any report or evidence may be challenged or rebutted by the parties. The formal rules of evidence do not apply, and the proceeding is intended to be informal, while still affording each party a fair opportunity to be heard.³³²

Decisions

At disposition, the court must determine the legal and practical framework that will govern the child's care, custody, supervision, and services going forward. These decisions require specific statutory findings and orders designed to ensure the child's safety, promote permanency, and address the conditions that brought the family before the court.

³³¹ [10A O.S. § 1-1-105\(72\) – Version 2](#)

³³² [10A O.S. § 1-4-706](#)

Choose the Custody/Placement³³³

Options include:

1. **In-home** with protective supervision and safety conditions. Custody remains with the parent/legal guardian with DHS supervision. The order placing the child under supervision by the Department in the child's own home remains in effect for a period of one (1) year. In appropriate circumstances, the court may extend or reduce the period of supervision by the Department.
2. With the **non-custodial parent** after a home assessment (either giving that parent sole custody with a final order, or custody under DHS supervision).
 - **Threshold:** After a home assessment, the court may place the child with the non-custodial parent unless that would not be in the child's best interests. Any party with knowledge may offer evidence on this point.
 - Two paths once placed with that parent:
 - **Final custody order + dismiss juvenile case.** The court may order the non-custodial parent to assume sole custodial responsibilities, set visitation for the other parent, and order child support. The court may then terminate juvenile jurisdiction by entering a final permanency order. The order remains effective and takes precedence over any previous custody or support orders until it is subsequently modified. It may be recorded in an existing or newly established district or administrative case to enable enforcement or modification outside of juvenile court. The clerk must transmit and file the order as directed.
 - **Protective-supervision track (case stays open).** The court may place the child with the non-custodial parent under DHS protective supervision, order services (to the removing parent, the custodial parent, or both), and set a review hearing to decide longer-term custody.
3. **With a relative** (preference applies; state reasons on the record if relative not chosen). The Court should direct DHS to complete/expand the relative search and assessment and to prioritize placement with a suitable relative, if any.
4. **Private institution/agency** (licensed); or

³³³ [10A O.S. § 1-4-707](#)

5. **DHS custody** (DHS then selects the specific placement consistent with above priorities, best interests and proximity rules). The court may order move-out/no-contact conditions as needed.

Set and Confirm Visitation

If reunification services are appropriate, allow reasonable parent visitation unless not in the child's best interests; do not deny solely because a parent can't prove sobriety or ISP compliance. Specify frequency, supervision, and logistics.

Establish Permanency Plan³³⁴

Set the initial permanency plan and decide concurrent planning (e.g., guardianship, adoption); determine whether aggravated circumstances exist (if not decided previously) and whether reunification services are appropriate.

Approve and Order the ISP

Determine and order the Individualized Service Plans for child and parent(s) (resolve any disputes by evidentiary hearing and then incorporate the ISP into the dispositional order).

Determine Child Support

At disposition, the court should either set child support or defer the issue to the appropriate administrative court. Any existing support order may remain in effect unless it is not in the child's best interests. When setting support, the court should apply the child support guidelines and may deviate when necessary to allow a parent to meet ISP obligations. Each parent is responsible for paying his or her percentage, even if the parents live together. Support is subject to income assignment. The support order must be filed as a separate, non-confidential order and is subject to enforcement.³³⁵

Youth Services (Older Teens)

For youth 14+, determine needed independent living/transition services (and ensure the ISP addresses transition planning as required).

Make “Reasonable Efforts” Findings & Timeline

If the child is removed, decide whether reasonable efforts were/are being made to return the child home; allow at least 3 months for the parent to correct conditions, with a 17-month cap on reunification services absent compelling reasons; or determine whether reasonable efforts are not required if aggravated circumstances exist. If reasonable efforts to reunify are not required, determine whether reasonable efforts were made to finalize the permanency plan.

³³⁴ [10A O.S. § 1-4-706](#)

³³⁵ [10A O.S. §1-4-702](#)

When reunification is the primary plan and concurrent planning is in place, the court must verify that the agency is actively pursuing the concurrent permanency plan, including identifying and pursuing appropriate in-state and out-of-state placement options.

Determine whether DHS has made reasonable efforts to place the siblings together or to ensure frequent contact when apart.

Schedule Future Hearings

Set dates/times for periodic review and permanency hearings before adjourning.

Include Required Advisements

Insert the warning that a parent's noncompliance may result in termination of parental rights (or removal from a legal guardian/custodian).

XIII. BEHAVIORAL HEALTH PLACEMENTS AND TREATMENT

When a child's needs include significant mental health or substance abuse concerns, the court must carefully evaluate whether a behavioral health placement or specialized treatment is necessary and legally appropriate. Such placements require specific statutory findings and ongoing judicial oversight to ensure that treatment is individualized, least restrictive, and consistent with the child's safety and permanency plan.

Minor In Need of Treatment

Admission to an Inpatient Facility (wards of the court — DHS or parent/guardian custody)³³⁶

- A child may be admitted on an emergency basis for no more than five (5) days, excluding weekends and holidays, from the time of admission.
- On the next business day after admission, DHS must give notice to the child's attorney, CASA/GAL, the court, and the district attorney.
- A licensed mental health professional at the facility must complete an evaluation within 48 hours, excluding weekends and holidays.
- If a parent who has physical custody arranged the emergency admission of a ward of the court, the parent must immediately notify the DHS caseworker; the agency then notifies the other parties.

³³⁶ [43A O.S. §5-508](#)

Evaluation Report³³⁷

Before inpatient treatment may be pursued, the evaluator's written report must find that:

- the child is in need of treatment and is reasonably likely to benefit, and
- 2. inpatient care is the least-restrictive alternative that meets the child's needs—either because less-restrictive options were tried and failed, or, after thorough consideration, they are unlikely to meet the needs.

The child must receive a clinically appropriate explanation of the proposed treatment. The report must be signed by the examiner, and prior/current providers must cooperate in supplying treatment records.

Petition³³⁸

(Style: "In the Matter of ___, a Minor Alleged to be in Need of Inpatient Mental Health or Substance Abuse Treatment")

- Only the District Attorney files the petition, after receiving an evaluation that supports inpatient treatment (including when requested by the legal custodian/guardian). The petition must be filed within three (3) days after the DA receives the evaluation, and the evaluation is attached.
- Contents include verified allegations bringing the child within the Act (diagnosis/dependence; dangerousness in the near future absent services; recent overt acts or significant threats supporting that expectation), identifying information (child, guardian, custodian, nearest relative if needed), the relief requested, and endorsement of witnesses.
- If the DA declines to file, the facility must be immediately notified in writing and the child is discharged.
- An individual treatment plan must be submitted to the court at least 24 hours before the merits hearing.

Pre-Hearing Detention Order (PHD)³³⁹

- A child may not remain on emergency status beyond five (5) days (excluding weekends/holidays) unless the court issues a pre-hearing detention order authorizing continued detention pending the hearing on the petition.

³³⁷ [43A O.S. §5-509](#)

³³⁸ [43A O.S. §5-512](#)

³³⁹ [43A O.S. §5-508; §5-512](#)

- The DA requests the PHD. If the court finds probable cause that the child is in need of treatment, the court enters the PHD and sets the hearing; if no probable cause, the petition is dismissed and the child is released. Provide a certified copy of the PHD to the facility.

Notice of Hearing / Setting³⁴⁰

- The court sets the merits hearing promptly upon filing. Statute requires a short-fuse setting (commonly not less than one (1) nor more than three (3) judicial days from filing), with notice of date, time, place, and purpose to: the DA, the parent(s) or legal custodian, the facility, and DHS. Notice is typically at least 24 hours before the hearing, by the method the court directs.

Legal Counsel³⁴¹

If the child is without counsel, the court must appoint an attorney. The attorney must consult with the child at least 24 hours before the hearing on the petition. The court may appoint a GAL on its own motion or on request of the child's attorney.

Rights of the Child³⁴²

- The child has the right to appear (unless the child elects to waive appearance), the right to remain silent (child's testimony cannot be used against the child in other proceedings), and the right to cross-examine witnesses. The court may close the hearing and a record/transcript must be kept.
- Scheduling: the merits hearing is held on the accelerated timeline above. Only the child's attorney may request a continuance up to three (3) judicial days.
- Jury: There is no right to a jury. The case is non-jury by default, but "the judge on his or her own motion may call a jury to try any such case." ³⁴³
- Proceedings may use teleconference, but the child's attorney must appear in person unless otherwise ordered.

Trial (Merits)³⁴⁴

- Hearings are private; only persons with a direct interest may be present. A verbatim record is required and remains confidential absent court order.

³⁴⁰ [43A O.S. §5-512](#) (and related notice provisions in [§5-511](#))

³⁴¹ [43A O.S. §5-511](#). Recommend that the child's attorney in the deprived case be appointed to represent child in INT.

³⁴² [43A O.S. §5-511](#)

³⁴³ [43A § 5-511\(C\)](#)

³⁴⁴ [43A O.S. §5-511](#)

- The decision must be based on sworn testimony subject to cross-examination, unless facts are stipulated—and the court should confirm on the record that the child understands and agrees to any stipulation and its consequences.
- The burden of proof is clear and convincing evidence on the elements required by statute.³⁴⁵

Judicial Findings and Order of Commitment³⁴⁶

The court must find, by clear and convincing evidence, that:

- the child has a demonstrable mental illness or is drug/alcohol dependent;
- as a result, the child can be expected in the near future to inflict or attempt to inflict serious bodily harm on self or another if services are not provided, supported by recent overt acts or significant threats;
- the child is likely to benefit from the proposed treatment; and
- inpatient treatment is the least-restrictive appropriate level of care (either less-restrictive alternatives were tried and failed, or after thorough consideration are unlikely to meet the needs, and there are no comparably effective, less-intrusive services available).

If the court does not find the child in need of treatment, dismiss and release immediately. If the child needs treatment but not inpatient, order the least-restrictive services and, if appropriate, direct the parent to comply with reasonable conditions related to treatment.

Post-Adjudication Review³⁴⁷

- Whenever inpatient treatment is ordered, the court must set a review within thirty (30) days of commitment and continue reviews at intervals of not more than thirty (30) days until the child is released.
- The facility must file a progress report at least three (3) days before each review addressing progress, whether inpatient criteria continue, and reasons if continued care is recommended.

Discharge & Discharge Plan³⁴⁸

The child must be discharged when:

- the facility determines inpatient criteria are no longer met;
- the order expires (e.g., 30 days from entry unless otherwise authorized); or
- the court orders discharge. Before discharge, the facility prepares a discharge plan and provides it to the child and the person responsible for case supervision. The plan should

³⁴⁵ [43A O.S. §5-512; §5-513](#)

³⁴⁶ [43A O.S. §5-513](#)

³⁴⁷ [43A O.S. §5-513](#)

³⁴⁸ [43A O.S. §5-513](#)

identify (at minimum): needed community services (treatment, education, housing, health/safety), the agencies/providers responsible, medication information, and a scheduled follow-up appointment for outpatient treatment and medication management.

Qualified Residential Treatment Program (QRTP)³⁴⁹

Purpose and Policy Intent

The legislative intent underlying both federal and Oklahoma QRTP provisions is to limit congregate care and ensure that children are placed in the least restrictive, most family-like setting consistent with their needs. QRTPs serve as short-term, clinically appropriate placements when intensive therapeutic intervention is required, but not as long-term residential settings.

Admission and Assessment Procedures

When the Department of Human Services (DHS) determines that a child's needs may require treatment in a congregate care setting, federal and state law mandate that no placement in a QRTP may occur without an independent clinical assessment supporting that level of care.

The assessment must:

1. Be conducted by a qualified individual who is a trained and licensed clinician not employed by DHS or the placement provider, unless otherwise approved by the court;
2. Determine whether the child's needs can be met through placement in a foster family home or whether a QRTP or other treatment setting is necessary;
3. Identify the short- and long-term clinical goals for the child and outline how the QRTP will meet those goals; and
4. Include documentation of the child's and family's participation in the assessment process, when appropriate.³⁵⁰

If a placement is made on an emergency basis before the assessment is complete, the assessment must be initiated within 30 days of the start of placement. The QRTP assessment report is required to be filed with the court within 45 days of the placement.

Notice and Participation of Parties

DHS must provide timely notice of any QRTP assessment or placement to:

- The child's attorney,
- The parents, custodian, or legal guardian,
- The district attorney, and
- Any CASA volunteer assigned to the case.

³⁴⁹ [10A O.S. §1-1-105\(57\)](#)

³⁵⁰ [42 U.S.C. §675a\(c\)\(1\)](#)

Parties are entitled to participate in the QRTP review hearing and may present evidence or argument regarding the necessity and appropriateness of the placement.

Court Findings at Initial QRTP Placement (Within 60 Days)

The court must make specific findings to validate the placement for federal IV-E eligibility and to ensure compliance with state law.³⁵¹ Within 60 days of placement in a QRTP, the court shall:

1. Review the assessment, supporting documentation, and treatment plan;
2. Determine whether the child's needs can be met in a family setting or whether the QRTP placement remains appropriate³⁵²;
3. Make a case-specific written findings by the preponderance of the evidence (and document) that:
 1. The child's needs cannot be met in a foster family home;
 2. The placement in a QRTP provides the most effective and appropriate level of care in the least restrictive, most family-like setting available;
 3. The placement is consistent with the child's permanency plan; and
 4. The court has reviewed the independent assessment and agrees that the placement is appropriate.

If these findings are not made within 60 days, the placement becomes ineligible for federal IV-E reimbursement, though it may continue under state funding or alternative authority.³⁵³

Ongoing Clinical Review

QRTP placements are designed to be short-term. The qualified individual or the QRTP treatment team must periodically reassess the child's progress toward discharge goals.³⁵⁴

At each reassessment, the team should evaluate:

- Whether the child's treatment goals remain valid,
- Whether a family-based placement has become appropriate, and
- Whether a plan for aftercare services to ensure transition stability.

³⁵¹ [42 U.S.C. §675a\(c\)\(2\)](#); [10A O.S. §1-4-703](#)

³⁵² The court should not approve or deny the particular placement identified by DHS.

³⁵³ To maintain compliance with federal funding requirements, the safest and most common interpretation across state agencies is:

- **Day 1** is the calendar day the child is physically placed in the QRTP.
- The 60-day deadline is the 60th calendar day after placement.

This means that the Oklahoma state-level procedural rule (excluding the first day) might conflict with the stricter federal interpretation used for Title IV-E funding purposes. For maximum compliance, the day of entry must be counted.

³⁵⁴ [42 U.S.C. §672\(k\)\(4\)](#)

Ongoing Judicial Review and Permanency Hearings

At each subsequent review or permanency hearing, the court must continue to evaluate the appropriateness of any ongoing QRTP placement.

The court shall make written findings addressing:

1. Whether the child's needs continue to require placement in a QRTP;
2. Whether the specific treatment services being provided are appropriate and whether progress is being made toward discharge goals;
3. Whether reasonable efforts are being made to transition the child to a family-based setting; and
4. Whether aftercare services are in place or being developed to support reintegration into a family or community placement.

These findings should be individualized and reference the QRTP's treatment plan and most recent clinical reviews.³⁵⁵

Duration Limits and Transition Planning

QRTP placements are intended to be short-term and clinically targeted, not long-term residential care.

When OKDHS determines that a child cannot currently function in a family setting and must remain in a QRTP or similar treatment setting, the court must re-evaluate the child's status **at least every 90 calendar days** until it makes a final determination that the child cannot be placed in a family setting.³⁵⁶

If a QRTP placement continues beyond **six months**, the court must make **detailed, case-specific findings** documenting the compelling reason for continued treatment in that setting and the child's ongoing clinical need.

The CW specialist's permanency report must include:

- Documentation that a qualified individual's assessment continues to support the QRTP as the most effective and least restrictive setting;
- The specific treatment or service needs to be met and the expected duration; and
- Efforts to prepare the child for transition to a family-based placement.

The QRTP must:

³⁵⁵ [Okla. Admin. Code §340:75-6-40.5](#) (DHS requirement to attach QRTP assessment made by qualified individual that QRTP remains in best interest of child).

³⁵⁶ [10A O.S. §§ 1-4-807\(A\)\(1\)–\(2\)](#)

- Provide discharge planning and family-based aftercare support for at least 6 months after discharge.³⁵⁷

If a child is placed in a QRTP for more than 12 consecutive or 18 non-consecutive months (or more than six total months while under the age of 13), the placing agency shall submit the most recent documentation prescribed in 42 U.S.C. 675(a) (c)(5) and the signed approval of the head of the placing agency (i.e., DHS) for continued placement.³⁵⁸

Interaction with Permanency Goals

QRTP placement does not alter the child's permanency goal but may temporarily support progress toward reunification, guardianship, or adoption.

Judges should ensure that:

- The QRTP plan aligns with the concurrent permanency goals;
- Discharge planning is integrated into the Individualized Service Plan (ISP); and
- DHS provides progress updates at every review hearing.

Failure to make these findings or to reassess the placement regularly can jeopardize federal reimbursement.

Note: A new assessment of the child is required each time the child re-enters a QRTP placement. New assessments are not required when the child transfers between two different QRTP placements. New assessments should reference past assessments to ensure continuity of the child's care.

INT vs. QRTP SUMMARY CHART

Feature	INT (Minor in Need of Treatment)	QRTP (Qualified Residential Treatment Program)
Legal Authority	10A O.S. §43A O.S. § 5-508; OAC 340:75-11-231 et seq.	42 U.S.C. § 672(k); 10A O.S. §§ 1-4-703, 1-1-105(57); DHS Policy 340:75-11-233
Funding Source	State or Medicaid; not IV-E reimbursable	Title IV-E reimbursable if statutory and judicial requirements met
Purpose	Serves children with severe mental illness, developmental disability, or dual diagnoses requiring psychiatric or substance abuse treatment	Serves children with serious emotional or behavioral needs requiring short-term trauma-informed clinical treatment

³⁵⁷ [42 U.S.C. §§672\(k\)\(4\)\(C\)–\(F\)](#)

³⁵⁸ [42 U.S.C. §675\(a\)\(c\)\(1\)–\(5\)](#)

Facility Type / Licensing	Psychiatric residential treatment facilities or specialized units licensed by ODMHSAS or OHCA	Child-placing or residential care agencies accredited by CARF, COA, or Joint Commission
Court Involvement	Court approves admission under 43A O.S. § 5-508 and 10A O.S. § 1-7-113; no federal QRTP findings required	Court must make QRTP findings within 60 days under 10A O.S. § 1-4-703 for IV-E eligibility
Clinical Assessment	Psychiatric or psychological evaluation supporting inpatient or residential psychiatric need	Independent Title IV-E assessment by a qualified clinician (non-DHS) verifying QRTP level of care
Length of Stay	Long-term as clinically indicated; discharge upon stabilization	Short-term (typically ≤ 6 months) with required 6-month aftercare services post-discharge
Examples of Use	Psychotic disorders, severe autism, self-harm, or substance abuse needing 24-hour medical oversight	Behavioral or trauma-related disorders that can stabilize through trauma-informed therapy
Oversight Agency	ODMHSAS (clinical/licensing) and DHS/OJA (placement management)	DHS Child Welfare Services only; QRTP applies to DHS custody, not OJA
Judicial Findings Needed for Federal Claim	None—state-funded only	Required within 60 days and at each review/permanency review for Title IV-E claim

XIV. Permanency Planning Options

The goal of every deprived child proceeding is to secure a safe, stable, and permanent home for the child within a timeframe consistent with the child’s developmental needs. Federal and state law require the court to adopt and review a permanency plan at each stage of the case, moving promptly from temporary care toward a legally permanent arrangement. The court must consider reunification with the parent as the primary goal unless reasonable efforts are not required or reunification is no longer in the child’s best interests. If reunification is not appropriate, the court must evaluate and select among alternative plans such as permanent guardianship, adoption, or, for older youth in limited circumstances, another planned permanent living arrangement. Each permanency option carries specific statutory findings, procedures, and long-term consequences, which the court must address on the record to ensure compliance with state and federal mandates.

Reunification

Reunification with a parent is the preferred permanency goal and must be the first option considered by the court. Federal and state law require that reasonable efforts be made to preserve or reunify the family unless aggravated circumstances are found or efforts are otherwise excused by statute. When reunification remains the plan, the court must ensure that the parent is engaged in services, visitation is occurring, and measurable progress toward safety and stability is being made within the statutory timelines.

Trial Reunification — Requirements & Procedure³⁵⁹

When and How to Start

Trial reunification is ordered by returning the child to the parent/legal guardian's care and setting a review date within 6 months. If reunification appears successful at any time, the court may return legal custody to the parent and relieve DHS of legal custody; if an extension is needed, the court sets a new review date. Total time in trial reunification may not exceed 12 months.

Pre-Placement Safety Check

Before trial reunification begins, DHS must run a criminal background check on every adult in the home who is not a parent, legal guardian, or custodian, including OSBI and FBI national checks.

Custody and Services During TR

While trial reunification is underway, DHS retains legal custody, may visit the child in any necessary setting, and must continue appropriate services to the parent (if eligible) and the child.

Emergency Termination by DHS

DHS may terminate the trial reunification without a prior court order if needed to protect the child's health, safety, or welfare, but must advise the court and parties within 3 judicial days. The court must then hold a **hearing within 15 days** of receiving notice to decide (a) whether remaining in the home/caretaker placement is **contrary** to the child's welfare and (b) whether **reasonable efforts** were made to prevent removal from trial reunification.

After 12 Months

If the court finds that its supervision should continue after the 12-month trial reunification cap, it may award legal custody to the parent and order continued DHS supervision (relieving DHS of legal custody) under agency rules; the supervision period may not exceed 6 months, except when the court finds a longer period is necessary to protect the child.

³⁵⁹ [10A O.S. §1-4-806](#)

Converting TR to Final Orders

The court may modify prior orders at any time to: (i) return legal custody, (ii) end DHS custody/supervision, or (iii) dismiss the case once conditions are corrected.³⁶⁰ —**except** it cannot modify a TPR order. Use [§ 1-4-814](#) as the legal basis to finalize a successful reunification.

Effect on 15/22 Months

Trial home reunification should **not** be counted in calculating the 15- month period in foster care that triggers termination of parental rights provisions.

Permanent Guardianship

Permanent guardianship provides a legally secure placement for a child when reunification is not possible, but termination of parental rights and adoption are not appropriate. It allows a child to remain in a stable home — with relatives — while preserving a limited legal relationship with the parents. The court must make specific findings that guardianship is in the child’s best interests, that reunification and adoption have been considered and ruled out, and that the proposed guardian is able and willing to provide long-term care and stability.

Requirements & Procedure³⁶¹

When Appropriate (Threshold)

Permanent guardianship (PG) is available when reunification is not viable and adoption is not appropriate, but the child needs a stable, legally secure home—often with a relative or kin. The court must find PG is in the child’s best interests and that statutory conditions are substantially satisfied.³⁶²

Who Files; Required Verification

A verified motion for PG is filed in the deprived case by the district attorney or the child’s attorney; the proposed guardian must verify/consent as the statute requires. The motion must include the child’s information, proposed guardian’s identity and relationship, placement history, why reunification/adoption are not appropriate, services provided, proposed visitation, and requested orders.³⁶³

³⁶⁰ [10A O.S. §1-4-814](#)

³⁶¹ [10A O.S. §1-4-709](#), [§1-4-710](#), [§1-4-711](#)

³⁶² [10A O.S. §1-4-709](#)

³⁶³ [10A O.S. §1-4-710\(A\)–\(B\)](#)

Who May Qualify to be a Permanent Legal Guardian

A permanent guardianship may be established for a child with a relative that has a relationship and attachment with the child and with whom the child has resided for at least the last 6 months while the relative was an approved/licensed foster home. This requirement is made so that the legal guardian may be eligible to receive IV-E financial assistance.³⁶⁴

Notice and Jurisdiction

The juvenile court retains subject-matter jurisdiction; ensure personal jurisdiction and notice to all necessary parties (parents, legal/putative fathers, custodian, GAL/child's counsel, Tribe if ICWA). Service/notice must meet statute and due process.³⁶⁵

Pre-Hearing Documentation

Obtain and consider a home study (or equivalent assessment), background checks, the current case plan/ISP, progress reports, and any subsidy/benefits eligibility review (including possible IV-E Guardianship Assistance Program).³⁶⁶

Required Findings at the Hearing

On the record, the court should find:

- PG is in the child's best interests;
- Reunification has been ruled out and adoption is not appropriate;
- The proposed guardian is suitable, able, and willing to provide long-term care, custody, and supervision;
- Reasonable efforts (or active efforts if ICWA applies) have been made to finalize a permanency plan; and
- Required assessments/checks and reports have been completed and considered.³⁶⁷

Order Contents (What the Decree Must Include)

The PG order should:

- Award legal custody to the guardian and define decision-making authority (education, medical/mental health, travel, records access);
- Set parental visitation/contact terms (and guardian authority for reasonable adjustments consistent with safety/best interests);

³⁶⁴ [OAC 340:75-6-31.4\(a\)\(1\)\(H\)](#)

³⁶⁵ [10A O.S. §1-4-710\(C\)](#)

³⁶⁶ [10A O.S. §1-4-709; §1-4-710](#)

³⁶⁷ [10A O.S. §1-4-709; §1-4-710\(D\)](#)

- Address child support (ordered or deferred to the proper tribunal; note any existing order);
- Direct services/supports (including post-guardianship services or GAP if eligible);
- State records-release directives to agencies/providers honoring the guardian's authority; and
- Set review expectations plus any sealing/confidentiality provisions.³⁶⁸

Effect on DHS Custody/Supervision

Upon entry of PG, the court terminates DHS legal custody and supervision. Legal custody of the child is placed with the guardian. The court retains jurisdiction for limited post-guardianship review.³⁶⁹

Post-Order Review

A date certain is set within 1 year for an initial post-guardianship review to confirm stability, services, and compliance with visitation. Additional reviews may be set at the discretion of the court.

Closure of Deprived Case

If periodic reviews are not necessary, the deprived case can be closed. The permanent-guardianship order then stays fully in effect and controls over any earlier or pending custody or child-support order until a district court later modifies it.

- The order can be docketed and filed in any prior or pending administrative or district court case; if no such case exists, the order can be used to open a new case in the county where the deprived case was pending or where the permanent guardian lives. The juvenile-court clerk must send the order (with the parents' last-known addresses) to the appropriate district-court clerk, who must open a file without a filing fee, assign a new case number, file the order, and mail a copy with the case number back to the juvenile court and to the parents. The order is not confidential and, once docketed, may be enforced or modified in that existing or new administrative or district court case.

Modification or Termination (Later Proceedings)

After PG is established, any modification or termination of the guardianship order requires clear and convincing evidence of a substantial change in material circumstances and that the requested change is in the child's best interests.³⁷⁰

³⁶⁸ [10A O.S. §1-4-710\(D\)-\(F\)](#)

³⁶⁹ [10A O.S. §1-4-710](#)

³⁷⁰ [10A O.S. §1-4-711](#)

- A motion may be brought by the permanent guardian, DHS, the district attorney, the child (through counsel/GAL), or another party the court permits.
- The statute gives examples (not an exclusive list), such as: the guardian is no longer able/willing/safe to serve; the child's needs or safety circumstances have materially changed; or reunification with a parent has become appropriate.
- All necessary parties must be served; the court appoints a GAL for the child for a modification/termination proceeding.
- The court holds a hearing; if safety is at issue, it may enter interim protective orders, including changing placement or (if the juvenile case is open/initiated) placing the child in DHS custody pending final decision.
 - If the child is removed from the home of the guardian, the court must determine if continuation in the home is **contrary to the welfare** of the child and whether **reasonable efforts** have been made to prevent the removal/or whether an emergency exists.
 - DHS must create a new permanency plan for the child and file it with the court within **30 days** that the PG was terminated.
 - If the parents' rights are **not** terminated, they **must be notified** that the guardianship was changed or ended and may participate in the new permanency-planning hearing, where the court will choose a plan that meets the child's needs.
 - The court may order reunification services again if that's in the child's best interests and may consider returning custody to a parent under DHS supervision if the parent proves by a preponderance of the evidence that the problems present when guardianship was granted have been substantially corrected and reunification is the best option for the child.

Key Differences Between Title 10A Permanent Guardianship and Title 30 Guardianship³⁷¹

- Forum & posture
 - 10A: Juvenile court, within a deprived action; often after adjudication/disposition with DHS involved.
 - 30: District/probate court; stand-alone civil case (no deprived case required).
- When used
 - 10A: After the court rules out reunification and adoption but still must achieve a federally compliant permanency outcome.
 - 30: Any time a minor needs a guardian outside juvenile court (e.g., parental incapacity, consent guardianships).

³⁷¹ [30 O.S. § 2-101 et seq.](#), Oklahoma Guardianship and Conservatorship Act

- Who brings it
 - 10A: Filed in the deprived case by the DA or child’s attorney; proposed guardian verifies.
 - 30: Filed by an interested person (relative, other) per Title 30 procedures.
- Findings & standard to create
 - 10A: Best interests and statutory conditions (reunification/adoption not appropriate; suitability/capacity; reports/home study).
 - 30: Generally, “best interests/necessity” under Title 30; no juvenile-permanency prerequisites.
- DHS & services
 - 10A: DHS typically party; court can order/track services; eligibility for IV-E Guardianship Assistance (GAP) or TANF-supported options may apply.
 - 30: Usually a *private* arrangement; no DHS custody/services or federal permanency reporting.
- Modification/termination standard
 - 10A: Clear and convincing evidence of a substantial change in material circumstances and best interests; GAL appointment required for such proceedings. Parent has no standing to request modification.
 - 30: Modified under Title 30 best-interests standards; no codified “substantial change” test like 10A’s—courts apply Title 30’s framework. Parent has standing to request modification.
- After entry / jurisdiction handoff
 - 10A: The PG order may be docketed in district court for enforcement/modification once the deprived case is closed; if child protection issues re-emerge, a deprived case is the vehicle for DHS custody/services/permanency—guardianship court cannot preside over a deprived case.
 - 30: All enforcement/modification stays in the Title 30 file.

Adoption

Adoption establishes a new and permanent legal parent-child relationship when reunification is not viable. Before adoption may become the permanency plan, parental rights must be terminated either voluntarily or involuntarily. The court must ensure that adoption is in the child’s best interests, that reasonable efforts or active efforts have been provided as required, and that statutory placement preferences are followed, including those mandated by ICWA when applicable. Adoption provides the most finality of all permanency options and requires careful adherence to statutory procedures.

Another Planned Permanent Living Arrangement (APPLA)

APPLA is the least preferred permanency option and may be used only for youth who are at least 16 years of age, and only after the court makes specific findings that reunification, guardianship, and adoption are not appropriate. The court must ensure that the youth has meaningful connections with supportive adults, that the placement is stable and meets the youth's needs, and that the agency is making diligent efforts to prepare the youth for adulthood. APPLA should be chosen sparingly and revisited at each review to confirm its continued necessity.³⁷²

XIV. REVIEW HEARINGS

Review hearings are a critical safeguard in deprived child proceedings, ensuring ongoing judicial oversight of the child's placement, safety, and progress toward permanency. At each review, the court must evaluate the reasonableness of the Department's efforts, the appropriateness of the child's placement, the parent's progress toward correcting the conditions that led to removal, and the adequacy of services provided. These hearings provide an opportunity to update the case plan, adjust visitation and services, and ensure the permanency timeline is maintained in accordance with state and federal law.³⁷³

Timing & Who Can Request

- First review **no later than 6 months** from the child's removal, and **at least every 6 months** thereafter until permanency or the court ends jurisdiction. A review may be held together with a permanency hearing. Any party may ask for an earlier review.

Notice & Participation

- If a foster parent, group home, pre-adoptive parent, or relative is currently caring for the child, the Department must give them notice, and they have the right to be heard (not party status by notice alone).

What Evidence the Court May Consider

- Evidence code does not apply. The court may receive any helpful evidence, including oral and written reports (not limited to what would be competent at adjudication). Service-provider progress and critical-incident reports must also be filed and distributed to counsel/GAL/Tribe as applicable.

The Written Review Hearing Report (What DHS Must File)

³⁷² [42 U.S.C. §675a\(a\)\(2\)](#); [10A O.S. §§1-4-811](#) and [1-4-807](#)

³⁷³ [10A O.S. §1-4-807](#)

DHS (or supervising/custody agency) must prepare a written report for each review.

- **What It Should Include But Not Limited To:** The child's physical/mental/emotional status and adjustment; school progress; parent visitation; transition services for youth 16+; parental progress and needed changes; services offered since last hearing and those needed; full placement history with reasons; efforts to locate/involve parents; compliance with court orders; placement appropriateness/least-restrictive analysis; a timetable for return home/other permanency; and specific recommendations (e.g., approve/continue TR; stay in-out of home; remain in current placement if plan is not reunification).
- **Child/Caregiver/GAL Input.** The child's attorney, foster parents, and GAL may submit their own report (in writing and/or verbally); the custodian must not deny the child access to counsel and must facilitate it.

Required On-The-Record Determinations at Every Review

The court **shall** determine and include in its order:

- Whether the ISP/services/placement meet the child's special needs and best interests (health, safety, education specifically addressed).
- Whether continued out-of-home placement is needed.
- Whether the current permanency plan remains appropriate.
- Whether services/party responsibilities need clarification or modification in light of new information.
- Whether visitation (including sibling visitation if separated) should be modified.
- The time frame to achieve reunification or another permanent plan.
- Whether reasonable efforts have been made for safe return home—or, if RE were excused or inconsistent with the plan, whether timely steps are being taken to finalize the selected permanency plan.
- For youth 14+, whether successful-adulthood/transition services are being provided (and inquire of the youth re: independent-living plan).
- Whether services to parent/child are adequate (order more studies/evaluations if needed).
- Whether siblings have been placed together (or have frequent contact if not).
- For youth approaching 18, whether a 90-day transition plan is being developed covering housing, insurance, education, mentors, and employment support.

Additional Review Hearing Considerations the Court Must Address

- Consider in-state/out-of-state placement options.
- Determine the child's safety using all relevant prior and current information.

- Consider compliance with the **reasonable and prudent parent standard**³⁷⁴ and the child’s access to age-appropriate activities while in care; assess progress toward correcting conditions; decide whether return home is safe; and confirm an appropriate permanency plan (concurrent planning as applicable; APPLA only for youth 16+).

Note: Impact of *In the Matter of J.M.*³⁷⁵:

No Outsourcing Judicial Authority to Private Providers: The court may not allow private agencies (e.g., treatment programs) to unilaterally change court-ordered services or effectively control outcomes without a court-approved modification; doing so abrogates judicial duties.

Fifth Amendment Concern with “Admit-to-Treat” Programs: Conditioning reunification/TPR outcomes on a parent’s admission of sexual abuse in a program (when the parent has not been convicted and denies guilt) risks compelled self-incrimination; the court criticized reliance on such a program where it was the “only game in town.”

Use Immunity

In cases where a parent may be facing criminal charges for abuse of the child and is asserting 5th Amendment rights, the child’s attorney or the district attorney applies for “use immunity” for a parent’s statements made to a court-ordered evaluator or treatment provider in furtherance of the court’s order. The protection is limited: it covers only statements made during the actual evaluation/treatment, does not extend to statements made to DHS investigators, and does not prevent perjury charges.³⁷⁶

The issue presented is whether a parent who testifies in the criminal action can be impeached with statements made during the deprived court hearing or court-ordered therapy. The answer remains unclear in Oklahoma. However, it appears that the answer should be “no.” The U.S. Supreme Court determined that testimony given under use immunity is the “essence of coerced testimony” and established that such testimony cannot be used for impeachment or any other purpose.³⁷⁷

³⁷⁴ See [10A O.S. § 1-1-105\(57\)](#) (defining “reasonable and prudent parent standard” as careful and sensible parental decisions that maintain the child’s health, safety, and best interests while encouraging emotional and developmental growth, to be used by the child’s caregiver in deciding participation in extracurricular, enrichment, cultural, and social activities).

³⁷⁵ [In the Matter of J.M.](#), 858 P.2d 118 (Ok Civ App 1993)

³⁷⁶ [10A O.S. §1-4-508\(A\)\(3\)](#)

³⁷⁷ [New Jersey v. Portash](#), 440 U.S. 450 (1979)

XV. PERMANENCY HEARINGS

Permanency hearings are the court’s milestone checkpoints to ensure every child achieves a safe, stable, and legally secure home without delay. At this hearing, the court identifies and orders the child’s permanent plan (e.g., reunification, adoption/TPR, legal guardianship, placement with a fit and willing relative, or—only for older youth—APPLA), evaluates the agency’s efforts to finalize that plan, and confirms that the child’s health, safety, and well-being remain paramount. The court reviews progress on services, visitation, education and medical needs, sibling and relative connections, and concurrent planning, then sets concrete next steps, deadlines, and any required filings (such as TPR or guardianship petitions).³⁷⁸ The child’s voice is heard in a developmentally appropriate way, and for older youth the court addresses transition planning and normalcy. The result is a clear, time-bound order that drives the case to legal permanency and reduces unnecessary foster-care drift. Permanency hearings are only applicable to children in foster care.³⁷⁹

Timing

- No later than 6 months following the child entering “out-of-home placement” and every 6 months thereafter.
- 30 days after a judicial determination that reasonable efforts to help a child safely return home are not required. Then every 6 months thereafter.³⁸⁰
- Within 30 days when parental rights are not terminated as a result of a trial.³⁸¹
- Recommended 30 days after a permanent guardianship is terminated and child placed back in DHS custody. Then every 6 months thereafter.³⁸²

A permanency hearing may be held concurrently with a dispositional hearing or review hearing.

Who Should be Present?

Required Parties & Counsel

- Parents (or legal guardian/custodian) and their attorneys.
- Child and Child’s attorney (and GAL/CASA if appointed).

³⁷⁸ “For example, while a review hearing may refine the case plan for returning a child home, the permanency hearing should decide whether or not the child will go home. If the child is to go home, the court should set a specific timetable and plan for the return. If not, the court should identify another permanent goal for the child and set a specific timetable for achieving the alternate goal.” *Improving Permanency Hearings Sample Court Reports and Orders*, Mark Hardin (2002)

³⁷⁹ [10A O.S. §1-4-811](#)

³⁸⁰ [10A O.S. §1-4-809](#)

³⁸¹ [10A O.S. §1-4-908](#)

³⁸² [10A O.S. §1-4-711](#)

- District Attorney/ADA and the DHS caseworker (agency representative). These are the core parties; the court “may consider testimony of any person who has relevant information,” and all parties may present evidence and cross-examine.³⁸³

Caregivers With a Right to be Heard

- Foster parents, preadoptive parents, and relative caregivers who are currently providing care must receive notice from DHS and have a right to be heard at the proceeding (notice/right to be heard does **not** make them parties). This mirrors federal law.³⁸⁴

Child & Youth Participation

- The court must consult the child in an age-appropriate manner about the plan.
- For youth 14+, the case planning must be done in consultation with the youth, and the youth may select up to two team members (one may serve as reasonable-and-prudent-parent standard advisor); DHS may reject a designee for good cause.³⁸⁵

Specialized Placements / APPLA / QRTP (As Applicable)

- If the plan is APPLA (permitted only for youth 16+), the court must question the youth and make written “best-plan” and “compelling reasons” findings; having DHS personnel (and often the caregiver) present to address these is essential.
- If the child is in a QRTP (Qualified Residential Treatment Program), the court must review the QRTP requirements and ongoing clinical need; ensure the DHS worker (and, as needed, a QRTP/clinical representative or Qualified Individual) can supply the required documentation and testimony.

Pre-hearing meeting (Context)

If a child has been in out-of-home care for 12 months or longer, the court may require DHS to facilitate a meeting or staffing between the parties, their attorneys, treatment providers, participants, PARB member and CASA to discuss recommendations regarding the child’s permanency plan. This meeting should occur no later than 30 days prior to the permanency hearing.

Consensus recommendation shall be reported to and reviewed by the court at the permanency hearing.³⁸⁶

³⁸³ [10A O.S. §1-4-811](#)

³⁸⁴ Id.

³⁸⁵ Id.

³⁸⁶ [10A O.S. §1-4-810\(A\)\(1\)](#)

Pre-Hearing Reports³⁸⁷

Pre-hearing report (due not less than 3 judicial days before the hearing) should include:

- The proposed permanency plan;
- DHS's efforts to effectuate that plan;
- The permanency options considered and reasons for excluding higher-priority options (e.g., reunification, adoption, guardianship, relative);
- Updates on: (a) parent progress on the treatment/service plan; (b) the child's behavioral, physical, and emotional health; (c) a recommendation to continue/modify the goal with an anticipated date to meet it; and (d) whether to extend the current placement with reasons.

Others: parents/child's attorney/CASA/foster parent—may also file informational reports.

Form of evidence presented at the hearing

The Evidence Code does not govern permanency hearings, but parties may cross-examine any witness presenting information to the court.

The following may be submitted as evidence for the court's consideration in permanency hearings:

- Testimony of any person with relevant information regarding the child or status of the treatment plan;
- Oral reports presented by OKDHS and any of the parties and participants (e.g., CASA);
- Written reports submitted by OKDHS, relevant treatment agencies and any of the parties or participants (e.g., foster parents).

Transcripts should be made of each hearing OR memorialized by written findings of facts by the court.³⁸⁸

Information to be presented

At a permanency hearing, the court considers:

Permanency Plan

- DHS must present the proposed permanency plan for the child.
 - Options include:
 - Return to parent

³⁸⁷ [10A O.S. §1-4-810](#)

³⁸⁸ [10A O.S. §1-4-811](#)

- Placement with a fit and willing relative
- Adoption (with termination of parental rights)
- Permanent Guardianship
- Another planned permanent living arrangement (APPLA – only for older youth and when no other option is appropriate)

Agency Efforts

- Evidence of reasonable efforts to finalize the permanency plan, including services provided to the child, parents, and foster caregivers.
- For children who cannot return home, DHS must show efforts to place with relatives, secure adoptive placements, or prepare for independent living (if age appropriate).

Child's Situation

- Current placement, safety, well-being, and stability.
- Child's adjustment in school and community.
- Child's wishes regarding permanency.
- DHS shall also document at each permanency hearing the steps taken, including inquiry of the child, to ensure that:
 - the foster family home of the child or facility where the child is placed is following the reasonable and prudent parent standard, and
 - the child has regular, ongoing opportunities to engage in age-appropriate or developmentally appropriate activities.

Parent's Progress

- Compliance with individualized service plan (ISP).
- Steps taken toward reunification, if that is the plan.

Required Findings³⁸⁹

The court must make explicit findings, including:

Best Interests of the Child: Which permanency option best serves safety, stability, and well-being.

Reasonable Efforts: Whether DHS made reasonable efforts to:

³⁸⁹ Id.

- Reunify the child with the family (if applicable), or
- Achieve the alternative permanency plan.
- Place siblings together or provide for frequent visitation or other ongoing interaction when not placed together.

Compelling Reasons: If the court rules out termination/adoption, the court must state compelling reasons why adoption is not in the child’s best interests.

Older Youth in APPLA: If APPLA is chosen:

- Court must document compelling reasons why other options are not appropriate.
- Must address youth’s placement stability, services to prepare for adulthood, and steps to support permanent adult connections.

Case-Specific Findings: Such as sibling placement/visitation, compliance with ICWA if applicable, and safety needs.

Projected Date: If the current placement is not permanent, the projected timetable for the return home or for placement in an adoptive home, with a guardian, or another planned alternative permanent living arrangement.

Required Decisions³⁹⁰

These are the orders the court issues to move the case forward:

- Select or change the child’s permanency goal:
 - Reunification with parent(s)
 - Adoption (with TPR if necessary)
 - Guardianship
 - Placement with fit/willing relative
 - APPLA (only if criteria met for older youth).
- Determine the date by which the goal of permanency is scheduled to be achieved.
- Order services: Direct DHS, parents, or others to provide/participate in services needed to achieve permanency.
- Visitation/contact: Modify or set conditions for parent-child or sibling visitation.
- Set next review/permanency hearing date(s): Establish deadlines for next permanency hearing or progress review.

³⁹⁰ Id.

- Adoption/TPR timing: If the plan is adoption, direct the State to file/advance TPR proceedings.
- Transition planning: For older youth, order DHS to provide services for independent living and permanent adult connections.

XVI. FOSTER CARE

Foster care provides temporary, safe homes for children who cannot remain with their families, and foster parents are essential partners in ensuring the child's safety, stability, and permanency. Acting under the authority of the Department of Human Services, foster parents have defined rights and responsibilities under Oklahoma law, including notice and the opportunity to be heard in court proceedings. While they do not hold legal custody or the same constitutional status as biological parents, their daily care and observations are critical to informed judicial decisions and to achieving the child's best interests.

Legal Framework

Foster care in Oklahoma operates within a comprehensive legal structure established by state and federal law. The foundation is the Oklahoma Children's Code, codified at Title 10A of the Oklahoma Statutes, which governs the custody, placement, and care of deprived children. Administration and oversight of foster care are primarily vested in the Oklahoma Department of Human Services (DHS), whose policies implement the statutory framework and ensure compliance with federal mandates. Federal law further shapes Oklahoma's foster care system through several key enactments: the **Adoption and Safe Families Act of 1997** (ASFA), 42 U.S.C. § 671 et seq., which emphasizes child safety, permanency, and timely decision-making; the **Fostering Connections to Success and Increasing Adoptions Act of 2008**, Pub. L. No. 110-351, 122 Stat. 3949, which promotes relative placement, sibling connections, and support for older youth; and the **Family First Prevention Services Act of 2018**, Pub. L. No. 115-123, 132 Stat. 64, which prioritizes prevention services to keep children safely with their families and limits the use of congregate care. Together, these statutes and policies form the legal foundation guiding Oklahoma courts and DHS in protecting children and promoting permanency within the foster care system.

Types of Foster Care Placements

- Kinship Foster Care – placement with relatives or close family friends.
- Traditional Foster Care – licensed, non-relative foster homes.
- Therapeutic/Treatment Foster Care – specialized for children with higher behavioral or medical needs.
- Respite Care – short-term placements to give foster parents breaks.
- Emergency Shelter/Foster Care – immediate, temporary placements in crisis situations.

Foster Parent Rights and Responsibilities

Oklahoma law recognizes foster parents as vital partners in providing care and permanency for children in state custody. The **Foster Parent Bill of Rights**³⁹¹ guarantees foster parents the right to be treated with dignity and respect; to receive necessary information about the child; to participate in court hearings and case planning; to obtain training and support services; and to advocate for the child without fear of reprisal. When foster parents believe their rights have been violated or that DHS actions are unfair, they may seek redress through the Foster Parent Grievance and Complaint Process³⁹² that provides for review and resolution by DHS and, in some cases, an administrative hearing. Although responsibilities are primarily defined by DHS regulations rather than statute, foster parents are expected to maintain a safe and nurturing environment, comply with licensing standards, cooperate with DHS and service providers, support family reunification or other permanency plans, and respect the confidentiality of all case information. Collectively, these provisions reflect the Legislature's intent that foster parents be valued members of the child welfare team, working collaboratively with DHS and the court to ensure each child's safety and well-being.

Foster parent responsibilities are specifically set forth in [Okla. Admin. Code § 340:75-7-37](#), which requires resource parents to provide safe and nurturing care, participate in case planning, support the child's permanency goals, cooperate with DHS and service providers, maintain confidentiality, and complete all required training.

Change of Placement

Changes in foster care placement are governed by [10A O.S. §§1-4-804](#) and [1-4-805](#), which establishes procedures to protect the child's stability and ensure fairness to foster parents.

Notice of Change in Foster Care Placement

When a child in the custody of DHS is moved from one placement to another, DHS must promptly notify the court, the post-adjudication review board, the district attorney, the child's attorney, and the guardian ad litem, if one has been appointed. In addition, DHS must provide prior notice to the foster family in accordance with the requirements of [10A O.S. § 1-4-805](#). The child's attorney and guardian ad litem must also be informed of the child's new placement location.

All required notifications must be made within a reasonable time after DHS becomes aware of the need for a placement change and, except in emergencies, no later than **five judicial days before the move**.

³⁹¹ [10A O.S. § 1-9-119](#)

³⁹² [10A O.S. § 1-9-120](#)

Emergency Removal

An “**emergency**” is defined as any situation requiring the immediate movement of a child **without the advance notice** otherwise required by law. An emergency move may occur only under one or more of the following circumstances:

1. When ordered by the court, including orders authorizing placement of the child with a parent or sibling;
2. When the child-placing agency or foster parent requests the child’s immediate removal without delay or prior notice;
3. When the move is necessary to obtain emergency medical or mental health treatment for the child;
4. When there is substantial noncompliance by a foster parent or child-placing agency with placement standards or agreements that places the child in **imminent danger**; or
5. When there is a pending investigation of alleged abuse or neglect by a foster parent, child-placing agency, or any person residing in the foster home.³⁹³

Change of Placement – Foster Parent Rights by Length of Placement

The procedural protections afforded to foster parents³⁹⁴ depend on the length of time the child has been in their care. All foster parents are entitled to notice before a child is moved, except in emergencies. Once the child has been in the home for three months or more, foster parents gain additional rights, including written notice and the opportunity to provide input to the court. After six months or more, foster parents may file a formal written objection, which automatically stays the removal and requires a court hearing to determine whether the proposed move is in the child’s best interests.

Category	Child in Placement < 3 Months	Child in Placement ≥ 3 Months	Child in Placement ≥ 6 Months
Statutory Basis	§ 1-4-805(A)	§ 1-4-805(C)	§ 1-4-805(D)
Notice Required	Yes – DHS must notify the foster family prior to movement and notify the court, DA, GAL, and child’s attorney.	Yes – DHS must give written notice of the proposed removal to the foster family, court, DA, GAL, and child’s attorney.	Yes – Same as 3-month rule; written notice required.
Timing of Notice	Within a reasonable time after DHS becomes aware of the need for movement;	At least five (5) judicial days before removal, unless an emergency exists.	At least five (5) judicial days before removal, unless an emergency exists.

³⁹³ [10A O.S. §1-4-805](#)

³⁹⁴ Id.

	no specific minimum period required.		
Contents of Notice	Basic notice of movement (may be oral or written).	Written notice stating the reasons for removal and the proposed effective date.	Written notice stating the reasons for removal and the proposed effective date.
Right to Object / Hearing	No statutory right to object or hearing.	May submit written or oral opinions or concerns to the court; the court may hold an informal review within 15 judicial days.	May file a formal written objection within five (5) judicial days of notice; triggers automatic stay and hearing.
Automatic Stay Pending Review	No stay required.	Court may stay removal pending informal review.	Automatic stay applies upon timely objection unless DHS demonstrates an emergency.
Court Hearing Requirement	None required.	Court may hold an informal placement review within 15 judicial days if concerns are raised.	Mandatory hearing within 15 judicial days to determine if proposed removal is in the child's best interests.
Foster Parent Participation	May provide information to DHS but has no statutory right to appear or testify.	May provide written or oral information to the court regarding the child's adjustment and relationship with the family.	Entitled to present information and evidence at hearing; treated as an interested participant for this purpose.
Emergency Exception	DHS may remove immediately in emergencies; must notify court and parties afterward.	Same emergency exception applies; defined in § 1-4-805(B).	Same emergency exception applies; automatic stay does not apply if DHS proves an emergency.
Judicial Review Standard	None required; court may review if raised by a party.	Court reviews for arbitrariness, consistency with permanency plan, and best interests if hearing is held.	Court must determine whether DHS's decision is arbitrary, inconsistent with or necessary for permanency plan, safety of child, is in the child's best interests and supported by credible evidence.

Policy Goal	Administrative flexibility for short-term placements.	Promote early notice and participation once the child begins bonding with caregivers.	Protect placement stability and attachment once a significant caregiving relationship has formed.
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The court is responsible for ensuring that the Department of Human Services (DHS) adheres to statutory notice and timing requirements, and that any proposed change in placement aligns with the child’s best interests. Judges are expected to review the duration of the placement to identify applicable procedural safeguards, confirm that proper notice was issued, and guarantee that foster parents have the opportunity to be heard as mandated by law. When a foster parent submits a timely objection after six months of care, the court is required to stay the removal and promptly conduct a hearing to assess DHS’s rationale for the change, the strength of the child’s attachment to current caregivers, and the alignment of the proposed move with the permanency plan.

Note: In *In the Matter of O.R.*,³⁹⁵ the Oklahoma Court of Civil Appeals considered whether the five-day period for foster parents to object to a child’s removal applied when the removal occurred under emergency circumstances. After law enforcement discovered drugs in the foster home, DHS immediately removed the child without providing written notice. Two months later, the foster parent filed an objection to the removal. The trial court denied the objection as untimely. The Court of Civil Appeals reversed, holding that the objection was not time-barred because 10A O.S. § 1-4-805 is silent regarding the timeframe for filing an objection following an emergency removal. The court emphasized that establishing procedural deadlines, such as the period for filing an objection, is a legislative—not judicial—function, and thus declined to impose one judicially.

Important Caselaw

- *Smith v. Organization of Foster Families for Equality and Reform*, 431 U.S. 816, 97 S.Ct. 2094, 53 L.Ed.2d 14 (1977): The case involved an attack on the constitutionality of state procedures for the removal of foster children from foster homes. The Court held that not only do foster parents have standing to assert the claim that they have a constitutionally protected liberty interest in the integrity of the family unit, but also that they have standing to raise the rights of foster children even where court-appointed counsel represented the children. However, while acknowledging that strong emotional bonds can form, the Court recognized key differences between foster and

³⁹⁵ [*Matter of O.R.*, 450 P.3d 1050 \(Ok Civ App 2019\)](#)

natural families. A natural family's liberty interest is rooted in human relationships, but a foster family's existence is a temporary arrangement created by state contract. Hence, the Court reasoned that the rights of the biological parents, based on blood relationship and state law, "necessarily override the foster family's contractual and emotional relationship" when there is a conflict.

- [Matter of B.C., 749 P.2d 542 \(Okla. 1988\)](#): The case involved the question whether foster parents could intervene to assert their interest in the adoption of their foster child. DHS, although previously assuring them that they would be able to adopt, placed the child with another family. The Court held that the foster parents did have standing to intervene as being long-term foster parents and persons in “loco parentis” – ones who have assumed the status and obligations of a parent without a formal adoption.
- [Department of Human Services v. Colclazier, 950 P.2d 824 \(Okla. 1997\)](#): The Court held that DHS has the duty to determine the appropriate placement of a deprived child in its custody, but the district court can either approve or disapprove that placement according to the best interests of the child standard until the court has terminated parental rights and placed permanent custody with DHS or until the child is no longer a ward of the court.
- [Saul v. Alcorn, 176 P.3d 346 \(Okla. 2007\)](#): The Court held that even where caregivers lack explicit statutory intervention rights regarding the removal of a child from a foster home (e.g., short term foster parent or respite caregiver), their participation may be appropriate where it contributes to a more comprehensive best-interests analysis. *Saul* supports judicial discretion to allow their involvement in removal decisions – particularly where their exclusion might deprive the court of critical information about the child’s welfare.
- [Skrapka v. Bonner, 187 P.3d 202 \(Okla. 2008\)](#): Maternal aunt and uncle—approved by DHS as a suitable placement—moved to intervene in a juvenile review proceeding after DHS split the siblings and placed two girls with a noncustodial father whose other child had previously sexually abused one of them (a fact DHS acknowledged). The trial court denied intervention; the relatives sought writs in the Supreme Court. The Oklahoma Supreme Court assumed original jurisdiction and granted writs in part, holding that under these facts, a proper best-interests determination requires allowing the aunt and uncle to participate in the review proceedings. The Court, reading the Children’s Code as a whole (and related statutes emphasizing best interests, relative/kinship preference, and sibling considerations), concluded the aunt and uncle hold a statutorily recognized interest sufficient that due process requires their participation (via intervention) to ensure an informed best-interests adjudication.
- [Archie v. Schonlau, 438 P.3d 706 \(Ok Civ App 2020\)](#): In a civil tort action where a foster child sued the foster parents for a dog bite suffered in their home, the

Court held that since foster parent stands in *loco parentis* to a foster child, parental immunity applies to foster parents.

XVII. TERMINATION OF PARENTAL RIGHTS

Termination of parental rights (TPR) is the most serious and consequential action in Oklahoma’s child welfare system. It permanently severs the legal relationship between parent and child and should occur only when clear and convincing evidence establishes that statutory grounds exist and that termination is in the child’s best interests. Governed by the Oklahoma Children’s Code, 10A O.S. §§ 1-4-901 et seq., and guided by constitutional due process principles, termination proceedings require strict adherence to procedural safeguards, proper notice, and proof that less restrictive alternatives have been considered. The court’s paramount duty is to ensure that termination is based on current, credible evidence and serves the overarching goal of safety, permanency, and well-being for the child.

Statutory Basis for Termination

This quick-reference chart compares Oklahoma termination-of-parental-rights (TPR) grounds under 10A O.S. § 1-4-904 across the 2024 statute and the 2025 amendments (HB 1965, effective Nov. 1, 2025). Each row lists the short title, the subsection citation for 2024 and 2025, and a brief note on any material change. Notably, the 2025 revisions restructure paragraph (B)(16) and add exceptions (a)–(i) while retaining the paragraph-specific “entered foster care” definition.

Termination of Parental Rights – 2024 vs 2025 Comparison Chart

10A O.S. § 1-4-904 (HB 1965 ENR, effective Nov. 1, 2025)

Ground for Termination (Statutory Citation)	Basic Requirement / Legal Standard	2025 Change
(B)(1) Voluntary Consent	Parent voluntarily consents in writing before the court; consent must be knowing and voluntary; revocation; ICWA withdrawal rules apply.	No change.
(B)(2) Abandonment	Parent entitled to custody has abandoned the child; intent may be inferred from conduct.	No change.

(B)(3) Abandoned Infant	Court finds the child is an abandoned infant.	No change.
(B)(4) Voluntary Placement & Failure to Comply	Parent placed child with DHS/agency; failed to comply with placement agreement; no firm intent to resume custody or arrange permanent care.	No change.
(B)(5) Failure to Correct Condition	Parent failed to correct conditions leading to deprived adjudication after at least 3 months.	No change.
(B)(6) Prior TPR + Conditions Not Corrected	Parent's rights to another child were terminated and those conditions remain uncorrected.	No change.
(B)(7) Failure to Support (6 of 12 months)	Noncustodial parent willfully failed/refused/neglected to contribute to support for 6 of the prior 12 months.	No change.
(B)(8) Specified Criminal Convictions	Parent convicted of enumerated violent or sexual abuse offenses.	Minor language update: replaces 'pornography' with 'child sexual abuse material.'
(B)(9) Heinous or Shocking Abuse/Neglect or Failure to Protect	Parent abused or neglected any child or failed to protect any child from abuse/neglect that is heinous or shocking.	No change.

(B)(10) Prior Abuse/Neglect + Subsequent Abuse	Parent previously abused or neglected this child or a sibling, and the child/sibling has been subjected to subsequent abuse.	No change.
(B)(11) Child Conceived by Rape	Child conceived as a result of rape by the parent whose rights are sought to be terminated.	No change.
(B)(12) Incarceration + Harm Factors	Parent incarcerated and continuation of rights would result in harm to the child based on a multi-factor analysis.	No change.
(B)(13) Parental Incapacity / Medical Condition + Harm	Parent's condition prevents adequate parenting within a reasonable time and custody would cause actual or near-future harm.	No change.
(B)(14) Prior Deprived Adjudication of Child/Sibling	Condition leading to deprived adjudication previously occurred (this child/sibling) and parent had opportunity to correct.	No change.
(B)(15) Substantial Erosion of Parent-Child Relationship	Relationship substantially eroded due to neglect, abuse, prolonged absence, or failure to visit or communicate.	No change.
(B)(16) Time-in-Care: 15 of 22 Months	Child has been in foster care ≥ 15 of the most recent 22 months and cannot be safely returned home.	Major revision: removes 'child 4+ years' limit; adds nine exceptions (a)–(i); retains 'entered foster care' definition; permits court to

consider parental bond and psychological harm.

(B)(17) Under 4: 6 of 12 Months	Child under 4 at placement has been in foster care ≥ 6 of 12 months and cannot be safely returned home.	No change.
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More than likely the 2025 amendment to (B)(16) applies prospectively beginning November 1, 2025. Petitions or deprived proceedings filed before that effective date remain governed by the prior version of the statute.³⁹⁶

When Termination Must Be Filed

Under [10A O.S. § 1-4-902\(A\)](#), the district attorney shall file (or join if the child files the petition/motion) a petition/motion to terminate parental rights in any of these situations:

1. **“15 of 22 Months” Rule:**

When a child has been in foster care under DHS responsibility for 15 of the most recent 22 month ([§1-4-902\(A\)\(1\)](#)), unless one of the statutory exceptions applies ([§1-4-902\(B\)](#)).

2. **Abandoned Infant:**

Within 60 days after the court finds that a child is an abandoned infant ([§1-4-902\(A\)\(2\)](#)).

3. **No Reasonable-Efforts Finding:**

Within 60 days after a judicial determination that DHS is not required to make reasonable efforts to reunify due to certain aggravated circumstances (e.g., conviction for homicide, sexual abuse, etc.) ([§1-4-902\(A\)\(3\)](#)).

4. **No Measurable Progress:**

Within 90 days after the court approves an individualized service plan (ISP) and the parent fails to make measurable progress toward correcting the conditions ([§1-4-902\(A\)\(4\)](#)).

Exceptions (“Compelling Reasons”) to TPR

The district attorney is not required to file a termination of parental rights petition if certain exceptions apply, such as when the child is safely placed, termination is not in the child’s best interests or required reunification services have not been provided.³⁹⁷

³⁹⁶ [In re L.M., 276 P. 3d 1088 \(Ok Civ App 2012\)](#)

³⁹⁷ [10A O.S. §1-4-902\(B\)](#)

- The child is safely cared for by a relative.
- There's a documented, compelling reason that filing isn't in the child's best interests, such as:
 - Ongoing parent-child relationship that benefits the child.
 - The child (age 12 or older) objects to termination.
 - Foster parents can't adopt but can give the child a stable, permanent home.
 - The child can't function in a family setting.
 - The child is an unaccompanied refugee minor with international or foreign-policy issues.
- The state hasn't provided the reunification services needed for the child's safe return home (when reasonable efforts are required).

Additional Exceptions

Even when a child has been in foster care for fifteen of the last twenty-two months, termination is not required if one of several exceptions applies—such as substantial parental progress, strong parent-child bonds, child objection, or other special circumstances.³⁹⁸

- The parent has made substantial progress, and the child can likely return home safely within 90 days.
- The child has a close and positive relationship with a parent, and a non-TPR permanency plan is more appropriate.
- The child (age 12 or older) firmly opposes termination and would likely disrupt an adoption.
- The parent is terminally ill but in remission, has named a guardian, and opposes termination.
- The child cannot function in a family setting; the court must review the status every 90 days.
- The child is an unaccompanied refugee minor with international legal or foreign-policy issues.
- Adoption is not an appropriate plan for the child.
- The parent's incarceration is the main reason for substitute care, and termination is not in the child's best interest.
- The parent's participation in a court-ordered residential substance-abuse treatment program is the main reason for substitute care, and termination is not in the child's best interest.

³⁹⁸ [10A O.S. §1-4-904\(B\)\(16\)](#)

See also §1-4-903³⁹⁹ that describes the judicial mechanism for ensuring accountability in moving toward termination of parental rights (TPR) when adoption is the child's permanency plan. The court asks the D.A. to "show cause" *why* a TPR petition/motion has not been filed when the plan is adoption and the parent hasn't corrected the conditions. This statutory section also recites examples of compelling reasons why the state has not moved forward (e.g., sufficient reasonable efforts not made).

Notice

Before a hearing on a petition or motion to terminate parental rights, the parent who is the subject of the proceeding must be served with written notice of the date, time, and place of the hearing and given a copy of the petition or motion. Service may be made personally, by certified mail, or—if the parent cannot be located—by publication under [§1-4-304](#). The notice must include a warning in substantially this form: "*Failure to personally appear at this hearing constitutes consent to the termination of your parental rights to this child or these children.*"

Notice must be served **at least fifteen (15) days before the hearing**, and it must also state that the parent's duty to support the child continues unless and until the child is adopted under § 1-4-906(B)(3).⁴⁰⁰

If TPR notice is by **publication**, the TPR hearing cannot be held until **at least 25 days** after the publication notice.

Note: [Tammie v. Rodriguez, 570 P. 2d 332 \(Okla. 1977\)](#): The evidence showed that the mother was living at the address shown on the summons and her place of employment was correctly listed. The return stated sheriff made five trips but "could not catch her." There was no affidavit or evidence a copy of the notice was mailed to her. The evidence did not support a finding that due diligence was used in attempting to locate and notify mother of the hearing and therefore the statutory prerequisites to valid service by publication were not met.

[Matter of F.B. v. State, 2025 OK 25, 579 P.3d 1039](#): The case was remanded for an evidentiary hearing to determine whether Mother received actual notice of the possible consequences of her failure to appear for her jury trial (i.e., deemed to be a waiver of jury trial) which could have informed her decision to fail to appear. The record filed was silent on this issue.

Incarcerated Parent

Service of summons is sent to the place of confinement. Ensure proper service of the TPR petition/motion and the trial setting to the facility where the parent is held, with the statutory warning language and at least 15 days' lead time.

³⁹⁹ [10A O.S. §1-4-903](#)

⁴⁰⁰ [10A O.S. §1-4-905](#)

Due process requires a **meaningful opportunity** to participate: the parent must be able to hear/see the proceedings, consult counsel, and present/contest evidence. Decide promptly whether to issue a writ of habeas corpus ad testificandum for in-person appearance.⁴⁰¹ If transport is impracticable (security, distance, cost, scheduling), order real-time video participation or, at minimum, two-way audio with reliable connectivity.⁴⁰² Testimony may also be provided by deposition.⁴⁰³

Provide a reliable way for **confidential** attorney–client consultation throughout the hearing (e.g., breakout room, private phone line, recesses on request).

Trial⁴⁰⁴

Who Can Demand & When: A parent entitled to service, the State, or the child may demand a jury on the termination issue either when TPR is pled with the initial deprived petition (judge decides deprivation; jury decides TPR) or when TPR is filed after adjudication.

Court May Call a Jury Sua Sponte: Even without a demand, the court may call a jury to try a TPR.

Burden of proof: Clear and convincing evidence on grounds and best interests; in ICWA cases, the State must prove beyond a reasonable doubt (including Qualified Expert Witness testimony that continued custody is likely to cause serious damage).

Jury Instructions: OUJI-JUV instructions are used; juries receive special interrogatories tracking statutory grounds and best-interests.

Evidence: The Evidence Code applies to jury and non-jury trial.

If Jury is Waived: Court must issue a scheduling order within **30 days**, and the bench trial must commence within **90 days** of that order unless the court makes written exceptional-circumstances findings or the parties/ GAL agree to continue.

If a Jury is Demanded: Court must issue a scheduling order within 30 days; the jury trial must commence within 6 months of that order unless written exceptional-circumstances findings or agreement. The jury is six (6) persons.

⁴⁰¹ [12 O.S. §397](#) (a writ is considered only for the merits hearing, with 15-day delivery to the custodian and a cost order; the court must order the applicant/appropriate party to pay transport costs; pretrial hearings involving a prisoner are to be conducted by telephone/deposition/video).

⁴⁰² *In re K.N.L.*, 154 P.3d 1276 (Ok Civ App 2007); *In the Matter of T.T.S.*, 373 P.3d 1022, 1030 n.18 (Okla. 2015); *In the Matter of J.O.*, 561 P.3d, 1118 (Okla. 2024)

⁴⁰³ See *Matter of Rich*, 604 P.2d 1248 (Okla. 1979)

⁴⁰⁴ [10A O.S. §1-4-502](#)

Nonappearance After Demanding a Jury: A party who requested a jury and fails to appear in person after proper notice, without good cause, may be deemed to have waived the jury right; the case proceeds non-jury unless another party demands a jury or the court calls one. The lawyer’s request to hold a jury trial in the parent’s absence does not preserve the jury right under the current statute. Due process requires the record show the parent had prior notice that nonappearance could waive the jury right.⁴⁰⁵

Verdict Fraction: In Oklahoma civil cases, three-fourths of the jurors may render a verdict (so 5 of 6 in a six-person jury).⁴⁰⁶

Selected TPR-Specific Evidentiary Rules/Procedures

Child-Witness & Special Presentation Rules

Recorded Forensic Statements of Child Victims/Witnesses⁴⁰⁷

- **Where it applies:** only in Children’s Code deprived-child proceedings and only for the statement of the child (or another child witness).
- **What can come in:** a recording of an oral statement made before the proceedings begin may be admitted if the court finds the statutory conditions are met.
- **Required findings/conditions (all of these):**
 1. Trustworthiness: After a hearing outside the jury’s presence, the court must find “sufficient indicia of reliability,” considering spontaneity/consistency, declarant’s mental state, age-appropriate terminology, and lack of motive to fabricate.
 2. Child is available or legally unavailable:
 - The child testifies or is available to testify in open court or by an approved alternative method ([12 O.S. § 2611.3](#) et seq.); or
 - The child is unavailable under [12 O.S. §2804](#), and there is corroborative evidence of the act.
 3. No attorneys in the room when the statement is made (they may observe via one-way facilities but not participate or signal their presence).
 4. The recording is both visual and aural (film, videotape, or other electronic means).
 5. Equipment/operator competence and no alteration of the recording.

⁴⁰⁵See *Matter of F.B. v. State*, 2025 OK 25, ___ P.3d ___, (requirement of actual notice to be given regarding consequences of failure to appear for jury trial).

⁴⁰⁶ [Okla. Const. art. 2, §19](#)

⁴⁰⁷ [10A O.S. §1-4-505](#); See *In the Matter of V.J.R. (a/k/a F.M.)*, 556 P.3d 1010 (Okla. 2024) (where the Court held that 10A O.S. § 1-4-505 is the controlling statute for admitting a child’s recorded forensic interview in juvenile deprived proceedings, because it is more specific than 12 O.S. § 2803.1 that generally governs child-hearsay in criminal/juvenile cases. When statutes conflict, the more specific controls.)

6. The statement is not the product of leading/suggestive questions (or is otherwise clearly the child's own statement).
 7. Every voice on the recording is identified.
 8. The interviewer appears at the proceeding and is available for testimony/cross-examination.
- **Pre-viewing:** Each party had an opportunity to view the recording before it's offered, and a court-reporter transcript is available.
 - **Advance notice:** The proponent must give at least 10 days' notice of the intent to offer the statement and its particulars.

Child (≤12) May Testify Outside the Courtroom⁴⁰⁸

- **Scope:** Applies only in Children's Code cases when the child (or child witness) is alleged/adjudicated deprived; it governs *that* child's testimony.
- **Two court-ordered methods (on a party's motion):**
 1. Live, contemporaneous testimony by closed-circuit TV from a room other than the courtroom, when appropriate facilities are reasonably available; the court, finder of fact, and parties view it in the courtroom. Only attorneys, GAL, persons aiding the child's welfare, and necessary tech staff may be in the room; only attorneys question; tech operators must be out of the child's sight/hearing (adjacent room/behind screen or one-way mirror).
 2. Recorded testimony taken outside the courtroom for later showing in court; only those permitted under the live method may be present; only attorneys question; and the court must ensure: (a) the recording is both visual and aural; (b) equipment/operator are competent and the recording is accurate/un-altered; (c) every voice is identified; and (d) each party can view the recording beforehand and receives a court-reporter transcript.
- **No in-court compulsion:** If testimony is taken under either method, the child shall not be compelled to testify in open court during the proceeding.
- **Defense consult right:** If these methods are used, a parent's attorney is entitled—on request—to a recess long enough to consult with the client before the testimony concludes.

Alternative Methods for Child Testimony⁴⁰⁹

- **Applicability & Motion:** TPR is non-criminal: use the Uniform Act's non-criminal standard. A party (or proper movant) files a motion requesting an alternative method for the child's testimony.

⁴⁰⁸ [10A O.S. §1-4-506](#).

⁴⁰⁹ [12 O.S. §§2611.3–2611.12](#) (Uniform Child Witness Testimony by Alternative Methods Act)

- **Notice & Hearing:** Set a noticed, on-the-record hearing; privileges apply but ordinary evidence rules may be relaxed for the hearing.
- **Threshold & Findings:** Based on a preponderance of the evidence, find an alternative method is necessary to serve the child's best interests or enable communication; consider age/maturity, relationships, nature/degree of trauma, setting, and ability to communicate.
- **Choose the Method (least restrictive that protects fairness):** Options include: (a) live two-way video from another room; (b) recorded testimony taken outside the courtroom; (c) in-room adjustments (screens, layout) with support person/therapy dog under [§2611.2](#)⁴¹⁰; (d) for children ≤12, Title 10A [§1-4-506](#) procedures.
- **Order — Required Contents:** Specify: method; who may/may not be present; conditions safeguarding examination/cross; tech/logistical details; time limits; and any special conditions. Order must be no more restrictive than necessary and preserve effective cross-examination.
- **During Testimony:** Ensure full and fair examination/cross; maintain chain-of-custody for recordings; document any mid-hearing adjustments on the record.
- **Post-Hearing:** File recording and transcript as exhibits under seal as appropriate; include findings and method specifics in the minute order/journal entry.

Child-Hearsay⁴¹¹

Oklahoma Statute 12 O.S. § 2803.1 is an exception to the hearsay rule within the Oklahoma Evidence Code. It provides for the admissibility of out-of-court statements made by children under the age of 16 and incapacitated persons that describe physical or sexual abuse.

- **Admissible statements:** The law allows for the admission of hearsay statements from the following individuals:
 - A child under 16 years of age when the statement was made.
 - A child 16 years or older with a disability⁴¹².
 - An incapacitated person or vulnerable adult.
- **Subject matter:** The statement must describe acts of:
 - Physical or domestic abuse
 - Neglect
 - Sexual contact

⁴¹⁰ Although this section applies to criminal proceedings, potentially therapy dogs may be utilized in TPR trials.

⁴¹¹ [12 O.S. §2803.1](#)

⁴¹² Disability is defined as a physical or mental impairment that substantially limits a major life activity—or the child is regarded as having such an impairment by a qualified medical professional.

Applies when the abuse is against the declarant and/or when the declarant witnessed abuse against another.

- **When they're admissible:** The statements are admissible in juvenile deprived proceedings under §2803.1(A).
 - Determining whether the declarant is available or unavailable pursuant to 12 O.S. §2804(A) is **no longer required**.
 - The statute is silent as to whether corroboration is required.
 - The statute is silent regarding a reliability hearing.⁴¹³
- **Discovery:** The Criminal Discovery Code⁴¹⁴ directs the requirements for notice/disclosure of any statement planned to be offered under §2803.1.
 - What must be disclosed (on request): The names/addresses of witnesses intended to testify to the statement, their written/recorded statements (or significant summaries if oral only), law-enforcement reports, and Brady-type favorable evidence; disclosure obligations extend to materials in the hands of agencies that report to the prosecutor.
 - Timing/management: discovery should be completed at least 10 days before trial, with the court free to set time/place/manner and issue protective orders as needed. There's a continuing duty to disclose newly discovered material.
 - Enforcement: if a party doesn't comply, the court may order disclosure, grant a continuance, exclude the evidence, or enter another just order.

Privilege, Immunity, and Access to Records

- Child-abuse reports & related facts are not excluded by physician-patient/psychotherapist privileges in proceedings arising from a report.⁴¹⁵
- Use-immunity for certain compelled testimony/records in evaluations/treatment related to deprived proceedings.⁴¹⁶
- Discovery in deprived/TPR is by court order.

⁴¹³ Unlike [10A O.S. §1-4-505](#)

⁴¹⁴ [22 O.S. §2002](#)

⁴¹⁵ [10A O.S. § 1-4-507](#)

⁴¹⁶ [10A O.S. § 1-4-508](#)

Voluntary Written Consent

What the Statute Requires ⁴¹⁷

- **Form & Colloquy:** The parent’s consent must be in writing, signed under oath, and recorded before a judge of a court of competent jurisdiction. The judge must certify that the terms and consequences were fully explained and fully understood in English or were interpreted into a language the parent understands.
- **Effectiveness & Revocation (non-ICWA):** The consent is effective when signed and may not be revoked except on clear and convincing evidence that it was executed by fraud or duress.
- **ICWA Overlay (if the child is an “Indian child”):** The parent’s consent may be withdrawn for any reason at any time before entry of the final decree of termination, and any consent given before, or within 10 days after, birth is not valid.⁴¹⁸ These protections mirror 25 U.S.C. §1913 (which also requires the judge’s certificate re: understanding/translation).

Independent Prerequisites Still Apply

- Even with a valid consent, the court may not terminate unless:
 - the child has been adjudicated deprived (before or concurrent with TPR), and
 - TPR is in the child’s best interests—the judge must make those findings on the record.

Practice Notes

- Put the written consent, oath, and the judge’s certificate in the file; ensure any interpreter is identified on the record.
- Take a brief voluntariness colloquy (absence of promises, threats, or impairment), then make best-interest findings separate from the consent.
- Where ICWA applies, use the ICWA consent form approach (judge’s certificate; 10-day rule; withdrawal any time before final decree). If consent is withdrawn before final decree, TPR cannot be granted on that consent.
- NOT adoption practice: §1-4-904 governs juvenile/TPR cases.

⁴¹⁷ [10A O.S. §1-4-904\(B\)\(1\)](#)

⁴¹⁸ [10A O.S. §1-4-904\(B\)\(1\)\(c\)](#)

“Consent” by Non-Appearance

Oklahoma recognizes “consent by non-appearance” — but it’s **not** a shortcut to termination. The “consent” language exists, but it doesn’t relieve the State of proving its case.

- **Statute:** If properly noticed and the parent fails to personally appear at the TPR hearing, that failure “constitute[s] consent” under [10A §1-4-905](#). But the court must still take evidence and make clear-and-convincing findings on a statutory ground and best interests. It’s not a default judgment.
- **How the Trial Proceeds:**
 - If the parent had demanded a jury and no-shows, the court may deem the jury waived and must proceed non-jury under [§1-4-502\(B\)](#). Counsel can no longer insist on a “jury trial in absentia.”⁴¹⁹
 - If the case was already a bench trial, even with nonappearance/“consent,” the State must present clear-and-convincing evidence of at least one [§1-4-904\(B\)](#) ground and best interests; courts cannot terminate by mere default or “prove-up” without an evidentiary record. Oklahoma appellate decisions have reversed terminations entered after no-shows when trial courts failed to take proper proof.⁴²⁰
- **Role of Counsel:** The parent’s attorney continues to advocate—object, cross-examine, present witnesses/exhibits—even if the client is absent; only the mode (jury vs. bench) may change.

Vacating TPR Judgment

Vacating a TPR judgment in Oklahoma depends on how the order was entered. If termination was entered on consent by non-appearance, a parent may move under [10A O.S. §1-4-905\(B\)](#) within 30 days of the filing of the judgment with the court clerk by showing no actual notice or unavoidable casualty/misfortune; if granted, the court sets the consent aside and holds a new trial.

When §1-4-905(B) doesn’t apply or the 30-day window has passed, relief may still be sought under Title 12 (e.g., [§1031.1](#) within 30 days, or §§[1031\(7\)](#), [1033](#) for unavoidable casualty/other

⁴¹⁹ *In the Matter of F.B.*, 2025 OK 25

⁴²⁰ See *In re H.R.T.*, 2013 OK CIV APP 114 (reversal where termination followed a missed pretrial); *Totty v. State* (*In re A.T.*), 2011 OK CIV APP 81 (no indication the trial court considered any evidence in granting State’s termination motion); *In re E.D.J.*, 2014 OK CIV APP 41 (reversal where judge converted a discovery/pretrial setting into a termination hearing after parents failed to appear; no evidence taken to meet the State’s burden).

grounds within the statutory periods). These civil remedies are supplementary, not exclusive of Title 10A.⁴²¹

Contents of the Termination Order

The Order Terminating the Parent-Child Relationship MUST contain the following finding to avoid reversal:

- Identification of the specific statutory basis relied on to terminate the parent-child relationship;⁴²²
- Set forth the specific findings required by that statutory provision;
- If the termination is based on “failure to correct conditions”, then the order must specifically identify what conditions the parent failed to correct which led to the adjudication order;⁴²³
- That termination of parental rights is in the best interests of the child.
- ICWA Case: Beyond a reasonable doubt that the “continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child.”

Failure to Terminate Parental Rights at Trial

A permanency hearing must be set within thirty (30) days after the trial.

Failure to terminate parental rights does not require reunification if the child has been adjudicated to be deprived.⁴²⁴

Effect of Termination of Parental Rights

Termination of the parent-child relationship means that all parental rights and duties are extinguished.⁴²⁵ This includes the following parental rights and responsibilities, such as the:

- Right to the custody of the child;
- Right to visit the child;
- Right to control the child’s training and education;
- The right to consent to adoption;
- Right to earnings of the child;

⁴²¹ *Burk v. State (In re A.T.)*, 510 P.3d 198 (Ok Civ App 2022); See *In the Matter of H.R.T.*, 362 P.3d 666 (Ok Civ App 2013) (the motion to vacate, filed within 30 days after the default judgment taken at pre-trial hearing, fell under 12 O.S. §1031.1)

⁴²² *Matter of L.S.*, 805 P.2d 120 (Ok Civ App 1990); *In re W.A.*, 91 P.3d 682 (Ok Civ App 2004)

⁴²³ *In re T.T.S.*, 373 P.3d 1022 (Okla. 2015)

⁴²⁴ [10A O.S. §1-4-908](#)

⁴²⁵ [10A O.S. §1-4-906](#)

- Right to inherit from or through the child. The child can still inherit from the biological parent.

The biological parent is still required to provide financial child support for his or her minor child until such time the child is subsequently adopted.

Placement of Child and Authority to Consent to Adoption

Upon the termination of parental rights, the court may place the child in the permanent custody of an individual or agency. The court may vest the individual or agency authority to consent to the adoption of the child.

When the court places the child in the permanent custody of DHS, it must vest DHS with authority to place the child and with the authority to consent to the adoption of the child upon the filing of an adoption petition.

The juvenile court's jurisdiction then ends upon entry of the final adoption decree.⁴²⁶

XVIII. REINSTATEMENT OF PARENTAL RIGHTS

For children who can not be reunited with their parents, adoption is the preferred plan because it offers the greatest degree of legal permanence. In order to free a child for adoption, the legal rights of the child's parents must be terminated. However, when the court acts either without an identified adoptive family for the child or where the identified adoptive family placement fails, the termination renders the child a "legal orphan."

[10A OS §1-4-909](#) prescribes a remedy to this existing problem for older youth that replaces the creative reunification through guardianships, custodial arrangements, or even adoptions. This statutory provision provides a process where youth can seek to have their parents' legal rights restored following an involuntary termination of parental rights if certain conditions are met.⁴²⁷

Topic	Substance (10A O.S. § 1-4-909)	Bench / Practice Notes
Who may apply	Only the child may apply. The child must have independent counsel, and the application must be signed by both the child and the child's attorney. (§ 1-4-909(B), (C))	Make sure appointment of the child's counsel and the child's personal appearance/consent are clearly reflected on the record.
Eligibility prerequisites	(1) Child was adjudicated deprived; (2) parental rights were terminated under Title 10A; (3) at	Confirm the 3-year period on the record and summarize the child's permanency history, including

⁴²⁶ [10A O.S. §1-4-907](#)

⁴²⁷ [10A O.S. §1-4-909](#)

	least 3 years have passed since the final TPR order and either (a) no permanency has been achieved, (b) an adoption has disrupted or failed, or (c) a guardianship has been terminated or failed; and (4) the child is at least 14 years old at filing. (§ 1-4-909(A)(1)–(4))	any failed adoption or guardianship or absence of permanency.
Preliminary hearing	The court holds a preliminary hearing to consider the former parent’s apparent fitness and interest. If, by a preponderance of the evidence, the court finds that reinstatement may serve the child’s best interests, it sets the matter for a full merits hearing. (§ 1-4-909(D))	Use this as a gatekeeping screen for obvious non-starters and to set discovery, evaluations, and scheduling toward the merits hearing.
Notice	The court must ensure prior notice to DHS, the child’s attorney, and the child, and must order DHS or the child’s attorney to provide notice to the former parent, current foster or relative guardian, any GAL, and the Tribe (if applicable). (§ 1-4-909(E))	Require proof of service/notice in the file. If ICWA/OICWA applies, confirm timely and adequate tribal notice.
If parent cannot be found	If the former parent cannot be located after diligent efforts, the court must dismiss the application. (§ 1-4-909(F))	Make a detailed record of the diligent search (efforts, time frame, and results) before dismissing.
Conditional grant – standard	The court may conditionally grant reinstatement only upon clear and convincing evidence that the child has not achieved and is not likely to imminently achieve permanency, and that reinstatement is in the child’s best interests. Factors include: the parent’s current fitness and remediation of prior conditions, the child’s age/maturity and preference, safety risks, and other material changes in circumstances. (§ 1-4-909(G))	Review and reference DHS’s permanency-efforts report and any other professional assessments. (§ 1-4-909(H))
Six-month conditional period	If conditionally granted, the court continues the matter for six months, enters a temporary order reinstating parental right, and places the child with the former parent. DHS must adopt a reunification permanency plan	At the conditional-grant hearing, calendar the six-month review and outline expectations for services, visitation, and safety monitoring with DHS and counsel.

	and provide appropriate transition and support services. If the child must again be removed for abuse or neglect during this period and that allegation is proven by a preponderance of the evidence, the court dismisses the application. (§ 1-4-909(I))	
Final order	After the six-month conditional placement, the court holds a review hearing. If the placement has been successful, the court enters a final order fully reinstating parental rights and duties (custody, control, and support), closes the deprived case, and directs the clerk to provide the parent a certified copy of the order at no cost. (§ 1-4-909(J))	Ensure the final order expressly restores all rights and obligations, terminates DHS custody/supervision, and closes the deprived action.
Effect / nature of proceeding	Reinstatement is a separate action that does not vacate or set aside the original TPR; it recognizes that conditions have sufficiently changed to make reunification appropriate. (§ 1-4-909(K))	Clarify on the record that the original TPR remains valid but is superseded going forward by the reinstatement order.
Scope / retroactivity	The statute applies to any child under deprived jurisdiction at the time of the reinstatement hearing, regardless of when TPR occurred. The court may extend reinstatement to a sibling group in its discretion. It also applies when adoption or guardianship has failed and at least 3 years have passed since TPR at the time of application. (§ 1-4-909(L))	Use sibling-group authority thoughtfully and make individualized best-interest findings for each child.
Liability shield	The district attorney, DHS, and their employees are not liable for services provided under this section absent gross negligence, and the statute creates no duty or cause of action regarding the original TPR. (§ 1-4-909(M))	Address this on the record when agencies express concern about exposure; it may reduce resistance to providing services.
Key case law	<u><i>T.H. v. State</i></u> , 2015 OK 53, 348 P.3d 1089 – Oklahoma Supreme Court reversed denial of a child’s application and clarified construction of § 1-4-909. <i>T.H. v.</i>	Use T.H. to guide statutory interpretation, to guard against overly restrictive gatekeeping, and to emphasize the child-centered purpose of reinstatement.

	<i>State</i> , 348 P.3d 1089 (Okla. 2015) ⁴²⁸	
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XX. APPEALS

Any party aggrieved by an order or decree of the trial court may appeal directly to the Oklahoma Supreme Court.⁴²⁹ The time clock for an appeal runs quickly – petition in error is required to be filed within 30 days from the entry of the journal entry of judgment. The court record is due within 60 days. It is critical that the journal entry of judgment be filed with the court clerk expeditiously.⁴³⁰

What is NOT an “Appealable Order”

These **do not count** as a judgment or an appealable order:

- minute orders / minute entries
- docket entries / docket minutes
- a verdict
- any informal write-up of what happened or the relief (e.g., summary orders/minutes), or a letter/email telling someone the ruling or how to draft the order

In short: Only a formal, written, filed judgment/order qualifies—none of the above do.⁴³¹

Rights of Indigent Parents (Counsel, Transcript, Costs)

When a parent announces an appeal from a TPR, the trial court should promptly take sworn evidence and enter a written indigency finding and a necessity/scope finding for the record on appeal (what hearings must be transcribed). For indigent juvenile matters, Court Fund dollars are used to pay the necessary transcript and related record-preparation costs⁴³² consistent with the Supreme Court’s policy that budgeted transcript funds are limited to indigent criminal, juvenile, and matters specifically required by statute. No Chief Justice approval is required for juvenile

⁴²⁸ Premised on legislative intent that a child achieves timely permanency, preferably with her family. The biological parent’s rights were reinstated where the child recently suffered a failed adoption wherein the adoptive parent’s rights were terminated within the 3-year period.

⁴²⁹ [10A O.S. 1-5-101](#)

⁴³⁰ See [In the Matter of I.T.S.](#), 490 P.3d 127 (Okla. 2021) (critical of the fact that the journal entry of judgment was filed one year after the jury trial).

⁴³¹ “We have held repeatedly that a court minute means nothing as part of the appeal. Court minutes are not -- are not -- appealable orders. Court minutes are not -- are not -- proof of anything except the court's failure to file in the record a proper order and the court's being either unaware or unconcerned about this Court's repeated rulings regarding court minutes.” [In the Matter of F.B.](#), 2025 OK 25 ¶3 (Darby, J., concurring)

⁴³² [28 O.S. §162\(E\)](#)

cases; in all other civil cases, prior Chief Justice authorization is required.⁴³³ Once indigency is determined, the trial court will issue a written order directing the preparation of the transcripts at public expense.

This operates alongside the parent's statutory right to appointed counsel in deprived cases, which Oklahoma has recognized to extend through perfecting any appeal.⁴³⁴ And under M.L.B. v. S.L.J., 519 U.S. 102 (1996), the State may not effectively bar an indigent TPR appeal by conditioning access to the record on fees the parent cannot pay.

Rights of Children

A deprived child, through their court-appointed attorney has standing to appeal a TPR order as an aggrieved party under 10A O.S. § 1-5-103 and related appellate rules. Costs of appeal, including the costs of transcripts, are paid by the court funds.

Pendency of an Appeal Will Not

- Suspend the order of the trial court;
- Remove the child from the jurisdiction of the trial court;
- Remove the child from the custody of the person, institution or agency to whose care the child has been committed,

UNLESS the Supreme Court orders otherwise.

Appeal from an adjudication order will not prevent the trial court from conducting a dispositional hearing.⁴³⁵

Adoption During Appeal

While a pending appeal addressing the eligibility of a child to be adopted or a valid consent was given, the trial court **cannot** enter a final adoption decree; any such decree is void.⁴³⁶

Quick-Reference Chart

Trial-court consideration	What you should do on the record	Authority (statute/rule/case)
Who's a party (and who may appeal)	Confirm party status for the appeal: the State (through the DA), the child (through counsel), each parent, and, in ICWA cases, the Indian	<u>10A O.S. § 1-5-101</u> (right to appeal for "any interested party aggrieved"); <u>10A O.S. § 1-4-306(A)</u> (counsel for child and parents); 25 U.S.C. §

⁴³³ See 2020 OK 48, ¶¶1-2; SCAD-2020-2 (rate cap for indigent transcripts); T. 12, Ch. 15, App. 1, Rule 1.28(K)

⁴³⁴ See 10A O.S. §1-4-306(A); Okla. Sup. Ct. R. 1.21; Matter of D.D.F., 784 P.2d 89 (Ok Civ App 1989); In re S.P., 976 P.2d 1117 (Ok Civ App 1999)

⁴³⁵ 10A O.S. §1-5-101

⁴³⁶ In re Adoption of L.D.S., 155 P.3d 1 (Okla. 2006) (supplemental op. on reh'g Mar. 6, 2007)

	Tribe; others only if granted party status/intervention by statute or court order.	1911(c) (ICWA Tribe intervention/party).
Final, appealable order on file	Ensure the written TPR order is signed and filed so the appellate clock can run.	10A O.S. § 1-5-103(A) (30-day petition in error; 60-day record).
Advise of deadlines/mechanics	State that juvenile appeals begin by petition in error in the Supreme Court within 30 days; record due in 60 days; expedited briefing applies.	10A O.S. § 1-5-103(A)–(B) ; Okla. Sup. Ct. R. 1.21, 1.23(d) .
Indigency determination	Take sworn financial information and enter a written finding on indigency if the parent requests counsel/fee relief.	10A O.S. § 1-4-306(A)(1)(a) .
Appoint appellate counsel (if indigent)	Enter an order appointing counsel for the appeal (scope through mandate). Note that effective assistance extends to perfecting any TPR appeal.	Okla. Sup. Ct. R. 1.21 (TPR appeal rule) ; 10A O.S. § 1-4-306(A) .
Designation of record & transcripts needed	Direct counsel to file the designation of record and identify the specific proceedings to be transcribed (trial days, rulings, offers, etc.).	Okla. Sup. Ct. R. 1.28 ; 10A O.S. § 1-5-103 (60-day record).
Who pays transcript costs (indigent TPR)	Authorize Court Fund payment for necessary transcripts in indigent juvenile matters consistent with Supreme Court policy (juvenile included).	2020 OK 48 ¶¶1–2 (Court Fund transcripts: indigent criminal, juvenile, or by statute).
Transcript rate cap (if Court Fund pays)	Ensure the reporter uses the indigent-criminal transcript rate set by administrative order.	SCAD-2020-2 (and successors).
Constitutional access to a record	Note that the State may not block a TPR appeal by conditioning access to the record on fees an indigent parent cannot pay.	M.L.B. v. S.L.J. , 519 U.S. 102 (1996).
Confidentiality / captioning	Ensure juvenile-appeal confidentiality (use the child’s surname initial;	10A O.S. § 1-5-103(C) .

	handle sealed items appropriately).	
Case-management to meet 60-day record	Set a status date; direct court reporters to estimate pages/cost and proceed so the record is completed within 60 days of the order.	10A O.S. § 1-5-103(A) .
Prompt entry of a compliant final order (avoid delays)	Do not rely on minutes/summary orders; ensure a § 696.3-compliant journal entry is promptly filed so appeal time can run.	Moore v. Haley , 2021 OK 37; Laubach v. Laubach , 2022 OK 78; 12 O.S. § 696.3 ; Okla. Sup. Ct. R. 1.21(a) .
Document and avoid post-trial delay in filing the judgment	Be aware that the Supreme Court has called out a full-year delay between verdict and filed journal entry in a TPR; avoid similar delay and ensure timely filing.	In re I.T.S. , 2021 OK 38, ¶¶8, 201, 490 P.3d 127.

Release from State Custody — Serious-Risk Stay & Review

One of the most challenging decisions a judge faces in deprived proceedings is determining whether to release a child from State custody and return them to a parent with a history of abuse or neglect.

The Kelsey Smith-Briggs Child Protection Reform Act was enacted to improve the processes used by DHS and the courts in addressing child abuse cases within Oklahoma. Named after a child who tragically lost her life due to abuse despite prior reports of maltreatment, the Act seeks to ensure more effective protection for vulnerable children.

Stay Pending Review of Release Order⁴³⁷

If, at any hearing, the court orders a child in state custody to be released and the DA or the child’s attorney objects on the record that release “creates a serious risk of danger,” the judge must stay the release order. Failure to issue the stay is subject to immediate mandamus.

The objecting party then has 3 judicial days to file a written application for review with the presiding judge of the administrative judicial district. If the application is not timely filed or is withdrawn within that time period, the objection is deemed to be abandoned and the stay shall expire.

The presiding judge assigns a reviewing juvenile judge within that administrative judicial district to complete the review within 5 judicial days and decide whether release creates a serious risk.

⁴³⁷ [10A O.S. §1-4-801](#)

The reviewing court must issue its findings of fact and conclusions of law and report them to the court issuing the custody order under review:

- A finding that release from state custody does pose a serious safety threat to the child controls and the court issuing the custody order under review must enter the reviewing court's decision.
- A finding that release from state custody does not pose a serious safety threat to the child and that the custody order under review is otherwise appropriate, releases the stay and the original custody order is then subject to appellate review.

If no serious risk is found, the stay is lifted and the order is then appealable under §1-5-101.

Hearing to Determine Release from State Custody ⁴³⁸

At any hearing to decide placement or release from state custody, the court must allow sworn testimony from: a DHS representative, the current foster parent/group home representative, the guardian ad litem, and the child (if of sufficient age).

If the Office of Juvenile System Oversight (OJSO) has investigated and believes there's a serious risk of danger, the OCCY must provide a written report to the court and parties within 5 days before the hearing, and authors may be ordered to appear for testimony.

The court must consider the report, permit cross-examination, and issue written findings of fact and conclusions of law. Failure to provide the required opportunities for testimony is subject to immediate mandamus.

XX. ADOPTION

The TPR order severs the parent-child legal relationship, including the need for parental consent to adoption. ⁴³⁹

Granting Authority to DHS to Place and to Consent to Adoption

When the court terminates a parent's rights and places the child with an individual or agency, the court may grant that individual or agency the authority to consent to the child's adoption.

Specifically, when the Department of Human Services (DHS) receives permanent custody of the child, the court shall grant the Department the authority to place the child. Upon notification to the court that an adoption petition concerning the child has been submitted, the Department will also be granted the authority to consent to the adoption. ⁴⁴⁰

⁴³⁸ [10A O.S. §1-4-802](#)

⁴³⁹ [10A O.S. §1-4-906](#)

⁴⁴⁰ [10A O.S. §1-4-907](#)

Once the final decree of adoption is entered, the jurisdiction of the court will end.

Post-TPR Permanency and Review Hearings

The court holds review and permanency hearings, setting adoption as the goal, and orders completion of all steps necessary to finalize the plan (e.g., home study, consents/ICWA compliance, placement). Subsequent review and permanency hearings continue at least every 6 months while the child remains in out-of-home care.

Juvenile Judge May Preside Over Related Adoption

A judge presiding over a deprived child action has the authority to conduct the adoption proceedings or consent to another court exercising concurrent jurisdiction. This means a different court, such as one for an adoption proceeding, can handle a case at the same time as the original deprived action, **with the juvenile judge's written consent.**⁴⁴¹

Foster Parent Eligibility

When adoption is the permanency plan, a foster parent is eligible to adopt if statutory criteria are met; if the child has lived with the foster parent greater than 1 year, the court gives the foster parent great weight - unless there is an existing loving emotional bond with a relative of the child by blood or marriage who is willing, able, and eligible to adopt the child.⁴⁴²

Although the Children's Code places preference for relatives/kin where appropriate, the court should consider the following non-exclusive factors when deciding who eligible to adopt:

- The love, affection, and other emotional ties between the child and the relatives, and the child's ties with the foster family.
- The capacity and disposition of the relatives as compared with the foster family to give love, affection, guidance, and continue the child's education.
- The length of time the child has lived in a stable, satisfactory foster home and the desirability of continuing in that environment.
- The physical and mental health of the relatives as compared with the foster family.
- The child's experiences in home, school, and community—both with the parents from whom the child was removed and with the foster family.
- The child's age and preference.
- The child's long-term best interests.
- Any other relevant factor for the specific placement.

⁴⁴¹ [10A O.S. §1-4-101\(A\)\(2\)\(e\)](#)

⁴⁴² [10A O.S. §1-4-812](#)

Oklahoma Caselaw

In re B.O., 177 P.3d 584 (Ok Civ App 2007): COCA applied the factors in §7003-5.6h (now 10A § 1-4-812) to a foster-parent v. grandmother contest, holding the trial court properly weighed the statutory factors and that best interests of the child control. The Court noted that “great weight” is given to foster parents having placement of the child for more than one year and that the statute does not make relatives automatic winners, even when a loving bond exists between the child and the relatives. It should be noted that DHS recommended adoption by grandmother and that the child expressed a preference to be adopted by grandmother.

In re Adoption of M.J.S., 162 P.3d 211 (Okla. 2007): the Oklahoma Supreme Court held that the Department of Human Services' (DHS) right to consent to an adoption does not overrule the trial court's duty to determine adoption based on the child's best interests. Therefore, the district court has the jurisdiction to hear and determine an adoption petition even if DHS withholds its consent.

In re Adoption of G.F.E.G., 251 P.3d 1167 (Ok Civ App 2011): COCA reversed the adoption court's dismissal of the grandparents' adoption effort and remanded for an evidentiary hearing. The court held the judge erred by effectively deciding best interests without taking evidence from “each of the interested parties,” explaining that DHS's consent (or opposition) does not control the outcome—the district court must hear evidence and make its own best-interests determination. The grandparents were not making an improper collateral attack because they had filed their intervention/custody/adoption pleadings **within the deprived case**, so they were entitled to participate and be heard in the adoption trial court.⁴⁴³

In re Adoption of L.F. & B.F., 445 P.3d 1264 (Ok Civ App 2019): Former foster parents filed a separate adoption case while a deprived case was ongoing. The juvenile court had previously overruled their objection to DHS's decision to move the children to kinship care (they did not appeal that removal ruling). After TPR, the foster parents asked the juvenile court to set a “best-interests” adoption hearing and also pursued their stand-alone adoption petition; the juvenile court dismissed both. COCA held the foster parents used the wrong process. Because a deprived case was pending, the Children's Code automatically stayed other custody/visitation proceedings absent the juvenile court's written consent, and the juvenile judge has authority to preside over any separate action (including adoption) needed to finalize the permanency plan. The foster parents lacked standing to initiate a separate adoption proceeding under these circumstances. The parent's private consent to the foster parents' adoption does not control in a deprived case. After TPR, § 1-4-907 vests DHS with authority to place and to consent to adoption; COCA emphasized that the **Adoption Code does not displace the Children's Code while the deprived action is active**. Because the foster parents did not intervene in the deprived

⁴⁴³ The juvenile court transferred the adoption petitions to the adoption court for its determination.

case to assert their adoptive placement request (and had already lost their placement-removal challenge there), they lacked standing to pursue adoption in a separate proceeding.

In the Matter of M.K.T., 368 P.3d 771 (Okla. 2016): ICWA controls over state “great weight” rule. The Supreme Court held that ICWA placement preferences govern foster/pre-adoptive/adoptive placement decisions for an “Indian child,” and any departure requires good cause proven under ICWA standards; state-law provisions like 10A § 1-4-812 (e.g., “great weight” to foster parents ≥1 year) cannot trump ICWA. The Court discussed what qualifies as “good cause” (including the BIA Guidelines) and the evidentiary showing required.

Important Points from Caselaw

- It is the trial court’s duty to determine proper adoptive placement under the statutory factors.
- A relative’s preference does not override the child’s established ties and placement stability in best-interests analysis.
- Adoption filings cannot be used to re-litigate placement made in the deprived action; the proper track is through the juvenile proceeding.
- Foster parents can be considered as adoptive parents, but the juvenile court sequences and oversees the permanency steps; separate adoption filings can be dismissed when they short-circuit that process.
- Foster parents may intervene, not initiate, in adoption consideration.

XXI. CONFIDENTIALITY & RECORDS

Confidentiality has been characteristic of juvenile courts since the first juvenile court began in Chicago in 1899. The purpose of confidentiality is to protect children from stigmatization for the rest of their lives for acts committed while they were children. Confidentiality has been examined and reconsidered by state legislatures in the past decade with the result that many States have either eliminated confidentiality altogether from their juvenile courts or substantially amended their confidentiality statutes.

It should be noted that certain federal legislation impacts the issue of confidentiality. CAPTA requires that a state make a showing that they maintain complete record confidentiality “in order to protect the rights of the child and the child’s parents or guardians.” However, in 2003, CAPTA provided that it is up to states to determine whether public access to the hearings should be allowed.⁴⁴⁴

⁴⁴⁴ See Child Abuse Prevention and Treatment Act § 106(b)(2), [42 U.S.C. § 5106a\(b\)\(2\)](#) (last ¶) (as amended by the Keeping Children and Families Safe Act of 2003, Pub. L. No. 108-36) (“Nothing in subparagraph (B) shall be construed to limit the State’s flexibility to determine State policies relating to public access to court proceedings to

The Adoption Assistance and Child Welfare Act (AACWA) is another federal act which places some restriction on the confidentiality of child abuse and neglect issues. The confidentiality safeguard ensures that information about children and families served by the Act is not disseminated to the general public. However, it too makes no mention of preventing the general public from having access to the hearings – although the content of the protected records is often read and discussed during the hearings.⁴⁴⁵

Juvenile confidentiality has two aspects, confidentiality of records and confidentiality of proceedings. In general, confidentiality of proceedings has been more relaxed in application than confidentiality of records because of the variety and nature of the reports and information they contain about the juvenile and his/her family.

Confidentiality of Hearings

Hearings are private by default. “All deprived proceedings shall be private unless the judge specifically orders a public hearing; persons with a direct interest may be admitted (subject to the court’s control).”⁴⁴⁶

Persons having a direct interest in the case generally are the parties, attorneys for the parties, CASA, participants (e.g., foster parents), DHS social worker, private agency’s representative or counselor involved with the family, and necessary court personnel. However, persons having a valid interest in the case or in the work of the court may be admitted provided their presence is compatible with the best interests of the child.⁴⁴⁷

The court should also ensure that relevant State or Federal confidentiality laws are being complied with (e.g., HIPAA) during the course of the deprived proceedings. Further, DHS is required to maintain the confidentiality of persons making the report of child abuse or neglect.

How This Applies to News Media

News media are not automatically permitted and do not have a right of access. But the court may allow a reporter or media representative only after making a case-specific determination that:

1. The person qualifies as having a proper interest under § 1-4-503(A)(1)(b); and
2. Allowing media will not be detrimental to the child’s best interests; and

determine child abuse and neglect, except that such policies shall, at a minimum, ensure the safety and well-being of the child, parents, and families.”).

⁴⁴⁵ [42 U.S.C. §671](#)

⁴⁴⁶ [10A § 1-4-503\(A\)\(1\)\(a\)](#)

⁴⁴⁷ [10A O.S. § 1-4-503\(A\)\(1\)\(b\)](#)

3. Confidentiality statutes regarding records, names, and identifying information remain protected.⁴⁴⁸

If the media request access:

- Take the request on the record.
- Identify purpose and scope (observer only? filming? reporting only?).
- Determine whether the media person has a “proper interest” (usually framed as *public oversight of court functioning*, not case details).
- Explicitly find whether admission is compatible with the child’s best interests.
- Issue protective orders as needed (e.g., no identifying details, no child images, no filming parties, no photographing case files).

Confidentiality of Records

The court records as well as DHS records are confidential and cannot be inspected or disclosed to the public without benefit of court order or statutory authority. **A subpoena or subpoena duces tecum purporting to compel testimony of confidential records is invalid.**⁴⁴⁹

Definition of Records

“Records” intended by law to be confidential include, but are not limited to, written or printed documents, papers, logs, reports, files, case notes, films, photographs, audio or visual tape recording and includes information entered into and maintained in an automated or computerized information system (i.e., OSCN, KIDS).

“Records” are categorized as:

- **Juvenile court records:** records filed with the court.
- **Agency records:** prepared and maintained by DHS or private agency that has custody or supervision over the child.
- **District attorney’s records:** records prepared, obtained and maintained by the DA’s office relating to juvenile and criminal prosecution cases.
- **Law enforcement records:** contact/incident reports, arrest records, disposition records, fingerprints, photographs, and detention records relating to the child.
- **Nondirectory education records:** records categorized by federal and state laws that are maintained by a school regarding the child.
- **Legal records:** petition, docket, motion, orders, judgments, pleadings and other documents other than social records that are filed with the court.

⁴⁴⁸ See [10A O.S. §§ 1-6-102 & 1-6-103](#) (confidential records), and [10A O.S. § 1-5-102](#) (child’s surname initial in any appellate record).

⁴⁴⁹ [10A O.S. §1-6-101](#)

- **Social records:** family social histories, medical reports, psychological and psychiatric evaluations or assessments, clinical or other treatment reports, educational records, or home studies.

Access to Records

All juvenile (deprived) records are confidential by default, so access happens one of two ways: (1) without a court order for those actors whom Title 10A expressly authorizes to inspect records in the course of their official duties (e.g., the court, DA/AG, child’s attorney/GAL/CASA, DHS, law enforcement, OCCY, the child’s Tribe, current foster parent), and (2) with a court order for everyone else, on a need-to-know basis and subject to protective conditions the court sets.⁴⁵⁰ The discussion below walks through both paths under the Children’s Code.

Who May Inspect Without an Order

Without a court order, the following may inspect juvenile court records and DHS agency records “upon showing of proper credentials and pursuant to their lawful duties”⁴⁵¹:

A. Juvenile court records + DHS agency records (both):

1. The court handling the case (and any district/tribal court on transfer), court staff, GALs, and CASAs;
2. District Attorneys, U.S. Attorneys, and the Attorney General (and staff) for child-welfare/crimes-against-children matters;
3. The child’s attorney;
4. Juvenile bureaus staff and DHS employees (in their official duties);
5. Law enforcement and out-of-state CPS/military-enclave CPS (for abuse/neglect investigations or protective-custody decisions);
6. Oklahoma Commission on Children and Youth (OCCY);
7. Office of Juvenile Affairs;
8. The child’s federally recognized Tribe (when ICWA/OK-ICWA applies; includes all case records as defined in [§1-6-101](#));
9. The Governor (or written designee);
10. U.S. HHS officials;
11. Legislators approved in writing by the House Speaker or Senate Pro Tem;
12. The foster parent (records about a child currently placed with them or being considered for placement);
13. Corrections/law-enforcement employees for presentence/supervision of a parent or adult in the child’s home;

⁴⁵⁰ See [10A O.S. § 1-6-102](#) (confidentiality) and [§1-6-103](#) (statutory access; court-order access)

⁴⁵¹ [10A § 1-6-103](#)

14. State agency staff (this or another state) for paternity/child support or other entitlements (limited to directly related info);
15. FIMR (Fetal Infant Mortality Review) members (limited to related info);
16. Designated federal authorities at the service member's installation (for active-duty families, per [§1-2-102\(A\)\(4\)](#));
17. Members of the Child Welfare Review Committee for Death/Near-Death of Children with Disabilities.

B. Juvenile court records (additional access):

1. CASA program employees (for recruiting/screening/training/supervising volunteers);
2. Post adjudication review boards, the Child Death Review Board, and multidisciplinary personnel (with specified ancillary records);
3. DHS or any custodian with court-ordered/physical custody, or conducting an abuse/neglect investigation (with specified ancillary records);
4. The child and the parents/legal guardian/custodian/foster parent;
5. Court-authorized bona fide researchers (with non-identifying publication).

C. DHS agency records (additional access):

1. Post adjudication review boards, CASAs, and Child Death Review Board;
2. District courts that ordered a DHS home study in domestic/guardianship matters (disclosure may be limited to summaries/relevant info);
3. Multidisciplinary teams/personnel designated by DHS (investigations/services);
4. Physicians/healthcare/mental-health professionals involved in evaluation/treatment of the child or relevant caregivers;
5. Agencies/providers authorized by DHS to diagnose/provide care/treatment/supervision/services (disclosure may be limited);
6. State-employed/contract researchers under DHS authorization (with strict de-identification/security);
7. Oklahoma Health Care Authority;
8. The medical examiner (to determine cause of a child's death).

D–F. Other statutory permissions:

- Participating agencies may receive records per rules promulgated under [10 O.S. §620.6](#) (subsection D).
- Court may disclose to out-of-state, licensed adoption home-study entities whether a prospective adoptive parent had TPR/relinquishment in Oklahoma (subsection E).
- DHS may disclose as necessary to secure care/treatment/protection of a child alleged abused or neglected (subsection F).

Note: The Oklahoma Child Death Review Board (CDRB) is statutorily entitled to obtain juvenile court records and DHS agency/social records for its official child-death (and near-death) reviews without a court order, and the records remain confidential.⁴⁵²

Reminder: Even when disclosed without an order, these records remain confidential and use is limited to the authorized purpose.

Who May Inspect Only With a Court Order

Anyone **not** listed in [10A § 1-6-103\(A\)–\(C\)](#) as having statutory access must get a court order to inspect juvenile court or DHS child-welfare records.

Common examples that require a court order (unless another statute expressly authorizes disclosure):

- **News media / general public.**
- **Relatives** who are **not parties** (and not current foster/kinship placements).
- **Private attorneys** who are **not** counsel of record in the deprived case.
- **Prospective caregivers** (foster/relative/adoptive) **not yet approved** or under active consideration.
- **Schools/employers/third-party providers** (except where disclosure is specifically authorized—e.g., DHS protective disclosures under [§1-6-103\(F\)](#)).
- **Researchers** (must be court-authorized as “bona fide” with non-identifying publication limits). [§1-6-103\(B\)\(5\)](#).
- **Adoption-related entities/attorneys** seeking court-file information outside the Adoption Code’s specific disclosure provisions (e.g., court-authorized confirmation regarding prior TPRs under [§1-6-103\(E\)](#)).

Bottom line: if the person/agency isn’t expressly named in § 1-6-103(A)–(C), they need a narrowly tailored court order specifying the records, purpose, and protective conditions.

Social Records

Under the Children’s Code, “social record” means family social histories, medical reports, psychological or psychiatric evaluations or assessments, educational records, or home studies—even if attached to DHS court reports. The records are those that are otherwise protected by state or federal law (e.g., HIPAA, nondirectory education records) and contain extremely personal social information regarding the child and/or the family members. It does not include service-provider progress reports or critical-incident reports required by §1-4-807 (i.e., review hearings).

Social records should **not** be filed in the court record **unless** the court orders it. If filed, they must be placed in confidential envelopes in the court file and may be accessed only by the person who

⁴⁵² See [10A O.S. §1-6-105](#) for detailed listing of release of information/records

is the subject of the records or that person's attorney, as well as those otherwise allowed by § 1-6-103 (the statutory access list).

Safety Analysis Records in Custody/Visitation Cases⁴⁵³

If custody or visitation is at issue, a parent, legal guardian, or the child who is the subject of the record may obtain DHS safety analysis records by court order.

This pathway **does not** apply to deprived proceedings, requests by non-subjects, or other criminal/civil/administrative cases.

The movant files a motion averring:

- (i) they are the subject (parent/guardian/child),
- (ii) custody/visitation is at issue,
- (iii) records will remain confidential and shared only with listed attorneys/agents for this case, and
- (iv) notice to parties, child's attorney, and GAL.

The court may enter an *ex parte* protective order⁴⁵⁴ directing DHS to deliver the records to the court (not the parties) not less than 5 judicial days, allowing DHS to redact reporter identity. The court shall restrict the use of the records to the custody/visitation litigation, require sealed filings, and warn of contempt for violations.

The records delivered to the court are not subject to judicial review and may be released only to the litigants under the protective order.

Orders under this subsection require only safety analysis records (not all DHS records), and DHS employees cannot be compelled to testify about them absent a specific court order; subpoenas without such an order are invalid.

The judge can, for good cause, either block the release of confidential records or testimony, or allow it with conditions the judge thinks are necessary.

Releasing Confidential Juvenile/DHS Records in Criminal, Civil, or Administrative Proceedings⁴⁵⁵

A court may authorize inspection/release/correction/expungement of confidential records for a criminal, civil, or administrative case only after:

⁴⁵³ [10A O.S. §1-6-102\(D\)](#)

⁴⁵⁴ See [10A O.S. §1-6-102\(D\)\(3\)](#) for protective order language

⁴⁵⁵ [10A O.S. §1-6-102\(E\)](#)

- (1) a specific, detailed petition/motion is filed describing the records sought and the compelling reason for disclosure;
- (2) the court sets a hearing not less than 20 days' notice to the record-holder, the subject (or parents if under 18), their attorneys, and any others the court designates (time may be shortened for exigent circumstances, and the court may issue an *ex parte* order to produce the records to the court or to show cause);
- (3) at the hearing, if no compelling reason exists the matter is dismissed; otherwise, the court orders production to the court for *in camera* review (hearing may be closed); and
- (4) after judicial (in camera) review, the court decides whether to authorize disclosure, weighing necessity and the protection of confidentiality and privacy and the legitimate public or private interests at stake.

The judge can, for good cause, either block the release of confidential records or testimony, or allow it with conditions the judge thinks are necessary—consistent with this section.

Redacting Siblings⁴⁵⁶

If a case file includes more than one child, the judge can redact the names and details of the other children before allowing someone to see or copy the file. If redaction can't be done safely or practically, the judge can deny access to the record altogether.

Limits on Disclosure Authority⁴⁵⁷

Nothing in Children's Records Section should be read to:

- override federal privacy/funding laws;
- open adoption records (those stay under the Adoption Code);
- waive privileges (e.g., attorney–client);
- limit parties' access to items filed in the juvenile court;
- block agencies from getting information required by contracts/funding conditions;
- stop DHS from giving a summary outcome of an investigation to the reporter or service providers;
- allow disclosure of a reporter's identity or hotline recordings that reveal it without a court order;
- prevent DHS from sharing de-identified child-care facility findings to help parents evaluate facilities;
- prevent disclosures to schools needed for education/safety;
- require a court order for DHS to obtain a child's nondirectory education records when the child is in DHS custody;

⁴⁵⁶ [10A §1-6-104](#)

⁴⁵⁷ [10A §1-6-102\(H\)](#)

- prevent DHS from sharing records with a federally recognized Tribe (for placement vetting) or with OJA (for foster-care applicants); or
- prevent DHS from sharing records with DHS staff doing audits/investigations (including Medicaid-program work), limited to the purpose.

Fees

Agencies or professionals who must produce confidential records can ask the requesting party to pay before production. They may charge:

- a research fee up to \$20/hour,
- a copy fee up to \$0.50 per page, and
- \$5.00 for each copy of a video/DVD/disk.

In a criminal case, the court may waive these costs if the defendant is indigent.

DHS may not charge fees for records released under subsection D (safety analysis records in custody/visitation cases) or when providing records to the Office of Juvenile Affairs under § 1-6-102(H)(13).

Penalty For Unlawful Disclosure of Confidential Records⁴⁵⁸

Persons or agencies obtaining records pursuant to the Children's Code provisions are prohibited from disclosing the contents of the records to another person or agency unless authorized to do so by law or by order of the court.

Any person or agency that knowingly permits or assists in the release, disclosure or use of the confidential records or information for any unauthorized purpose may be prosecuted for contempt of court, or for a misdemeanor, which, upon conviction, is punishable by up to six (6) months in jail, a fine of \$500.00, or both.

XXII. DO-NOT-RESUSCITATE (DNR) AUTHORIZATION PROCESS FOR CHILDREN IN DHS CUSTODY

Under [10A O.S. §1-3-102\(C\)\(2\)](#) and *Baby F. v. Oklahoma County District Court*, 2015 OK 24, 348 P.3d 1080, the juvenile court is the sole authority that may approve a Do-Not-Resuscitate (DNR) order or withdrawal of life-sustaining medical treatment for a child in DHS custody. The process requires a written recommendation from a licensed physician, notice to all parties, a court hearing, and a judicial finding by **clear and convincing** evidence that the DNR is in the child's best interests. Only after a written court order may the treating physician execute the DNR.

⁴⁵⁸ [10A §1-6-107](#)

Step	Responsible Party	Action / Legal Authority
1. Medical Recommendation	Treating Physician	Provides written recommendation supporting DNR or withdrawal of life-sustaining treatment. Required under 10A O.S. § 1-3-102(C)(2).
2. Motion for Authorization	Department of Human Services (through District Attorney)	Files motion or application with juvenile court seeking authorization. DHS cannot issue or execute DNR on its own. (Baby F., ¶¶ 15–17)
3. Notice and Hearing	Juvenile Court (DHS ensures notice)	Court conducts hearing after notice to parents (if rights not terminated), child’s attorney, CASA, and all parties. (10A O.S. § 1-3-102(C)(2))
4. Judicial Determination and Burden of Proof	Juvenile Court	Court considers evidence and applies Baby F. Footnote 5 criteria: diagnosis, prognosis, pain, burdens/benefits, parental wishes, comfort care, and medical standards. The court must find by clear and convincing evidence that the DNR is in the child's best interests. (Baby F., ¶¶ 20–21)
5. Written Court Order	Juvenile Court	Issues written, specific order authorizing or denying DNR. Order must cite physician recommendation, findings, and clear and convincing evidence standard. (Baby F., ¶ 17)
6. Execution of DNR	Treating Physician / Hospital	Executes DNR pursuant to court order. DHS ensures documentation and provider notification; DHS does not execute order itself.

Summary: Only the court may authorize a DNR order for a child in DHS custody. The burden of proof is clear and convincing evidence that the DNR is in the child's best interests. DHS may request authorization but cannot execute the order. The physician executes the DNR under the court’s written authorization.

APPENDIX A - EMERGENCY CUSTODY HEARING DESK CARD

USE FOR

Initial hearing after removal into protective or emergency custody to determine probable cause and whether continued custody is necessary for the child's health or safety.

NATURE OF HEARING / STANDARD

- **Purpose:** Determine whether facts show reasonable suspicion the child needs immediate protection due to abuse/neglect, or circumstances/surroundings present an imminent safety threat.
- **Timing:** Within two (2) judicial days of removal into emergency custody.
- **Informal hearing – rules of evidence do NOT apply:** May consider reliable hearsay, reports, and offers of proof.
- **Burden of Proof:** Reasonable suspicion that the child needs immediate protection and faces imminent danger if returned home.
 - If standard NOT met → release from emergency custody (with or without protective conditions).
 - If met → may continue custody; make findings below

WHO IS PRESENT/ON THE RECORD

At the start of the hearing, identify the following appearances on the record:

- Judge, court reporter
- DA
- DHS caseworker
- Parents/guardians/Indian Custodian and their counsel
- Child (unless appearance excused) and child's attorney
- CASA/GAL, if any
- Tribal representative, if applicable
- Foster parent or relative caregiver (if placement already made)

PARENTS – RIGHTS & COUNSEL

- Advise each parent/guardian present:
 - Nature of proceeding and allegations.
 - Possible consequences (including possible TPR).
 - Right not to incriminate themselves in a criminal matter.
 - Right to counsel; may request court-appointed counsel if unable to afford one.

- Ask on the record for each parent:
 - Do you want an attorney?
 - Can you hire one, or are you asking for court-appointed counsel?
- If requesting appointed counsel & apparently indigent →
Make indigency determination; appoint as early as practicable.
- If counsel cannot appear today, consider brief continuance of contested issues while keeping safety orders in place.

Child's attorney → confirm child is or will be represented going forward.

REQUIRED FINDINGS FOR REMOVAL / CONTINUED CUSTODY

- **Contrary To Welfare**
Remaining in home IS / IS NOT contrary to child's health, safety, or welfare (with explanation).
- **Reasonable Efforts To Prevent Removal**
Check what applies (more than one may apply with explanation):
 - Reasonable efforts WERE made to prevent or eliminate need for removal.
 - NO reasonable efforts were made before removal, but absence of efforts was REASONABLE due to the immediate emergency and lack of time.
 - NO reasonable efforts were made and absence of efforts was NOT reasonable. Agency is ordered to immediately (list actions needed to be taken by DHS).
 - Reasonable efforts to reunify are NOT required due to aggravated circumstances as found on the record.

ICWA / INDIAN CHILD (IF ANY HINT OF INDIAN ANCESTRY)

- Inquiry (ask parents, extended family, agency):
 - Any Tribal membership or eligibility for child?
 - Any parent or grandparent Tribal member?
 - Any information suggesting Indian ancestry or Tribal affiliation?
- If reason to know / reason to believe:
 - Put facts on record; treat as ICWA case until status clarified.
 - Order **Tribal notice** to parents/Indian custodian, Tribe(s), and appropriate federal office; require proof of mailing/receipts by next hearing.
- If continuing out-of-home custody for a child who may be an Indian child:
 - Ask what **Active Efforts** have been made (services, Tribal involvement, use of relatives, culturally appropriate supports).
 - If time allowed efforts → make preliminary finding that active efforts HAVE been made but have not been successful.
 - Provide brief description.

- If pure emergency with no prior efforts → state that lack of efforts is due to emergency and ORDER that active efforts begin immediately and will be reviewed at next hearing.

PLACEMENT, RELATIVES, SIBLINGS, VISITATION

- **Placement**
 - Identify current placement.
 - Consider safer/less restrictive options (relative/kinship, foster home, other family-like setting).
- **Relatives / Kin**
 - Order completion of relative/kin information form or affidavit.
 - Order agency to use due diligence to identify, notify, and assess relatives/kin within set timeframe.
- **Siblings**
 - Identify siblings & placements.
 - Ask what has been done to place them together or maintain frequent contact.
 - Enter orders re: sibling placement/visitation.
- **Visitation & Services**
 - Set parent–child visitation unless contrary to safety (frequency, location, supervision, conditions).
 - Identify immediate services for child and family.
 - Order DHS to initiate and address practical barriers (transport, schedule, language).

NEXT HEARING / ORDERS

- Confirm deadlines for petition filing, relative affidavits, evaluations, ICWA notices, and reports.
- Set adjudication or next review date.
- Ensure written order reflects:
 - Emergency standard and facts;
 - Contrary-to-welfare and reasonable efforts findings;
 - Any ICWA inquiry, notice, and active efforts findings;
 - Status of counsel for parents and child.

APPENDIX B – ADJUDICATION DESK CARD

USE FOR

Assessing whether the allegations presented in the petition are substantiated and determining if the child is adjudicated as deprived during both contested and uncontested adjudication hearings.

NATURE OF HEARING / STANDARD

- **Purpose:** Decide whether the child is a deprived child as alleged in the petition and identify the conditions that must be corrected to make the home safe.
- **Burden of proof:** Petitioner must prove deprived status by a preponderance of the evidence.
- **Evidence:** The Evidence Code applies in nonjury trial.
- **Fact-finder:** Adjudication is by nonjury trial; the judge determines whether the child is deprived based on sworn testimony.
- **Scope:** Focus on whether the factual allegations in the petition are true and whether they establish that the child is deprived; placement and services are primarily addressed at disposition.
- **Ask:**
 - Are the petition, summons, and notice in order?
 - Have all necessary parties been served or properly notified?
 - Are there any preliminary motions or issues that affect the scope of adjudication (amendment, dismissal, continuance)?

WHO IS PRESENT / ON THE RECORD

At the start of the hearing, identify the following appearances on the record:

- Judge, court reporter
- DA
- DHS caseworker
- Parents/guardians/Indian Custodian and their counsel
- Child (unless appearance excused) and child's attorney
- CASA/GAL, if any
- Tribal representative, if applicable

INITIAL MATTERS / RIGHTS

- Confirm that each parent/guardian understands the nature of the proceedings and the allegations in the petition.
- Confirm each parent/guardian received notice of the adjudication hearing.
- Ensure that each parent is represented by counsel or address appointment of counsel.
 - Provide a brief continuance, if necessary, for newly appointed counsel.
- Confirm whether the child is present or excused and whether counsel has consulted with the child.

- Advise each parent of rights: to counsel, to confront and cross-examine witnesses, to present evidence and witnesses, to remain silent, and to appeal.
- Ask whether there are any motions (continuance, discovery, amendment of petition, etc.) that must be heard before evidence.
- Inquire about any language, disability, or accessibility needs.

STIPULATION / NO-CONTEST ADJUDICATION

- If a parent stipulates to, or does not contest, the allegations, ensure the admission is voluntary, knowing, and intelligent.
- Confirm the parent understands that an admission or no-contest stipulation will result in adjudication of the child as deprived and may later be used in disposition and permanency decisions.
- Establish a factual basis on the record that supports deprived status as alleged or as amended.
- Confirm that all parties understand that the court will enter the adjudication and conditions to correct.

CONTESTED ADJUDICATION –EVIDENCE

- Clarify which allegations remain contested and which are admitted or dismissed.
- Confirm the order of proof and identify witnesses for each side.
- Address sequestration of witnesses if requested.
- Ensure evidence is directed to whether the child is deprived; defer pure disposition issues to the dispositional hearing when possible. The Evidence Code applies.

FINDINGS AND RULINGS

- For each child, decide whether the petitioner has proven that the child is deprived, as defined in the Children's Code, by a preponderance of the evidence.
- If adjudicated deprived, state on the record the specific facts and conditions that support the adjudication (conditions to correct).
- Identify, for each parent or legal custodian, how their conduct or omissions relate to the deprived conditions, as appropriate.
- If the petition is not sustained, dismiss the petition as to that child and release the child from court custody or supervision.
- If sustained in part, specify which allegations are proven and which are not.

REASONABLE EFFORTS / AGGRAVATED CIRCUMSTANCES / PLACEMENT AT ADJUDICATION

- If the child remains out of the home, determine whether reasonable efforts have been made to prevent removal or to make it possible for the child to return safely home.

- If the State alleges aggravated circumstances, consider at adjudication whether such circumstances are proven and whether reasonable efforts toward reunification are not required as to that parent.
- Even if reasonable efforts toward reunification are not required for a parent, ensure that reasonable efforts will be made to finalize the child's permanency plan.
- Confirm the child's current placement, safety, and need for continued custody pending disposition.
- Set expectations for what information or reports will be needed at the dispositional hearing.

ICWA / INDIAN CHILD (IF APPLICABLE)

- Determine whether there is reason to know the child is an Indian child; if so, ensure that ICWA inquiry and notice requirements are being met.
- Confirm tribal involvement and whether the Tribe wishes to participate, intervene, or seek transfer of jurisdiction.
- For any foster-care placement of an Indian child, ensure the State has proven by **clear and convincing evidence**, including testimony of a qualified expert witness, that continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
- Make an active efforts finding: that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that those efforts have been unsuccessful.
- Ensure that placement preferences are being followed or that good-cause findings are made on the record if there is a deviation.

LINK TO DISPOSITION AND CASE PLANNING

- Clearly identify the conditions to correct that must be addressed in the Individualized Service Plan (ISP).
- Direct DHS/agency to prepare or update the ISP addressing each condition to correct, services, and visitation.
- Ensure that parents understand that the ISP will reflect the adjudication findings and conditions to correct.
- Set expectations for reports and assessments to be completed before disposition (evaluations, home studies, etc.).

SCHEDULING & WRITTEN ORDER

- Set the date and time for the dispositional hearing within the required time frame.
- Direct who must file reports (DHS, CASA/GAL, Tribe) and the deadlines for filing and service.

- Ensure that a written adjudication order is entered, using the proper Uniform Adjudication Order, stating the child has been adjudicated deprived, the factual basis, the conditions to correct, and best interests that child be made a ward of the court.
- Include findings on reasonable efforts (and any aggravated-circumstances/no-reunification determination) and, if applicable, ICWA/active-efforts and foster-care placement findings.

APPENDIX C - DISPOSITION DESK CARD

USE FOR

Dispositional hearings conducted following the adjudication of a child as deprived. The hearing may occur on the same day as adjudication but must be held and the corresponding order entered within the statutory timeframe.

NATURE OF HEARING / STANDARD

- **Purpose:** Decide what disposition best serves the child's health, safety, and welfare now that the child has been adjudicated deprived.
- **Timing:** Held promptly after adjudication or within 30 days following adjudication. Continuances only for good cause and when in the child's best interests (reasons stated on the record).
- **Evidence:** Informal. May receive and rely on:
 - Written reports (DHS, CASA, GAL, service providers, evaluations),
 - Oral summaries, and
 - Other relevant information, including hearsay, so long as the parties have a reasonable opportunity to see and challenge the reports.
- **Ask:**
 - Have parties had a reasonable chance to review reports?
 - Do any parties want to call or cross-examine authors of key reports?

WHO IS PRESENT / ON THE RECORD

At the start of the hearing, identify the following appearances on the record:

- Judge, court reporter
- DA
- DHS caseworker
- Parents/guardians/Indian Custodian and their counsel
- Child (unless appearance excused) and child's attorney
- CASA/GAL, if any
- Tribal representative, if applicable
- Relatives, resource parents, others

LINK BACK TO ADJUDICATION FINDINGS

Remind yourself and the record:

- What were the **sustained allegations** at adjudication?
- What **conditions to correct** were identified as making the home unsafe (substance use, DV, mental health, housing, supervision, etc.)?

- How do those conditions inform what is needed now for safety and permanency?

The disposition should logically follow from, and be consistent with, the adjudication and conditions to correct.

INDIVIDUALIZED SERVICE PLAN (ISP) & CASE PLANNING

At disposition, the court should determine and order the ISP.

- Has an ISP been prepared that:
 - Addresses each condition to correct;
 - Specifies services, responsibilities, and time frames for parents, DHS/agency, and child; and
 - Includes visitation, relative/kinship efforts, and permanency planning?
- Review the ISP with:
 - Parents/guardians (and counsel);
 - Child's attorney and youth, if present;
 - Tribe/ICW worker (if applicable);
 - CASA/GAL.
- Approve, modify, or reject the ISP as necessary. Make clear on the record:
 - What services will be provided;
 - What is expected of each parent, as well as DHS; and
 - How progress will be measured.

DISPOSITIONAL OPTIONS – “WHERE DOES THE CHILD GO?”

Consider, in order and based on best interests:

- **In-home with protective supervision:** Can the child safely remain or return to the home of a parent or legal guardian under protective supervision and conditions (e.g., safety plan, service participation, no contact orders, etc.)?
 - If so, specify:
 - Conditions for the home to remain safe;
 - Conduct required of adults in the home; and
 - Duration of DHS supervision (with review dates).
- **Placement with noncustodial parent**
 - Is there a safe, appropriate noncustodial parent?
 - Has a home assessment been completed or at least begun?
 - Options:
 - Transfer custody to noncustodial parent (with court supervision or closure with exit order), OR
 - Place child with the noncustodial parent under protective supervision.

If placed with in the temporary custody of the noncustodial parent:

- Identify whether services are needed for that parent, the other parent, or both.
- Ensure future review to decide whether long-term custody should rest with that parent.

- **Relative or kinship placement**

If the child cannot safely be placed with either parent:

- Give preference to suitable relatives and kin.
- Ask:
 - What relatives/kin have been identified and assessed?
 - Can siblings be placed together?
 - Is the relative willing and able to provide a safe home and work with the court and DHS?

If you do NOT place with a suitable requesting relative, state the reasons on the record.

- **Foster care / group care / other out-of-home care**

- If child must continue to be placed in DHS custody or another institution/agency:
 - Confirm the placement type (relative, kinship, non-kin foster, group home, QRTP, etc.);
 - Ensure placement decisions are consistent with the child's best interests and permanency plan; and
 - Consider proximity to the parent's county of residence and sibling placements.
- For sibling groups, begin with the presumption that joint placement is in the siblings' best interests unless rebutted.

REASONABLE EFFORTS & PERMANENCY PLANNING AT DISPOSITION

- **Reasonable efforts**

In any dispositional order removing the child from the home or continuing out-of-home placement:

- Determine whether reasonable efforts have been made to provide for the safe return of the child to the home.
- If reasonable efforts are required:
 - Allow the parent at least a baseline period to correct conditions, and
 - Note that the overall reunification services period is time-limited absent compelling reasons.
- If continuation of reasonable efforts to return home is inconsistent with the permanency plan:
 - Determine whether reasonable efforts are being made instead to finalize the permanency plan (adoption, guardianship, APPLA, etc.).

- If aggravated circumstances are proven:
 - Decide whether reasonable efforts to reunify are not required as to a particular parent;
 - Identify the specific aggravated circumstances on the record; and
 - Clarify that efforts toward a safe, permanent plan for the child must still continue.
- **Concurrent permanency planning**

If the child is out of the home:

 - Establish an initial permanency plan (reunification, with or without concurrent alternative plan).
 - Consider and, when appropriate, explicitly direct concurrent planning so that:
 - If reunification fails or is delayed, the current placement can transition to permanency or another permanent home with minimal disruption.
 - Ask:
 - What is the primary permanency goal?
 - Is there a concurrent goal (e.g., reunification plus adoption or guardianship)?
 - What steps will be taken now to support both goals?
- **Siblings & independent-living services**
 - Determine whether reasonable efforts have been made to:
 - Place siblings together, OR
 - Provide frequent visitation/other ongoing contact if they are separated.
 - For youth 14 or older:
 - Determine what services are needed to support the transition from care to adulthood/independent living, and
 - Include those services in the ISP and orders.

ICWA / INDIAN CHILD (IF APPLICABLE)

If the child is (or is presumed to be) an Indian child and you are ordering or continuing foster-care placement:

- Confirm ICWA notice and tribal involvement status.
- Ask what **active efforts** have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and whether they have succeeded or failed.
- Make a clear, case-specific active efforts finding on the record.
- Ensure there is the required evidence (including qualified expert witness testimony) supporting any continued foster-care placement and state the serious-damage finding on the record before continuing or ordering out of home care.

VISITATION, CONTACT, AND SERVICES GOING FORWARD

As part of the dispositional order:

- Set parent–child visitation (frequency, location, supervision, conditions), unless clearly contrary to the child’s safety or welfare.
- Address sibling visits and contact.
- Address key services:
 - Substance use, mental health, parenting, DV intervention, etc.
 - Practical supports (transportation, housing referrals, childcare).
 - Educational, medical, and therapeutic needs of the child.

Make sure orders are specific enough that parties and providers know exactly what is expected before the next review.

SCHEDULING & WRITTEN ORDER

Before concluding:

- Set dates and times for:
 - Review hearings, and
 - Permanency hearings.
- Direct who must file what reports and by when (DHS, CASA, GAL, Tribe, service providers).

Written dispositional order should clearly state:

- That this is the disposition following a deprived adjudication;
- The custody/placement decision and reasons;
- The approved (or modified) ISP and conditions to correct;
- Reasonable-efforts and, if applicable, active-efforts findings;
- Any aggravated circumstances / “no reasonable efforts required” findings;
- Sibling placement/contact findings;
- Any transition-to-adulthood services for older youth; and
- Dates for the next review and permanency hearings.

APPENDIX D - REVIEW HEARING DESK CARD

USE FOR

Periodic review hearings in deprived cases are conducted following disposition. These hearings occur regularly, at a minimum every six months, regardless of whether they coincide with a permanency hearing. Please utilize the designated permanency card for any permanency hearing.

NATURE OF HEARING / STANDARD

- **Purpose:**
 - Review the child's placement, services, permanency plan, and progress on correcting conditions that led to adjudication.
 - Decide what needs to change before the next review to move the case toward safe permanency.
- **Timing:** First review: no later than 6 months from the date of removal. Thereafter, at least once every 6 months until permanency is achieved or jurisdiction is terminated.
 - Some cases may require more frequent reviews (e.g., non-family settings, special circumstances).
- **Evidence: Informal. May receive and rely on:**
 - Written reports (DHS, CASA, GAL, service providers, evaluations),
 - Oral summaries, and
 - Other relevant information, including hearsay, so long as the parties have a reasonable opportunity to see and challenge the reports.

WHO IS PRESENT / ON THE RECORD

At the start of the hearing, identify the following appearances on the record:

- Judge, court reporter
- DA
- DHS caseworker
- Parents/guardians/custodians and their counsel
- Child and child's attorney
- CASA/GAL, if an.
- Tribal representative/ICW worker, if any (ICWA cases)
- Foster/resource parents, relative/kinship caregivers, or group-home representatives currently caring for the child
 - Entitled to notice and the right to be heard, but not parties solely on that basis.
- Any other persons present (service providers, mentors, etc.)

REPORTS & INFORMATION TO CONSIDER

Make sure you have, and put on the record that you've received:

- DHS/agency review report, including:
 - Child's current physical, mental, emotional condition and adjustment to placement.
 - School progress and any special-education needs.
 - Visitation exercised by parents and others since last hearing.
 - Services offered and provided to parents and child; progress made; remaining changes needed.
 - Placement history (moves, reasons, stability).
 - Recommended plan: trial reunification, return home, continued placement, or other change.
- Any written report from:
 - Child's attorney, parent's attorney
 - CASA/GAL
 - Foster/resource parents or group home,
 - Tribe/ICW program,
 - Service providers/evaluators as ordered.
- Ask parties if:
 - They have received and had time to review the reports.
 - They wish to call or cross-examine report authors or present additional evidence.

CORE QUESTIONS AT EVERY REVIEW

- **Placement & safety**
 - Does the current placement continue to meet the child's health, safety, emotional, and educational needs?
 - Is there still a need for continued out-of-home placement, or can the child safely return to a parent's care in some form (trial reunification or full custody)?
 - Any new safety threats or incidents since the last hearing?
- **Permanency plan**
 - What is the current permanency plan (and any concurrent plan)?
 - Does that plan remain appropriate in light of the child's safety, well-being, and progress?
 - Is the case moving toward that plan, or has progress stalled?
- **Services & conditions to correct**
 - Are services still the right ones to address the conditions to correct identified at adjudication/disposition?
 - Are expectations for parents, the agency, and the child clear and realistic?

- Has there been meaningful progress toward correcting the conditions that caused the child to be adjudicated deprived?
- Do services or expectations need to be adjusted (added, modified, or reduced)?
- **Visitation & family connections**
 - Are parent–child visitation terms appropriate, too restrictive, or too lax?
 - Are sibling contacts sufficient to maintain relationships when siblings are not together?
 - Are there relatives, kin, or other important adults whose involvement should increase?
- **Timeframe**
 - What is a realistic timeframe for reunification or another permanent plan, given the child’s age and needs?
 - Are there avoidable delays (late referrals, scheduling barriers, lack of follow-through) that should be corrected by court order?

REASONABLE EFFORTS FINDINGS AT REVIEW

At every review hearing, the order should address reasonable efforts.

- **To return the child home**
 - Since the last hearing, have reasonable efforts been made to provide for the safe return of the child to the child’s home?
 - Look at: services actually provided (not just referrals), accessibility, efforts to remove barriers (transportation, child care, scheduling, language), frequency and quality of visitation, and adjustments when services were not effective.
- **If reunification efforts are not required or no longer appropriate**
 - If you have previously found that reasonable efforts to reunify are not required (aggravated circumstances) or no longer appropriate because they conflict with the permanency plan, then at this review determine whether reasonable efforts are being made to:
 - Place the child in a timely manner in accordance with the permanency plan; and
 - Take concrete steps to finalize that plan.
- **Your written order should clearly state:**
 - Either that reasonable efforts to return home are being made (briefly describe); or
 - that reasonable efforts to return home are not required / no longer appropriate, and instead reasonable efforts are being made to achieve the permanency plan (briefly describe).

SIBLINGS, NORMALCY, AND OLDER YOUTH

- **Siblings**
 - Have reasonable efforts been made to place siblings together when they are all in care?
 - If siblings are separated, are reasonable efforts being made to provide frequent visitation or other ongoing contact?
 - Do current sibling arrangements still serve their best interests?
- **“Normalcy” / reasonable and prudent parent standard**
 - Is the agency supporting the caregiver to use the reasonable and prudent parent standard so the child can participate in school activities, sports, social events, cultural and religious activities, and other age- or developmentally appropriate experiences?
- **Older youth (especially 14+)**
 - Is the youth receiving services toward independent living and transition to adulthood (education, employment, housing, health care, financial skills, supportive connections)?
 - Is the youth actively involved in case planning and any written transition/independent-living plan?

ICWA / INDIAN CHILD (IF APPLICABLE)

If the child is (or is presumed to be) an Indian child:

- Confirm ongoing ICWA/OICWA compliance: notice, tribal involvement, and any transfer-to-tribal-court issues.
- Ask what active efforts have been made since the last hearing to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and whether they have succeeded or failed.
- Make a clear, case-specific active-efforts finding in the review order.
- Ensure any continued out-of-home placement remains supported by the required ICWA evidentiary findings, either in this order or by express reference to prior orders.

ORDERS & NEXT STEPS

- **For Parental Custody – Return Home Options**

After considering safety, progress, and services, decide:

- **No return at this time**
 - Child remains out of that parent’s custody; identify what must change before return is considered.

- **Trial reunification**
 - Child returns physically to a parent **under trial reunification**, with the agency retaining legal custody.
 - Set clear conditions for the trial reunification (services, supervision, safety rules, who may be in the home, etc.).
 - Set a review date (or specify that the status will be addressed at the next scheduled review/permanency hearing).
- **Successful reunification – custody back to parent**
 - If trial reunification has been successful and conditions to correct have been sufficiently addressed, you may return legal custody to the parent.
 - Options:
 - Return custody and keep the case open for a limited period under protective supervision, with a future review; OR
 - Return custody and close the deprived case (if the child is no longer deprived and supervision is no longer needed).
 - Be clear on the record whether the case remains open and under what conditions, or whether jurisdiction is being terminated.
- **For a Child in DHS Custody – Placement Approval**
 - Review whether the current DHS placement continues to meet the child’s needs and comply with placement preferences (relatives/kin, siblings, ICWA, proximity, family-like setting).
 - The court may not direct DHS to place the child in a specific home or facility, but may approve or disapprove the current placement.
 - If you disapprove the current placement, order DHS to:
 - Identify and secure an appropriate alternative placement consistent with law and the child’s needs, and
 - Report back to the court by a date certain (in writing and/or at the next hearing).
- **Other Key Orders**
 - Modify, continue, or expand as appropriate:
 - Parent and sibling visitation;
 - Services for parents and child;
 - Safety conditions and supervision;
 - Sibling and family/tribal connections.
 - Confirm:
 - The current permanency plan (and any concurrent plan); and
 - What must happen before the next review to move toward that plan.

- Set the next review hearing date (and separately calendar the permanency hearing if not already set).
- Direct who must file updated reports (DHS/agency, CASA/GAL, child's attorney, Tribe, service providers) and by when.

Your Written Review Order Should Clearly Reflect:

- Placement and safety status, including whether the current DHS placement is approved or disapproved and any directions to DHS;
- Progress on the individualized service plan and conditions to correct;
- Reasonable-efforts and, if applicable, no-reasonable-efforts findings;
- Sibling placement/contact and normalcy;
- Any ICWA active-efforts and serious-damage findings (if applicable); and
- The expected path and timeframe toward permanency, without turning the review into the permanency hearing itself.

APPENDIX E – PERMANENCY HEARING DESK CARD

USE FOR

A permanency hearing is mandated for every child placed in out-of-home care. The hearing must take place at least every six months while the child is in custody. While it may be conducted concurrently with a Review Hearing, it must fulfill all requirements specific to permanency.

NATURE OF HEARING / STANDARD

- **Purpose:** Determine the child’s permanency plan and review progress toward a safe, stable, and permanent home.
- **Focus:** The child’s health, safety, and welfare.
- **Timing:** Within 6 months of entry into foster care and every 6 months thereafter while in out-of-home placement.
 - If reunification services are not required (aggravated circumstances), hearing must be held **within 30 days** of that determination.
- **Evidence:** Informal. May rely on written reports, oral summaries, and hearsay if parties have a reasonable chance to review and challenge reports.
- **Ask:**
 - Have parties had a reasonable chance to review permanency reports?
 - Do any parties wish to cross-examine authors of key reports?
 - What progress has been made since the last hearing?
 - What barriers remain to achieving permanency?

WHO IS PRESENT

At the start of the hearing, identify the following appearances on the record:

- Judge, court reporter
- DA
- DHS caseworker
- Parents/guardians/custodians and their counsel
- Child and child’s attorney
- CASA/GAL, if any
- Tribal representative/ICW worker, if any (ICWA cases)
- Foster/resource parents, relative/kinship caregivers, or group-home representatives currently caring for the child
 - Entitled to notice and the right to be heard, but not parties solely on that basis

- Any other persons present (service providers, mentors, etc.)

LINK BACK TO PRIOR FINDINGS

- What conditions to correct were identified?
- What progress has each parent made?
- What remains for the home to become safe?
- How do current circumstances guide the permanency decision?

PERMANENCY PLAN OPTIONS

- **Reunification (Return Home)**
 - Trial reunification is required before legal custody can be returned.
 - Is a trial reunification appropriate now?
 - Is the safety plan adequate?
 - Is the parent's progress sufficient for the child's safe return?
- **Adoption**
 - Have parental rights been terminated or is a petition pending?
 - Is the placement willing to adopt?
 - What steps or barriers remain?
- **Legal Guardianship**
 - Is guardianship appropriate because reunification or adoption is not appropriate?
 - Is the proposed guardian willing and suitable?
 - What supports or services are needed?
- **APPLA (Youth 16+ Only)**
 - Is the youth 16 or older?
 - Are there compelling reasons no other permanency plan is appropriate?
 - Does the youth have stable adult connections?
 - Are independent-living services provided?

CHILD'S SAFETY, STABILITY, AND WELL-BEING

- Is the placement safe and appropriate?
- Are the child's physical, mental health, and developmental needs met?
- Are educational needs and school stability addressed?
- Are siblings placed together, or is there frequent contact if separated?

PLACEMENT APPROVAL / DISAPPROVAL

- Approve or disapprove the child's placement.
 - Court cannot order DHS to place the child in a specific home.

- If disapproved, direct DHS to locate another placement and report back.

EFFORTS TOWARD PERMANENCY

- Are efforts being made to finalize the permanency plan?
- Are parents being supported in correcting conditions?
- Are relative/kinship options fully explored?
- Are family time and sibling visits appropriately supported?

CONCURRENT PLANNING

- Identify primary and concurrent permanency plans.
- Assess progress toward both plans.

YOUTH INVOLVEMENT

- Engage youth, as appropriate, regarding safety, school, stability, and connections.
- For youth 14+, confirm transition planning.

ICWA (IF APPLICABLE)

- Confirm status and tribal involvement.
- Active efforts must be demonstrated.
- Placement preferences reviewed and followed unless good cause determined.

SERVICES, VISITATION, AND NEXT STEPS

- Set or review parent–child visitation schedule.
- Address sibling visitation.
- Order evaluations, treatment, and specific services as needed.
- Ensure expectations are clear and measurable.

SCHEDULING & WRITTEN ORDER

- Set next permanency hearing within 6 months.
- Identify required reports and deadlines.
- Written order should identify permanency plan, progress, efforts, placement approval, sibling findings, youth transition steps, and next hearing dates.

APPENDIX F – TERMINATION OF PARENTAL RIGHTS (TPR) DESK CARD

USE FOR

A Termination of Parental Rights (TPR) trial occurs when the State initiates proceedings to end parental rights. The trial may be conducted before a jury or as a bench trial, depending on the parents' presence and any waivers provided.

NATURE OF HEARING / STANDARD

- **Purpose:** Determine whether a statutory ground exists and whether termination is in the child's best interests.
- **Burden:** Clear and convincing evidence for grounds and best interests.
- **Right to Jury Trial:** Parent has an absolute right to a jury trial unless knowingly and voluntarily waived.
 - If a parent fails to appear after proper notice, the court proceeds with a non-jury trial.
- **Evidence:** Formal trial with witnesses, exhibits, and full adversarial process.
- **Ask:**
 - Did the parent (s) appear?
 - Was proper notice given to the parent(s)?
 - Did the parent (s) request or waive a jury?
 - Was the parent previously informed that failing to appear for a requested jury trial waives the jury trial right and the case will proceed as a non-jury trial (no *in absentia*)?
 - Are required witnesses present?
 - Any preliminary evidentiary issues?

WHO IS PRESENT / ON THE RECORD

At the start of the hearing, identify the following appearances on the record:

- Judge, court reporter
- DA
- DHS caseworker
- Parents/guardians/custodians and their counsel
- Child and child's attorney
- CASA/GAL
- Tribal representative, QEW (if ICWA).

LINK BACK TO PRIOR FINDINGS

- Confirm that the child was adjudicated deprived before or concurrently with TPR.
- Review conditions to correct and prior review/permanency findings.
- Identify which issues remain contested for the TPR trial.

ELEMENTS THE STATE MUST PROVE

- At least one statutory ground for termination exists.
- Ground proven by clear and convincing evidence.
- Termination is in the child's best interests (also clear and convincing).
- Findings must be specific and fact-based.

ICWA REQUIREMENTS (IF APPLICABLE)

- Confirm child's ICWA status and tribal participation.
- Prior to going to trial, the State must prove active efforts to prevent breakup of the Indian family (this is a judicial determination – not an issue for the jury).
- QEW testimony must be presented at trial.
- Court/jury must find beyond a reasonable doubt that continued custody is likely to result in serious emotional or physical damage.

BEST INTERESTS

- Independent requirement even if a ground exists.
- Consider safety, bonding, permanency, emotional and physical stability, caregiver quality, trauma, and sibling relationships.
- Must be supported by clear and convincing evidence.
- Court must clearly state best-interest finding on the record.

CONDUCT OF TRIAL

- If jury trial: OUJI instructions used. 6 jurors empaneled.
- Allow full presentation of evidence, cross-examination, and rebuttal.
- Ensure parents have full opportunity to be heard unless absent without good cause.
- Ensure completeness of the record for appeal.

ORDERS AFTER TRIAL

- State each ground found (if any) and specifically state the conditions that were not corrected (if applicable).
- State best-interest finding.
- For ICWA: make active-efforts finding, beyond reasonable doubt damage finding, and note QEW testimony.
- Terminate rights as to each parent separately.

- If TPR granted: set post-TPR permanency review.
- If TPR denied: set a permanency hearing within 30 days.

VOLUNTARY CONSENT TO TERMINATION

- **Non-ICWA Voluntary Consents**
 - Parent must give voluntary, knowing, and intelligent consent in open court.
 - Consent is effective when signed and may be set aside only upon clear and convincing evidence of fraud or duress.
 - Court should confirm understanding of permanency consequences.
- **ICWA Voluntary Consents**
 - Consent must be in writing before a judge with full judicial explanation.
 - Consent cannot be accepted until at least 10 days after birth.
 - Parent may withdraw consent at any time prior to the entry of the final decree.
 - After the decree, withdrawal requires proof of fraud or duress within the allowed period.

SCHEDULING & WRITTEN ORDER

- Use the appropriate Uniform Order and set out specific findings where necessary. File the Order as quickly as possible so not to delay an appeal.
- Advise parties of right to appeal, determine indigency for appointment of parent's attorney, cost of transcript and records. Set deadlines for preparation of the appeal record.
- Set next hearing (post-TPR permanency or permanency hearing if denied).

APPENDIX G - REASONABLE EFFORTS DESK CARD

Use at emergency/show-cause, disposition, review, and permanency hearings whenever removal, reunification, sibling placement, or permanency goals are at issue.

GENERAL REMINDERS

- Reasonable efforts findings should be:
 - Tied to the specific goal (prevent removal, reunify, place siblings together, finalize the permanency plan), and
 - Case-specific (not boilerplate).
- For an Indian child, reasonable efforts findings do NOT replace required “active efforts” findings. Make both, separately.

REASONABLE EFFORTS TO PREVENT REMOVAL

Use at: emergency/show-cause hearings and any hearing where the child is first removed or remains out of the home.

Key Questions

- Before removal, what did the agency do to keep the child safely at home?
 - Safety planning with the parent or another adult in the home.
 - In-home services (family preservation, parenting help, substance abuse or mental health services, domestic-violence safety planning).
 - Relative or kinship options explored before shelter/foster care.
 - Practical help (transportation, housing referrals, concrete supports).
- Was there a true emergency where there was no time to provide services beforehand?

Sample Findings Language

- “The Court finds that reasonable efforts were made to prevent or eliminate the need for removal, including: _____.”
- “The Court finds that due to the immediacy and severity of the risk to the child, there was not sufficient time to provide services before removal, and that emergency removal was necessary to protect the child’s health and safety.”
- If not made: “The Court finds that reasonable efforts to prevent removal were not made, and directs the agency to immediately provide or arrange the following services to reduce the need for continued out-of-home placement: _____.”

REASONABLE EFFORTS TO REUNIFY

Use at disposition and all review/permanency hearings when reunification is a goal (primary or concurrent).

Key Questions

- Has the agency:
 - Provided the services identified in the case plan?
 - Adjusted services when they were not effective or accessible?
 - Addressed practical barriers (transportation, scheduling, childcare, language, cultural issues)?
 - Facilitated regular, meaningful parent–child visitation and contact?
- Have parents engaged in services and made progress on the identified conditions to be corrected?

Sample Findings Language

- “The Court finds that reasonable efforts have been made to reunify the child with the parent(s), including: _____, and that these efforts are reasonably calculated to address the conditions that led to removal.”
- “The Court finds that reasonable efforts to reunify have not been made in the following respects: _____, and orders the agency to modify and increase its efforts by: _____.”
- “The Court finds that continued reasonable efforts to reunify are no longer required/appropriate because: _____.”

REASONABLE EFFORTS TO PLACE SIBLINGS TOGETHER AND MAINTAIN CONTACT

Use at any hearing where the child has siblings in care or known siblings elsewhere.

Key Questions

- Have all siblings (including half-siblings) been identified?
- Are siblings placed together?
 - If yes: are the placements stable and meeting everyone’s needs?
 - If no: why not? Safety, needs, placement capacity, child’s wishes, Tribe’s recommendations?
- If siblings are separated:
 - Is there a schedule for visits, calls, or other contact?
 - Are barriers to sibling contact being addressed?

Sample Findings Language

- “The Court finds that reasonable efforts have been made to place siblings together, including: _____. The Court further finds that joint placement is/is not currently possible because: _____.”
- “The Court finds that reasonable efforts are being made to preserve and strengthen sibling relationships through visits and contact, including: _____, and orders that sibling contact shall occur as follows: _____.”
- “The Court finds that reasonable efforts to place siblings together have not been sufficient in the following respects: _____, and directs the agency to take additional steps, including: _____.”

REASONABLE EFFORTS TO FINALIZE THE PERMANENCY PLAN

Use in permanency hearings and later review hearings once a permanency goal is selected (reunification, adoption, guardianship, custody with a fit and willing relative, or another planned permanent living arrangement for older youth where permitted).

Key Questions

- What is the current permanency goal (or concurrent goals)?
- What has the agency done since the last hearing specifically to move toward that goal?
 - For reunification: services, visitation, trial home visits, in-home supports
 - For adoption: relative/non-relative adoptive home search, child-specific recruitment, home studies, matching, pre-adoptive placement
 - For guardianship/relative custody: identify and assess relatives, complete background checks and home studies, negotiate support, prepare the child and caregiver
 - For older youth/APPLA: identify a committed, long-term adult; strengthen supportive connections; support transition planning and services
- Are there avoidable delays? Has the agency followed through on what the Court previously ordered?

Sample Findings Language

- “The Court finds that reasonable efforts are being made to finalize the permanency plan of _____ for this child, including: _____.”

- “The Court finds that reasonable efforts to finalize the permanency plan have not been adequate in the following respects: _____. The agency is ordered to take the following additional steps by the next hearing: _____.”
- “The Court finds that the current permanency goal is no longer appropriate and that reasonable efforts shall now be directed toward the new permanency plan of _____, with the following immediate actions: _____.”

ICWA Note (if applicable)

- For an Indian child, in addition to reasonable efforts findings, the Court must make separate findings that:
 - Active efforts have been made to provide services and programs designed to prevent the breakup of the Indian family;
 - Those efforts were unsuccessful (if the child remains out of the home); and
 - The required ICWA evidentiary standards and expert testimony are met.
- Make clear on the record that “reasonable efforts” and “active efforts” findings are both addressed.

WHEN REASONABLE EFFORTS ARE NOT REQUIRED (Aggravated Circumstances)

Use at disposition or later hearings when the State alleges that reasonable efforts to reunify are not required because of aggravated circumstances (or similar statutory exceptions).

General Points

- The Court must:
 - Make a clear, case-specific finding that an “aggravated circumstance” (or other statutory exception) exists; and
 - Specify **which** efforts are not required (usually efforts to reunify), and why.
- Even when reasonable efforts to reunify are not required:
- Reasonable efforts to **achieve a safe permanency plan** for the child are still required.
- The Court should still consider services and supports for the child and safe family connections (including relatives and siblings).

Sample Findings Language

- “The Court finds that aggravated circumstances exist as to _____, specifically: _____. Based

on these findings, the Court concludes that reasonable efforts to reunify the child with this parent are not required.”

- “Even though reasonable efforts to reunify are not required as to _____, the Court finds that reasonable efforts must still be made to achieve a safe and timely permanency plan for the child and orders the agency to: _____.”

ICWA Caution:

Aggravated circumstances may relieve the State of ‘reasonable efforts’ under Title 10A, but they do not eliminate the federal ICWA requirement of ‘active efforts’ under 25 U.S.C. § 1912(d). Neither ICWA nor the federal regulations recognize an aggravated-circumstances exception to this requirement. The BIA Guidelines likewise treat active efforts as a continuing obligation in ICWA cases, even where state law would permit a waiver of reasonable efforts.

APPENDIX H - REASONABLE EFFORTS vs. ACTIVE EFFORTS

Reasonable Efforts

Efforts made to prevent removal when required, support reunification when appropriate, and always to finalize permanency.

Provided at removal (unless aggravated), during reunification, and always to finalize permanency.

DHS offers services, referrals, visitation coordination, and monitors progress.

Cultural considerations help but are not mandatory.

Extended family may be considered but not required for planning.

Court must find reasonable efforts toward reunification (when required) AND always reasonable efforts to finalize permanency.

Examples:

- Making referrals
- Providing service lists
- Scheduling visitation
- Helping parent apply for services
- Holding ISP meetings
- Parent generally responsible for follow-through
- Reasonable efforts to finalize adoption, guardianship, APPLA

Active Efforts (ICWA Regulations & BIA Guidelines)

Affirmative, active, thorough, and timely efforts required in all ICWA cases involving foster-care placement or TPR.

Always required under ICWA; cannot be waived by aggravated circumstances.

DHS proactively assists parents with services, removes barriers, supports participation, and collaborates with the Tribe.

Culturally relevant services must be included; tribal resources must be consulted and used.

Extended family must be actively identified, engaged, and included in planning.

Court must find active efforts were made and were unsuccessful, supported by specific evidence.

Examples (25 CFR § 23.2):

- Helping parents overcome barriers like transportation & paperwork
- Comprehensive family assessment with tribal input
- Identifying & engaging extended family
- Supporting family visitation in natural settings
- Collaborating with Tribe & using tribal services
- Using culturally appropriate programs & traditional supports
- Actively assisting parents in accessing services
- Frequently monitoring and adjusting services