

# **Children's Code Benchbook**

## **Oklahoma Statutes and Case Law**

## The Oklahoma Children's Court Bench book

The purpose of this bench book is to give judges and attorneys quick access to relevant information regarding the Oklahoma Children's Code in Oklahoma.

This book is divided into chapters. The chapters are listed in the left hand column. Clicking on the chapter will open up subsections of each chapter. Click on the subsection to display the contents.

The underlined citations on the left hand side of the documents are hyperlinks. In order to open the relevant statute or case, click on the hyperlink. Close the window to return to the bench book.

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## Table of Contents

### CHAPTER 1: DEPRIVED CHILD PROCEEDINGS

#### I. General Provisions

1. The Children's Code
  - A. Substantive Rights
  - B. Limitations
  - C. Legislative Intent
  - D. Authority of the Court
  - E. ASFA and its Implications
  
2. Key Concepts
  - A. Best Interests
  - B. Reasonable Efforts
    1. Reasonable Efforts to Prevent Removal
    2. Post Adjudication Determination of Reasonable Efforts
    3. Reasonable Efforts for Siblings
    4. When Reasonable Efforts to prevent removal or reunify are not required
  - C. Contrary to Welfare of Child Finding
  - D. Concurrent Planning
  - E. Legal Custody and Placement
  - F. Successful Adulthood Act
  
3. Jurisdiction and Venue
  - A. Subject Matter and Personal Jurisdiction
    1. Conflicting Orders
  - B. Venue
  - C. Transfer of Venue
  - D. Interstate Compact on Placement of Children
  - E. Concurrent Jurisdiction with Criminal Cases
  - F. Concurrent Jurisdiction with Probate Court
  - G. Concurrent Jurisdiction with Interstate Custody
  
4. Parties
  - A. Chart: Persons Before the Court
  - B. District Attorney



- C. Parents' Attorneys
- D. Children's Attorney
- E. GAL for Child
- F. Court Appointed Special Advocate (CASA)
- G. GAL for Parent
- H. Juvenile Court Case Managers
- I. Foster Parents, Pre-Adoptive Parents and Relatives

5. UCCJEA

- A. Initial Jurisdiction
- B. Continuing, Exclusive Jurisdiction
- C. Emergency Jurisdiction
- D. Modification Jurisdiction
- E. Inconvenient Forum
- F. Unjustifiable Conduct
- G. Duty to Enforce

## II. DEPRIVED PROCEEDINGS

1. Reporting Abuse and Neglect

- A. What is Reported: Defining Child Abuse and Neglect
- B. Mandatory Reporters
- C. Referrals for Investigation in Child Custody Actions
- D. Human Trafficking

2. Pre-adjudicative Removal of Child from the Home

- A. Protective Custody
- B. Voluntary Consent Upon Arrest
- C. Emergency Custody Order
  - 1. Written Application of District Attorney
  - 2. Oral Application of District Attorney
  - 3. Necessity of Medical/Behavioral Health Treatment for Child
  - 4. Required Findings
- D. Execution of Emergency Custody Order
- E. Written Notice to Parent
- F. Emergency Custody Hearing

1. Time Frame for Hearing
    2. Issues to be Resolved
    3. Advise to Parent at Hearing
    4. Custody Determination
    5. Critical Findings in Addition to Custody Determination
    6. Additional Actions to be taken by the Court
    7. Relative Placements
  - G. Restraining Orders
    1. The Order
    2. The Issuance of Restraining Order
    3. Entering Order in the NCIC Database
    4. Penalty for Violation of Restraining Order
  - H. Emergency Custody For Medical Treatment
3. Petition
  - A. When Filed
  - B. Contents
  - C. Amendments
  - D. Responsive Pleadings
  - E. Post-adjudication Petition
4. Service of Summons
  - A. Content
  - B. Waiver of Service of Summons
  - C. Who Should be Served
  - D. How Service of Summons if Effected
  - E. Publication
  - F. Consequences of Failure to Appear
  - G. Issuance of Warrant
5. Adjudication Hearing
  - A. Purpose
  - B. What is a Deprived Child
  - C. What is Not a Deprived Child
  - D. The Non-Custodial Parent
  - E. Proof
  - F. Timeline
  - G. Adjudication Trial
  - H. Stipulations

- I. Consent Adjudication
- J. Insufficient Evidence Presented
- K. Order of Adjudication
- L. Deferred Adjudication
- M. Costs

6. Dispositional Hearings and Orders

A. Dispositional Hearings

- 1. Time Frame
- 2. Continuances
- 3. Evidence

B. Temporary Custody Options

- 1. Remain with Parent
- 2. Custody or Placement with Non-Custodial Parent
- 3. Temporary Custody to Relative
- 4. Private Agency or Institution
- 5. Temporary Custody with DHS
- 6. Placement of Siblings

C. Additional Dispositional Orders

- 1. Mandated Findings in Every Dispositional Order

D. Individualized Service Plan (“ISP”)

- 1. Procedure for Adopting ISP
- 2. General Requirements of ISP
- 3. Contents of ISP

7. Review Hearings

- A. Time Frame
- B. Participants
- C. Evidence
- D. Court Findings
- E. Contents of Reports

8. Permanency Hearings

- A. Time Frame
- B. Participants
- C. Pre-Hearing Staffing
- D. Deciding Alternatives for Permanent Placements
- E. Content of Reports

- F. Evidence
- G. Court Findings
- H. Court Orders
  
- 9. Trial Home Reunification
  - A. Status of Custody During Trial Home Reunification
  - B. Termination of Trial Home Reunification
  
- 10. Permanent Guardianship
  - A. Conditions for Establishing Guardianship
  - B. Requirements for Motion
  - C. Home Assessment and Report
  - D. Hearing
  - E. Subsequent Hearings
  - F. Modification or Termination of Permanent Guardianship

### **III. TERMINATION OF PARENTAL RIGHTS**

- 1. Criteria
- 2. Effect of Termination
- 3. Additional Finding
- 4. Special Issues
  - 4.1 Aggravated Circumstances
- 5. Filing Petition or Motion to Terminate
  - 5.1 Notice of Petition; Motion; Consent; Vacate
  - 5.2 Trial
  - 5.3 Due Process Issues
- 6. Failure to Terminate at Trial
- 7. Contents of Termination Order
- 8. Placement of Child
- 9. Reinstatement of Parental Rights
  - A. Application
  - B. Preliminary Hearing
  - C. Notice of Hearing on Merits
  - D. Necessary Findings for Conditional Grant
  - E. Temporary Order of Reinstatement
  - F. Removal of Child
  - G. Final Order of Reinstatement

## H. Retroactivity of Statute

### **IV. Other Procedural Considerations**

1. Use Immunity
  - A. Purpose
  - B. Impeachment
  - C. Who May Apply
  - D. Documents
  - E. Therapy
  - F. Does not Apply
2. Discovery
3. Pre-Trial Hearings
4. Jury Trial
5. Mediation
6. Family Group Conferencing or Family Team Meeting
7. Settlement Conferences
8. Immigration Considerations
  - A. Special Immigrant Juvenile Status
    - i. Eligibility
    - ii. Application
    - iii. Additional Requirements
9. Family Drug Courts

### **V. INDIAN CHILD WELFARE ACT (“ICWA”)**

1. History
2. Purpose
3. Codification
4. Applicability
5. Jurisdiction
6. Emergency Removal
7. DHS Affidavit for Removal
8. Notice
9. Adjudication
10. Expert Witness Testimony
11. Placement Preferences
12. Active Efforts
13. Removal to Tribal Court

14. Termination of Parental Rights
15. Full Faith and Credit

## **VI. PLACEMENT ISSUES**

1. Placement Preferences
  - A. Identifying and Contacting Relatives
  - B. Determination of Relative Placement
  - C. Foster Parent Preference for Adoption
2. Placement of Child – Who Determines
3. Movement of Children
4. Removal From Foster Care Placement
5. Releasing a Child from State Custody
  - A. Stay Pending Review of Release
    - i. Grounds
    - ii. Stay
    - iii. Application
    - iv. Review

## **VII. APPEALS**

## **VIII. CONFIDENTIALITY**

1. Hearings
2. Records
  - A. Definitions
  - B. Those Entitled Without Benefit of Court Order
  - C. Social Records
  - D. Penalty or Unlawful Disclosure of Confidential Records
  - E. What the Court May Not Order
  - F. Records or Information Not Subject to Release with or Without Court Order
  - G. Release of Records in Deprived Case
  - H. Discovery of Records in Criminal, Civil or Administrative Proceeding
  - I. Request for Records in Child Custody/Visitation Proceedings
  - J. Redaction of Other Children's Information

3. Disclosure of Information in Cases of Death or Near-Death of Child

**IX. FEDERAL LAWS AFFECTING STATE PROCEEDINGS**

1. Timeline

- A. Child Abuse Prevention and Treatment Act of 1974
- B. Indian Child Welfare Act of 1978
- C. Child Abuse Prevention, Adoption and Family Services Act of 1978
  
- D. Adoption Assistance and Child Welfare Act of 1980
- E. Child Abuse, Domestic Violence, Adoption and Family Services Act of 1992
- F. Family Preservation and Support Services Program of 1993
- G. Multiethnic Placement Act of 1994
- H. Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996
- I. Child Abuse Prevention and Treatment Act Amendments of 1996
- J. Adoption and Safe Families Act of 1997
- K. Foster Care Independence Act of 1999
- L. Child Abuse Prevention and Enforcement Act of 2000
- M. Intercountry Adoption Act of 2000
- N. Strengthening Abuse and Neglect Courts Act of 2000
- O. Promoting Safe and Stable Families Amendments of 2001
- P. Keeping Children and Families Safe Act of 2003
- Q. Deficit Reduction Act of 2005
- R. Safe and Timely Interstate Placement of Foster Children Act of 2006
- S. Children and Family Services Act of 2006

- T. Adam Walsh Child Protection and Safety Act of 2006
- U. Fostering Connections to Success & Increasing Adoptions Act of 2008
- V. The Preventing Sex Trafficking and Strengthening Families Act (2014)

## **X. RELATED PROCEEDINGS**

- 1. Inpatient Mental Health and Substance Abuse Treatment of Minors Act
  - A. Admission Into Inpatient Facility
  - B. Evaluation Report
  - C. Petition
  - D. Prehearing Detention Order
  - E. Notice of Hearing
  - F. Rights of Child
  - G. Legal Counsel
  - H. Trial
  - J. Judicial Findings and Order of Commitment
  - K. Post Adjudication Hearings
  - L. Discharge Plan
- 2. Establishing Paternity
  - 2.1 Child Support
- 3. Withdrawal of Life-Sustaining, etc.
  - A. Best Interests
  - B. Substituted Decision making Standard
  - C. Hearing and Parental Rights
    - 1. Burden of Proof



## **1. THE CHILDREN'S CODE**

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.

As part of the Children's Code, the state is authorized to act in these cases through the Oklahoma Department of Human Services ("OKDHS") as well as the District Attorneys' Office – generally a consensus model involving social workers and attorneys, all of whom are trained in the area of child protective services. In addition, there are attorneys for the parents, attorney for the child, assistance of volunteers through the Court Appointed Special Advocate (CASA) program, oversight by Citizen Review Boards (PARB), extended family members and substitute caregivers.

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 attempt 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.

## A. SUBSTANTIVE RIGHTS

### PARENTS:

Long-standing precedent of the United States Supreme Court holds that the Due Process Clause of the 14<sup>th</sup> Amendment protects the fundamental liberty interest of the parents in the care, 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.” In 2000, the U.S. Supreme Court reiterated the importance of this interest ruling that a Washington State statute allowing “any person” to petition for visitation was unconstitutional because it impermissibly infringed on the rights of parents.

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 14<sup>th</sup> Amendment. This case marks the connection between the substantive rights of parents and the procedural requirements necessary to protect those rights.

Not only are parents entitled to an evidentiary hearing before a determination can be made as to their “fitness”, but the Due Process Clause also dictates that the standard of proof in such cases must be clear and convincing evidence, rather than a mere preponderance.

### CHILDREN:

A child has a right to be raised by his parents and there exists the presumption that a child’s best interests are served by remaining in the custody of its natural parents. But the truth is self-evident that children also have certain inalienable needs: to be free from physical and emotional harm at the hands of their caretakers; and to be provided with the essentials of food, shelter, education and medical care.

### 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.

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 authority of the parent to the extent necessary to protect the child.

[Meyer v. Nebraska, 262 US 390,399,401 \(1923\);](#)

[Pierce v. Society of Sisters, 268 US 510, 535 \(1925\).](#)

[Parham v. JR, 442 US 584, 602 \(1979\)](#)

[Troxel v. Granville, 530 US 57 \(2000\)](#)

[Santosky v. Kramer, 455 US 745 \(1982\).](#)

[In re Sweet, 317 P.2d 231 \(Okla. 1957\)](#)

[State ex rel Hunter v. Duncan, 288 P.2d 388 \(Okla. 1955\);](#)  
[Ex parte Parnell, 200 P. 456 \(Okla. 1921\)](#)

[Matter of Sherol AS, 581 P.2d 884 \(Okla. 1978\);](#)  
[Matter of Baby Girl Williams, 602 P.2d 1036 \(Okla. 1979\)](#)

## B. LIMITATIONS

The term “parent” is not defined in the Oklahoma Children’s Code, however, there exists a line of cases from the U.S. Supreme Court that declare that the right to parent is not a mere incident of biology, but requires some sort of familial relationship.

In [\*Caban v. Mohammed\*](#), the Court stressed that the strength of an unwed father’s claim to his child is directly proportional to his efforts to fulfill his responsibility. In [\*Lehr v. Robertson\*](#), the Court upheld New York’s putative father registry, ruling that an unwed father has no guarantee of notice of the adoption of his child, unless he undertakes some affirmative actions to establish a custodial, personal, or financial relationship with her. A biological connection creates the opportunity to become a parent; but if a parent does not avail himself of that opportunity, the Constitution will not afford him that right automatically.

[\*Michael H. v. Gerald D.\*, 491 US 110](#) (1989)

Even a father who has both a biological and an established relationship with his child may be denied parental rights by the state statutory presumption that the husband of the mother is the child’s legal parent.

It is important to distinguish between the terms “acknowledged father,” “presumed father” and “alleged father.” The Adoption Code requires that the first two men consent, and not the last one, before an adoption can take place. These provisions make it clear that biology alone does not confer a constitutionally protected parental status. A father should act affirmatively to acknowledge his paternity in some fashion to ensure protection of his rights under the Children’s Code.

### C. LEGISLATIVE INTENT

[10A OS §1-1-102:](#)

It is the purpose and the intent of the Children's Code to provide the foundation and process or state intervention into the parent-child relationship whenever the circumstances of a family threaten the safety of a child and to properly balance the interest of the parties. The legislative purpose is to allow:

[Saul v. Alcorn 176 P.3d 346 \(Okla. 2007\)](#)

- Intervention to protect a child from harm or threatened harm;
- Timely judicial procedures to protect the child;
- Preservation, unification, and the strengthening of family ties when it is in the best interests of the child;
- Protection of a child from abuse and neglect;
- Reasonable efforts to prevent or eliminate removal of the child or to return the child if rehabilitation and reunification is possible;
- Recognition that permanency is in the best interest of the child;
- Recognition that adoptive homes and permanent living arrangements are necessary when rehabilitation and reunification are not possible;
- Secure the permanency, care, education, and guidance to best serve the spiritual, emotional, mental and physical health, safety and welfare of the child.

The paramount consideration in all proceedings within the Oklahoma Children's Code is the best interests of the child.

## D. AUTHORITY OF THE COURT

The Oklahoma district courts are given subject-matter jurisdiction over proceedings arising under the Oklahoma Children's Code in which a child is alleged to be abused or neglected. 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 here. 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. From beginning to end, every decision of the judge is attended with the due process protections of notice and the opportunity to be heard.

[Matter of PEK, 875 P.2d 451](#)  
(Okla.Civ.App.1994);

[Oklahoma v. Harris, 976 P.2d 1117](#) (Okla.Civ.App.1999)

[Smith v. Dinwiddie, 510 F.3d 1180](#) (CA10 Okla.2007),  
cert.denied 128 S.Ct. 2431.

[CC v. Christensen, 907 P.2 241](#)  
(Okla.Civ.Ap.1995)

[In re KLC, 12 P.3d 478](#)  
(Okla.Civ.App. 2000)

Actions taken under the Oklahoma Children's Code are in the nature of special proceedings and it has been held that the strict rules of pleading and practice do not necessarily apply. However, the 10<sup>th</sup> 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.

The Oklahoma Court of Civil Appeals, Division 4, also noted the distinction between criminal and deprived/termination cases and based on this distinction, ruled that summoning a party to the witness stand to invoke his Fifth Amendment privilege did not violate his constitutional rights – which is the rule of law in civil cases. However, Division 1 of the Court of Civil Appeals adopted the criminal law test to determine whether there was ineffective assistance of counsel in termination of parental rights matters – noting that civil cases did not recognize the right to effective assistance of counsel.

Other Oklahoma statutes that may be applicable in a deprived child proceeding under the Code are:

[43 OS §118](#) et seq.

[10 OS §7700-101](#) et seq.

[30 OS §2-101](#) et seq.

[43A OS §5-501](#) et seq

[43 OS 551-101](#) et seq.

[63 OS §1-740.1](#) et seq.

- Child Support
- Uniform Parentage Act
- Guardianship of Minors
- Inpatient Mental Health and Substance Abuse Treatment of Minors Act
- Uniform Child Custody and Jurisdiction Enforcement Act
- Judicial Authorization of Abortion Without Parental Notification

The extent that a court may utilize certain procedures from the Adoption Code to address the parent-child relationship remains uncertain. It has been determined that when a case is initiated as a deprived proceeding pursuant to the Oklahoma Children's Code, "the statutes regarding termination of parental rights under the Code, together with all of the constitutional safeguards thereunder, must be followed."

Matter of PEK, 875 P.2d 451  
(Okla.Civ.App.1994);

[Oklahoma v. Harris 976 P.2d 1117 \(Okla.Civ.App.1999\).](#)

Davis v. Davis, [708 P.2d 1102](#)  
(Okla. 1985)

This is consistent with Justice Opala's observation: "...this court has distinguished between an adoption without consent...a private remedy – and a §1130 termination proceeding – a state remedy....[T]he former aims at parental substitution through termination coupled with an adoption, while the latter authorizes the state to terminate parental rights in order to set the child free for a future adoption."

## **E. ASFA AND ITS IMPLICATIONS**

The [Adoption and Safe Families Act of 1997](#) and the issuance of implementing regulations in 2000 provided this State with a major impetus to accelerate timelines and amend certain statutory provision of the Children's Code. ASFA does not impose mandates directly on the state or its court system, but it does make the receipt of federal funds for foster care conditional upon compliance with ASFA requirements. This is a significant concern in a state in which the majority of the funds used to make foster care payments for children are federal dollars. While some may not appreciate this approach, all branches of state government have recognized that both state and federal law are driven by the need of children for safety, permanence and well-being.

While most of the changes in the timelines and approaches to permanency outlined in ASFA are mirrored already in the Oklahoma Children's Code, some require special attention. The ASFA regulations provide, for example, that the first court order in the case, which would typically be the *Ex parte* custody order, must contain certain factual findings and that the absence of such findings will result in the loss to the child of federal foster care payments for the duration of the child's stay in foster care.

## **2. KEY CONCEPTS**

Certain concepts and terminology are particular to deprived court proceedings and must be fully understood before any meaningful findings and orders can be made. Although certain terms may be utilized in other areas of family law, e.g., “best interests,” the application of this consideration in deprived proceedings may differ considerably from that in a divorce case.



## A. CHILD'S BEST INTERESTS

[York v. Halley 53P.2d 363](#)

[T.H.L. In re 636 P.2d 330](#)

[Matter of Stacy W., 623 P.2D 1057 \(Okla.App.Div.2, 1980\)](#)

[Baby Girl L.51 P.3d 544](#)

[Saul v. Alcorn P.3d 346](#)

It is presumed that the best interests of children are ordinarily served by leaving them in the custody of the parents who are expected to have the strongest bond of love and to be best able to provide them with these needed qualities. The presumption can be rebutted with legally sufficient proof of abuse or neglect.

Although parents enjoy a constitutionally protected liberty interest in their family integrity, this interest is counterbalanced by the compelling governmental interest in the protection of minor children, particularly in circumstances where the protection is considered necessary as against the parents themselves. Where the rights of the parents conflict with those of a child, it's the child's rights that must be protected. A child's "best interests" under the Oklahoma Children's Code differs from that under other laws. A child who has been removed from the home is entitled to the following:

- To be placed in a foster home that will serve the development of the moral, emotional, spiritual, mental, social, education, and physical well-being of the child;
- To be placed in a foster home that will consider the child as part of the family;
- To be placed with his or her siblings and when not possible, shall be allowed to preserve the relationship through visitation and other means of communication; and
- To have the assurance of achieving a permanent placement as soon as is possible.

[10A OS §1-1-102\(C\)](#)

Bruce D. Perry, *Maltreated Children: Experience, Brain Development and the Next Generation* (W.W. Norton & Company, New York 2000)

Children undergo a critical attachment process in their early years. They may suffer significant emotional damage that could lead to behavioral illness if they do not bond with an adult. Further, a child's sense of time is much different from an adult's, as is the impact of experience on the developing child's brain. Six (6) months in the life of a one-year old represents 50% of the child's total life, compare to only 1.2% of a forty-year old adult. During that same six-month period a child's brain is 100 times more active than that of the forty-year old. The Oklahoma Children's Code recognizes that expedited permanency planning is critical to the best interests of the child by requiring that:

[10A O.S. §1-4-601\(A\)](#)

[10A O.S. §1-4-706](#)

[10A O.S. §1-4-706\(B\)\(2\)\(a\)](#)

[10A O.S. §1-4-811\(A\)\(1\)](#)

- The case not be delayed without a showing of good cause;
- The adjudicatory hearing be held within ninety (90) days of the filing of the petition;
- The dispositional hearing and order be entered no later than forty (40) days after the adjudicatory hearing;
- The initial permanency plan be determined at the dispositional hearing and six (6) months after out-of-home placement.

42 U.S.C.A. 671(a)(15)(E);

[10A O.S. §1-4-811](#)

42 U.S.C.A. 671(a)(15)(F);

[10A O.S. §1-4-706\(3\)](#)

The first priority in most cases is keeping the children with their families. After removal, the goal changes to reunification. If children cannot safely return home, a plan for adoption or guardianship can offer the child a new family. Also, plans to find the child another permanent home from that of their parents may be made at the same time as reunification efforts. This is called “concurrent planning.”

Children may not have a placement denied or delayed because of race. Under the federal Multiethnic Placement Act, the state cannot discriminate in placement based on the child’s or foster- or adoptive-parent’s race, color or national origin. The only exception is under the federal Indian Child Welfare Act, which preserves ties to the child’s tribe.

## **B. REASONABLE EFFORTS**

[Pub.L.No. 96-272; 42 USC §§671\(a\)\(15\), 672\(a\)\(1\)](#)

The federal Adoption Assistance and Child Welfare Act of 1980 provides that before a state is eligible to receive federal funds for foster care assistance, the child welfare agency must have made “reasonable efforts” to prevent removal and to reunify parent and child.

[Pub.L. 105-89; 45 CFR §1356.21\(c\)](#)

The Adoption and Safe Families Act of 1997 modified this requirement by mandating that the child’s safety be the first concern in decisions about a child’s placement. The court must also determine whether the child remaining at home is contrary to the welfare of the child.

A finding that reasonable efforts have not been made prior to the removal of a child does not mean that the child will be or should be returned home. However, OKDHS cannot receive federal foster care funds for that child until such time reasonable efforts are being made.

The term is not defined in state law. However, OKDHS defines it as follows:

“ ‘Reasonable efforts’ means the reasonable exercise of diligence and care, with regard to a child who is in out-of-home placement or who is at imminent risk of harm, to:

[OKDHS Policy 340:75-6-4 Definitions](#)

(A) refer to, arrange for, or develop reasonable supportive and rehabilitative services for the child's family that are required both to prevent unnecessary placement of the child outside of the home and to foster, whenever appropriate, the safe reunification of the child with the child's own family...”.  
340:75-6-4.

## **1. REASONABLE EFFORTS TO PREVENT REMOVAL**

[10A OS 1-4-201\(D\)](#).

Pre-petition emergency custody order that removes a child from the home must contain the following judicial determination:

- Whether reasonable efforts have been made to prevent the removal of the child from the child's home or
- Whether the absence of efforts is reasonable because of an emergency that requires removal to preserve the child's safety and welfare.

Examples of reasonable efforts:

- Bringing protective relatives to the home while the parents leave;
- Initiating home-based community service(s) such as public health nurse, family-centered services, or homemaker services;
- Moving the non-abusing caretaker and child to a safe location;
- Entering a restraining order that require the abusive caretaker to be removed from the home;
- Place the child with relatives or friends.

ASFA permits the court sixty (60) days from the child's removal of the home to ultimately make this determination. However, state law requires that this finding be made at the conclusion of the emergency custody hearing.

## **2. POST ADJUDICATION DETERMINATION OF REASONABLE EFFORTS**

a. Reasonable efforts finding must be made at least every six (6) months.

[10A OS 1-4-807](#)

i. Required determination at review and permanency hearings.

b. Specific Findings at Review Hearings:

i. Whether reasonable efforts have been made to provide for the safe return of the child to the child's home.

ii. If permanency plan is other than reunification, whether reasonable efforts are made to:

1. timely place the child in accordance with the permanency plan, and

2. determine the steps necessary to finalize the permanency for the child.

[10A OS 1-4-811](#)

c. Specific Findings at Permanency Hearings:

i. Whether reasonable efforts to finalize the permanency plan that is in effect for the child has been made.

1. OKDHS is required to summarize its efforts.

### 3. REASONABLE EFFORTS FOR SIBLINGS

[PL 110-351](#)

A federal act, *Fostering Connections to Success and Increasing Adoptions Act of 2008* signed into law October 7, 2008, required the states to make reasonable efforts to keep siblings in custody placed together. If this is not possible, the state must provide for frequent visitation or other ongoing interaction between the siblings, unless the state shows frequent visits or other interaction would be contrary to the safety or well-being of any of the siblings.

1. Reasonable efforts is required to be made to:
  - Place siblings, who have been removed, together in the same foster care, guardianship, or adoptive placement; and
  - Provide for frequent visitation or other interaction where siblings are not placed together.
2. This finding must be made at:
  - Emergency custody hearings;
  - Dispositional hearings;
  - Review hearings;
  - Permanency hearings.

[10A OS §1-4-203\(A\)\(6\)](#)

[10A OS §1-4-707\(E\)](#)

[10A OS §1-4-807\(D\)\(1\)\(j\)](#)

[10A OS §1-4-811\(F\)\(4\)](#)

#### 4. WHEN REASONABLE EFFORTS TO PREVENT REMOVAL OR REUNIFY NOT REQUIRED

ASFA provides that a court may waive reasonable efforts to reunify if it finds “aggravated circumstances.” The regulations clarify that the court must waive reasonable efforts if a parent has been convicted of an enumerated felony committed against a child or another child of the parent, and the regulations interpret the law to require that such findings be based upon criminal convictions.

45 CFR §1356(B)(II);

65 FR 4054.

[10A OS 1-4-809\(A\)](#)

- **Definition:** ASFA left it up to the states to define and clarify what constitutes “aggravated circumstances.” Oklahoma’s law provides that reasonable efforts to prevent removal or to reunify are not required if it is determined by the court that a parent or legal guardian has:
  - Abandonment of a child whose age is 12 months or younger;
  - Committed murder or manslaughter of any child;
  - Aided or abetted attempted, conspired, or solicited to commit the murder or manslaughter of any child;
  - Committed a felony assault upon any child that resulted in serious bodily injury;
  - Subjected any child to aggravated circumstances including, but not limited to, heinous and shocking abuse or heinous and shocking neglect; or
  - The parental rights of a parent to the child’s sibling have been involuntarily terminated.
- **Timing:** The court may make this determination, upon motion of a party or on its own motion, at any time prior to or following the adjudicatory hearing.
- **Burden of Proof:** Preponderance of the evidence.
- **Impact on TPR Proceedings:** A finding that reasonable efforts are not required **may** lead to TPR proceedings.
  - However, if the finding is made because an infant is abandoned or the parent has been convicted of the specified crimes, the **state has 60 days** to file or join in a petition/motion for termination.

10A O.S. 1-4-809(A)

[10A OS §1-4-902\(A\)\(2\) and \(3\)](#)

45 CFR §1356.21(i)(1)(ii);

- **Impact on Timing of Permanency Hearing:** a finding that reasonable efforts are not required triggers a permanency hearing within 30 days.
  - The permanency hearing may, in turn, trigger a petition for the termination of parental rights.
- **ASFA Regulations regarding Criminal Proceedings:** a criminal conviction is necessary to find that reasonable efforts are not necessary. Therefore, a court finding that a parent has been arrested for the commission of a crime is insufficient. There are circumstances, however, where there is no criminal conviction (e.g., proceedings not completed or are under appeal), yet the Department does not need to make efforts:
  - Where the court determines whether it is reasonable to attempt to reunify the child based upon:
    - The developmental needs of the child, and
    - The length of time associated with completion of the criminal proceedings or the appeal process.



### **C. CONTRARY TO THE WELFARE OF THE CHILD**

45 CRF §1356.21(c);

[10A OS §1-4-201\(A\)\(2\)](#)

1. At the first hearing following the child's removal, the court **MUST** determine whether the child remaining in the home is contrary to the welfare of the child.
  - Failure to do so will disallow federal foster care funds for that child during the remainder of that child's foster care stay.
2. The court should make this finding at any hearing where the child is being removed from the home (e.g., dispositional hearing, termination of trial reunification).

## **D. CONCURRENT PLANNING**

42 U.S.C.A. 671(a)(15)(F);

[10A O.S. §1-4-706\(3\)](#)

States may engage in concurrent planning to effectuate permanency. According to this concept, reasonable efforts to reunify families may proceed simultaneously with efforts to identify and implement a permanent alternative if reunification should prove unsuccessful. In the past, little attention was given to these secondary scenarios, and then only after too much time had elapsed. For example, in the past the adoptive placement process could not commence until the child was legally “freed” for adoption and, even after parental rights had been terminated, a case could continue for months on appeal, postponing any efforts to find the child a permanent home.

Some of the consequences of these delays were mitigated in practice due to the high frequency of “foster parent conversions,” situations in which the foster parents decide to adopt their foster child. This meant that the child did not have to be moved between temporary and permanent placements, even when the legal parameters changed. Concurrent planning requires OKDHS to identify immediately those cases at greatest risk, and to seek placements for those children in homes likely to become permanent.

## **E. LEGAL CUSTODY AND PLACEMENT**

Whoever has legal custody of a child is empowered to make decisions regarding, among other things, where and with whom the child shall live, that is, the physical placement of that child. If legal custody is given to OKDHS, placement is in the discretion of OKDHS and not the court; OKDHS' placement decisions are reviewable by the courts.

The significance of the concept of "legal custody" as distinct from "placement" is that it clarifies the distinction between the caretaker and the decision-maker for the child. In certain situations, a parent may be able to provide one or the other of these functions, but not both. For permanency planning purposes, the participants need to evaluate the two functions separately. For example, a parent who is incarcerated and unable to provide physically for the child may yet be able to remain legally authorized to care for the child. Conversely, a parent could suffer from substance abuse or mental illness rendering him or her incapable of exercising appropriate judgment, but might still have a viable, loving relationship with the child and be able to meet some of that child's needs.

[10A OS §1—9-107](#)

## **F. SUCCESSFUL ADULTHOOD ACT**

The Act ensures that those youth who have been or are in the foster care program of DHS or a federally recognized Indian tribe with whom DHS has a contract, receive certain services necessary to allow those youth to become self-reliant and productive citizens through services or programs that include transitional planning, housing, medical coverage, education and other skills necessary for successful adult living. Youth ages fourteen (14) until eighteen (18) living in an out-of-home placement are eligible to receive the transition services

[10A OS §1-1-105\(65\)](#)

P.L. 113-183 §475

The statutory requirements have eliminated the older concept of “independent living.”

### **3. JURISDICTION AND VENUE**

The district courts are vested with the authority to decide many issues involving the status of children within its jurisdiction. It is important to note that the provisions of UCCJEA apply to deprived proceedings.

## **A. SUBJECT MATTER AND PERSONAL JURISDICTION**

[10A OS §1-4-101\(A\)\(1\)](#)

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

- A deprived petition is filed;
- The assumption of custody; or
- An emergency custody order has been issued.

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.

[10A OS §1-4-101\(A\)\(1\)](#)

The court may retain jurisdiction until:

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

[10A OS §1-4-101\(A\)\(2\)\(a\)](#)

[10A OS §1-4-101\(A\)\(2\)](#)

[In the Matter of the Guardianship of SJL, 970 P.2d 1193 \(Okla.Civ.App.1998\).](#)

[10A OS §1-4-101\(2\)\(c\)](#)

[10A OS §1-4-707\(A\)\(b\)\(1\)](#)

## 1. CONFLICTING ORDERS

- All pending or thereafter commenced child custody, support or visitation actions are stayed.
  - Exceptions:
    - Delinquent cases, Inpatient Mental Health and Substance Abuse Treatment of Minors.
    - The court may issue its written consent for the other actions within the county or state to proceed concurrently with the deprived action, e.g., guardianships, adoptions, modification of custody.
- All orders issued in deprived proceedings control over conflicting child custody, support or visitation orders entered in other cases. This is true until such time the deprived proceedings are dismissed.
  - Exception: the following orders remain in full force and effect after the deprived proceedings have been dismissed.
    - Paternity orders
    - Final permanency orders entered in deprived proceedings
- Court may issue any temporary order in an emergency, regardless of other conflicting orders issued by other courts.

## **B. VENUE**

1. Proper venue is in the county where:
  - The child resides, or has resided for six (6) months preceding the filing,
  - The alleged acts of deprivation occurred,
  - A parent or sibling has a deprived action pending, or
  - Where the child is found.
  
2. The child's residence is determined by:
  - The residence of the person who has custody by either prior court order or operation of law.
  - If no order previously entered, then the custodian shall be:
    - If residing together, both parents;
    - If not residing together, the actual physical custodian, or
    - The mother where paternity has or has not been established.
  - A newborn child's residence is the county where the mother legally resided at the time of birth.
  - If the child is in the permanency custody of a public or private child care agency, then the residence is the county in which the child resides at the time the legal proceedings are initiated.
  - The residence of the person that the court approves for permanent placement.
  
3. Action cannot be dismissed for filing in improper venue.
  - Matter can be transferred.



## C. TRANSFER OF VENUE

[10A OS 1-4-101\(B\)\(3\)](#)

### A. Transfer the deprived proceeding to another venue when:

- The action was commenced in a county other than the child's residence;
- When the evidence and/or witnesses are located in another county and the interests of justice or convenience of the parties require a transfer to that county;
  - However, following the trial, the case may be transferred to the county of the child's residence.
- Other proceedings are pending concerning custody of the child or the child's siblings.
- All motions or petitions to terminate parental rights have been concluded, and
- The child resides in another county with the court-approved permanent placement.

[10A OS 1-4-101\(B\)\(4\)\(d\)](#)

[10A OS 1-4-101\(B\)\(5\)](#)

### B. Procedure for Transfer

- Contact the judge in the receiving venue to confirm that the transfer will be accepted.
- After receiving written confirmation that the transfer will be accepted,
  - Transferring judge enters the transfer order;
  - Court clerk of transferring county transmits to the receiving court:
    1. Certified copies of documents of record with the clerk
    2. Names and addresses of all parties entitled to notice of further proceedings.
- Receiving court sets hearing date within thirty (30) days after court documents received.

## **D. INTERSTATE COMPACT ON PLACEMENT OF CHILDREN**

[10 OS 571 et seq.](#)

The Interstate Compact on Placement of Children (“ICPC”) is an agreement among all 50 states that coordinates the placement of children across state lines for purposes of placement.

[10 OS §577, Art. I](#)

Four (4) types of placements are covered by the ICPC:

10 OS §577, Art. III

- Placement in an adoptive home;
- Placement in group homes, foster homes, residential treatment facilities, and institutions;
- Placement with parents and relatives; and
- Placement of adjudicated delinquent in institutions.

Circumstances that are not subject to compliance with the ICPC include:

10 OS §577, Art. III

- Placements between relatives when there is no court jurisdiction over the child.
- Placement with a nonrelative by a parent with legal authority if not for purposes of adoption;
- A child admitted to any hospital, medical facility, or school.
- Home studies during divorce or custody investigations.
- Tribal placements on reservations unless an ICPC is requested.
- Placement with a noncustodial parent provided that:
  - The sending court is satisfied that the noncustodial parent has a substantial relationship with the child,
  - The sending court make a written finding that placement with the noncustodial parent is in the best interests of the child, and
  - The sending court dismisses its jurisdiction over the child’s case.

The ICPC requires that the state, court, county, city or employee of the state, county or city comply with the compact’s procedures. It is important to note that the sending agency is not required to have physical custody of the child for their placement to be considered an ICPC situation (e.g., delinquent child who is being sent out-of-state by a court for incarceration or therapy.)

[10 OS §577, Art. III](#)

The time frames for completing the steps required for ICPC compliance can be difficult for agencies to implement. The Association of Administrators for the Interstate Compact on the Placement of Children has established a recommended time line for completing the ICPC

process. For unlicensed foster home placements, 60 days is recommended. For licensed foster home placements, it is 45 days from receipt of request and for priority placements 28-38 days.

ASFA has two requirements that greatly increase the time it takes to complete the home study process.

The court does not have jurisdiction over children placed in Oklahoma by another state agency under ICPC. Under the ICPC, the sending state has authority to request the return of the children even if they may have been abused in the receiving state.

[10 O.S. §577, Art. IV](#)

Jurisdiction ends if the child:

- Is adopted;
- Reaches the age of majority;
- Becomes self supporting; or
- Is discharged by agreement of both the sending agency and the receiving state.

The court may order an expedited ICPC on the following grounds:

- The proposed placement recipient is a parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or guardian, and;
- The child is under two (2) years of age, or
  - The child is in an emergency shelter, or
  - The court finds that the child has spent a substantial amount of time in the home of the proposed recipient, or
  - The receiving state Compact Administrator has a properly completed ICPC-100A with supporting documentation for over thirty business days, but the sending agency has not received a notice pursuant to Article III(d) of ICPC determining whether or not the child may be placed.

ICPC Regulation No. 7, Effective  
June 29, 2001

The expedited order must include the name, address, telephone number, and fax number of the judge. The sending agency must transmit, within three business days, the completed 100A form and supporting documentation to the sending state Compact Administrator.

The expedited ICPC does not apply to any case where: (1) the request for placement of the child is for licensed foster family care or adoption; or (2) the child is already in the receiving state in violation of ICPC.

No child may be placed out of state for more than thirty (30) days without court approval and compliance with the ICPC.

As a result of delays or impatience, some courts and agencies ignore the compact and illegally place the child in another state. Visitations have been used as a pretense to mask an actual intent to place a child out of state. What are some of the consequences of illegal placements?

- A child may be placed in a physically or emotionally damaging environment with no supervision.
- A child may have problems enrolling in school and receiving publically funded medical care.
- Proper services for the child are not arranged.
- Receiving states upon discovery may:
  - Make immediate arrangements to return the child to the sending state;
  - Block pending adoption;
  - Remove the child from placement and place into foster care in order to develop their own permanency options; or
  - Notify the sending state that a home study shall be completed and bring the placement into compliance.

## **E. CONCURRENT JURISDICTION WITH CRIMINAL CASES**

[Matter of KW, 10 P.3d 244  
\(Ok.Civ.App.2000\).](#)

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 does 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.

## **F. CONCURRENT JURISDICTION WITH PROBATE COURT**

The juvenile court, when a deprived case is in process, has exclusive jurisdiction over custody, visitation and support matters. This jurisdiction remains exclusive until the case ends.

Further, the judge presiding over a deprived action has the statutory authority to preside over any separate adoption or guardian action necessary to finalize the child's court-approved permanency plan. However, the juvenile court may execute a written consent giving a probate division or court located in another county within Oklahoma jurisdiction over guardianship and adoption proceedings if this is in keeping with the child's permanency plan.

## **G. CONCURRENT JURISDICTION WITH INTERSTATE CUSTODY CASES**

[43 OS 551-101 et seq.](#)

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) governs interstate custody cases.

[43 OS 551-201](#)

The purposes of the UCCJEA include avoiding jurisdictional conflict with courts of other states in matters of child custody, which have in the past resulted in the shifting of children from state to state.

The “custody proceedings” covered by the UCCJEA include deprived cases. Under the UCCJEA, a state has jurisdiction to make child custody determinations if:

- This is the home state of the child on the date of the commencement of the proceedings; or
- This was the home state of the child within six (6) months before the commencement of the proceeding and the child is absent from this state but a parent or persons acting as the child’s parent continues to live in this states; or
- A court of another state does not have jurisdiction under that state’s law; or
- A court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum and the child and the child’s parent or the person acting as the child’s parent have a significant connection with this state other than mere physical presence and substantial evidence is available in this state concerning the child’s care, protection, training, and personal relationships.

[43 OS 551-204](#)

An Oklahoma district court has jurisdiction to protect children who are temporarily in this state from abuse or maltreatment regardless of their domicile. This allows for the court to make temporary custody and protective orders, but does not grant authority to make a permanent custody disposition.

[43 OS 551-110](#)

The Oklahoma judge should contact the child’s home state judge to request permission to modify any preexisting orders for emergency purposes.

The juvenile court loses jurisdiction over custody issues once it determines the child is not deprived.

#### **4. PARTIES AND PARTICIPANTS**

The key legal professionals in deprived cases are judges, assistant district attorneys, child's counsel, parents' counsel, CASA, social workers, foster parents, and in some courts, case managers.



## A. PERSONAL JURISDICTION

<b><u>Persons Before the Court</u></b>		
<u>Term</u>	<u>Definition</u>	<u>Citation</u>
Adult	Person age 18 or older or any married person	
Child/Minor	Any unmarried person under age 18	<a href="#">10A O.S. §1-1-105(8)</a>
Infant	A child who is 12 months of age or younger.	<a href="#">10A O.S. §1-1-105(36)</a>
Indian Child	Any unmarried person under age 18 who is a member of an Indian tribe or is an Alaskan native or eligible for tribal membership if a parent is a member	<a href="#">25 U.S.C.A. § 1903(4)</a>
Parent	Child's birth parent or adoptive parent	
Parent of Indian Child	Birth parent or adoptive Indian parent of Indian child excluding unmarried fathers who have not acknowledged or established paternity	<a href="#">25 U.S.C.A. § 1903(9)</a>
Kinship relation	Relatives, stepparents, or other responsible adults who have a bond or tie with a child and/or to whom a family relationship role with the child or the parents has been ascribed. In cases where ICWA applies, the definitions in 25 U.S.C. §1903 must control.	<a href="#">10A O.S. §1-1-105(41)</a>
Guardian	A guardian is a person appointed by the court to take care of the person or property of another.	<a href="#">30 O.S. § 1-105</a>
Custodian	Person other than a parent, legal guardian or Indian custodian, to whom legal custody of the child has been awarded by the court. For purposes of this title, custodian does not mean the Oklahoma Department of Human Services	<a href="#">10A O.S. §1-1-105(16)</a>
Indian Custodian	Any Indian person with legal custody of an Indian child under tribal law or custom, under state law or by agreement of the parents	25 U.S.C.A. § 1903(6)

Person responsible for a child's health, safety, or welfare	Child's parent, guardian or legal custodian, or any other adult living in the home of the child; an agent or employee of a residential home, institution, facility or day treatment program; or an owner, operator, or employee of a child care facility.	<a href="#">10A O.S. §1-1-105(51)</a>
Putative father	An alleged father as defined in 10 O.S. §7700-102	<a href="#">10A O.S. §1-1-105(53)</a> and <a href="#">10 O.S. §7700-102</a>
Sibling	A biologically or legally related brother or sister of the child.	<a href="#">10A O.S. §1-1-105(63)</a>

## **B. DISTRICT ATTORNEY**

[10A OS 1-4-501](#)

The district attorney's office is statutorily required to prepare and prosecute every hearing and proceeding within the Oklahoma Children's Code and acts as the petitioner in all cases.

The American Bar Association provides the following analysis of this "prosecutorial model":

"Attorneys working for this individual, often a district attorney or county attorney, files petitions and appears in court on behalf of the agency, and represents the state or 'the people' of the jurisdiction. This may mean the elected attorney may override the views of the agency in court. One positive aspect of this model is that the attorney may be more in tune with the wishes and beliefs of the community and how the community feels about handling child welfare cases."

Concerns with this model include:

- The caseworker is often the only party in court without an attorney speaking for him or her;
- The caseworker's expertise may be ignored, since the attorney has the ultimate say;
- Under this model, an elected or appointed attorney may be handling all the business for the community and therefore not be able to specialize in child welfare law;
- Political agendas may play a large role in decision-making;
- The agency as a whole may not be getting legal advice on policy issues;
- The attorney's personal beliefs about issues such as permanency rather than caseworker expertise dictate what will happen for a child; and,
- Potential conflicts of interest may arise, such as when the prosecutor is pursuing a delinquency petition against a child who is in the agency's custody."

## C. PARENT'S ATTORNEYS

[Lassiter v. Dep't of Social Services, 452 US 18 \(1981\).](#)

[Matter of DDF, 801 P.2d 703 \(Okla.1990\).](#)

[Matter of DDF, 784 P.2d 89 \(Okla.Civ.App.1989\)](#)

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. This right also includes the right to court appointed counsel if the parent is indigent and the statutory right to appointed counsel on appeal.

### 1. 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;
- Their child has been removed from the home and placed in protective or emergency custody.

[10A OS 1-2-106\(8\)](#)

[10A OS 1-4-202](#)

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.

[10A OS 1-4-203\(2\)\(b\)](#)

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

[Matter of AG, 225 P.3d 816 \(Okla.Civ.App.2009\)](#)

### 2. Appointment of 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.
- No other adult individual, such as a step-parent or mere physical custodian, is entitled to court appointed counsel.

[10A OS 1-4-306\(A\)\(1\)](#)

[In re KLC, 12 P3d 478 \(Okla.Civ.App.2000\)](#).

### 3. 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.

## D. CHILDREN'S ATTORNEYS

[Matter of TMH, 613 P.2d 468 \(Okla.1980\).](#)

[10A OS §1-4-306\(A\)](#)

Matter of TMH, 613 P.2d 468 (Okla. 1980)

[10A OS 1-4-306\(A\)](#)

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

### 1. Appointment of Counsel

The court is required to appoint an attorney for the child, independent of and not selected by the district attorney or the child's parent or legal guardian. The parent or legal guardian cannot waive the child's right to be represented by counsel.

- Counsel or guardian ad litem may be appointed at the emergency custody hearing
- Counsel must be appointed after the petition is filed.

### 2. Compensation for Counsel

- Counsel is to be provided by the state
- Counsel shall be allowed a reasonable fee.
- Counsel may be allowed a reasonable reimbursement for mileage if required to travel to more than one district court location.
- If financially able, the parent(s) may be required to reimburse the court fund.

### 3. Effective Assistance of Counsel

The attorney represents the child and the child's expressed interest. The attorney should, in his or her efforts to effectively advocate for the child's expressed interest.

## **E. GUARDIAN AD LITEM FOR CHILD**

[10A O.S. § 1-4-306](#)

A guardian ad litem may be appointed by the court after the filing of the petition. This appointment is made pursuant to the motion of the:

- Child;
- Child's attorney;
- Court, *sua sponte*.

The guardian ad litem is appointed to objectively advocate on behalf of the child and act as an officer of the court to investigate all matters concerning the best interests of the child.

A “court-appointed special advocate” and a “guardian ad litem” have the same function for purposes of the Oklahoma Children’s Code and shall have the same power, duties and responsibilities.

When a CASA program is available to serve as guardian ad litem, priority should be given to the appointment of a CASA.

## F. COURT APPOINTED SPECIAL ADVOCATE (“CASA”)

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. When appointed by the court, the CASA serves as an officer of the court in the capacity as a guardian ad litem.

[10A OS §1-1-105\(14\)](#)

### 1. Qualifications for Appointment:

- Completion of education and training courses in juvenile law, child abuse and neglect, foster care, parental divorce, domestic violence, substance abuse, visitation standards, and other relevant issues;
- Completion of a training program that is in compliance with nationally documented CASA standards, and
- Approval by the local CASA program, which includes appropriate criminal background checks.

[10A OS §1-8-102\(C\)](#)

### 2. Role of the CASA

The CASA may be appointed after a petition is filed. The appointment may be made upon the request of:

- The child;
- The attorney for the child;
- The court, *sua sponte*.

The appointment ends when the court jurisdiction terminates or the court discharges the CASA on its own motion or that of the CASA program director.

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.

[10A OS §1-4-306\(B\)\(3\)](#)

### 3. Responsibilities:

- 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 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.

4. Access to Records and Files:

CASA shall be given access to court and agency files and all documents, reports, records and information relevant to the case. This includes reports and records of child's parent or other custodian.

5. Compensation

CASA serves without compensation.

[10A OS §1-4-306\(C\)\(3\)](#)

## **G. GUARDIAN AD LITEM FOR PARENT**

Where a court finds a parent to be incompetent, a guardian ad litem should be appointed for the termination of parental rights trial.

The Court of Civil Appeals determined that the trial court should use the criminal elements of incompetency:

- 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.

[Matter of TEB, 24 P.3d 900 \(Okla.Civ.App.2001\)](#)

If a party is determined to be “incompetent”, then a guardian ad litem should be appointed.

Appointment of a guardian ad litem assures the parent of his/her due process right to notice and an opportunity to be heard.

A guardian ad litem’s appointment does not amount to an adjudication of incompetency but is merely a determination of the fact that the state of the record indicates the need for court intervention for a party’s protection. It is an assertion of the court’s inherent common-law equitable powers.

12 OS §2017(C): “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.”

For further case law assisting the trial court in the role of a parent’s guardian ad litem in deprived matters, see: Parents' Mental Illness or Mental Deficiency as Ground for Termination of Parental Rights--Issues Concerning Guardian Ad Litem and Counsel, 118 A.L.R.5th 561 (2004).

## **H. JUVENILE COURT CASE MANAGERS**

[20 OS §128](#)

Family court facilitators help the court monitor deprived cases. Piloted under the Oklahoma Court Improvement Project in Tulsa County's juvenile division, juvenile court case managers track time and progress on deprived cases to facilitate timely and informed decisions.

People hired for this job have legal, social work, or related experience. Experience with a private family or children's service agency is preferred. The court supervises the juvenile court case managers.

The case managers are assigned dockets and actively focus on cases in need of facilitation, such as:

- Expedited permanency planning cases;
- Children in care more than six months;
- Children whose placements have been changed at least three times;
- Cases where termination motions have been filed;
- Families who have had prior D&N cases;
- Any case open more than two years; or
- High conflict situations.

The court may also ask a juvenile court case manager to follow up on compliance with a court order or to make sure any affidavits of unknown whereabouts are filed in a timely manner.

Juvenile court case managers hold status conferences to help solve problems. DHS, the attorneys, family, relatives and service providers are brought together to exchange information, evaluate alternatives and resolve disputes. The juvenile court case manager promotes discussion at these meetings. The case managers are also trained as mediators.

Juvenile court case managers support cases with research and reports. They may file written reports with the court on permanency planning goals and timelines in individual cases. They report what occurred at status conferences. Any communications must be sent to all parties. They also collect and analyze case data. They monitor required time frames for each case, look at local trends and explore national efforts to improve and speed up judicial determinations in deprived cases.

## **I. FOSTER PARENTS, PRE-ADOPTIVE PARENTS AND RELATIVES**

[10A OS 1-4-811\(C\)](#);

10A OS 1-4-807(B)

The foster parent, preadoptive parent, or relative currently providing care for a child is entitled to be given notice by DHS of all review and permanency hearings. Furthermore, they have the right to be heard regarding information or knowledge concerning the care and protection of the child during the hearing. However, except when allowed to intervene, the foster parent, pre-adoptive parent, or relative providing care for the child is not considered a party to the proceeding solely because of notice and the right to be heard.

The present foster parent also has the right to present sworn testimony, subject to cross-examination, at any hearing for the purpose of determining placement of a child or that a child in state custody is to be released from state custody.

[10A OS 1-4-805\(A\)\(1\)](#)

If a child has resided with a foster parent for three (3) or more months, the foster parent may provide the court with an oral or written opinion in support of or in opposition to any change in the child's placement that is planned or under consideration by DHS.

[10 A OS 1-4-805\(C\)](#)

If a child has resided with a foster parent for more than six (6) months, the foster parent may file a written objection with the court to the removal of the child by DHS or the child-placing agency. An informal hearing must be held within 15 judicial days on this objection.

[10A OS 1-4-812](#)

A foster parent with whom a child has resided for at least one (1) year has standing to request that the court give that foster parent great weight in the adoption consideration for that child.

## 5. UCCJEA

[43 OS §551-102](#)

[43 OS §551-104](#)

[43 OS §551-105](#)

[Joliff v. Joliff, 829 P.2d 34 \(Okla.1992\)](#)

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), first promulgated in 1997, has now been adopted in 48 states, the District of Columbia, Guam and the Virgin Islands. The Act, by definition, applies any time a child custody determination is to be made in a child custody proceeding. It encompasses any judgment, decree or other order that provides for the custody of or visitation with a child. This includes temporary orders. Deprived proceedings are subject to the rules of the UCCJEA. Delinquent proceedings are not. Further, the jurisdictional principles also apply to cases involving Indian tribes and foreign countries.

Subject matter jurisdiction to make child custody determinations cannot be conferred by consent nor waived by participating in an action. Even if not raised in the trial court level, it can be raised for the first time on appeal.

## **A. INITIAL JURISDICTION – NO PRIOR COURT ORDER REGARDING “CUSTODY”**

[43 OS 551-201](#)

The UCCJEA establishes four bases for initial jurisdiction:

- Forum state is child’s home state, or was the home state within last 6 months and a parent or person acting as a parent lives in the state;
- Another state does not have home state jurisdiction, or the home state has declined jurisdiction on the ground that this state is more appropriate forum; and
  - Child and at least one person acting as parent have a significant connection with this state (other than mere physical presence); and
  - Substantial evidence is available in this state concerning the child’s care, protection, training, & personal relationships;
- All courts having jurisdiction as above set forth have declined on ground that this state is more appropriate forum, or
- No other state has jurisdiction under the above stated criteria.

Clear priority is given to the home state jurisdiction.

## **B. CONTINUING, EXCLUSIVE JURISDICTION**

State 1 has continuing, exclusive jurisdiction until:

[43 OS 551-202](#)

- State 1 decides that neither the child, parents or person acting as parent have a significant connection with State 1 and that substantial evidence is no longer available in State 1 concerning the child's care, protection, training and personal relationships; or
- State 1 or State 2 determines that neither the child nor any parent/person acting as parent resides in State 1.

## C. EMERGENCY JURISDICTION

[43 OS 551-204](#)

Temporary emergency jurisdiction may be used when the child is physically present in the state and:

- Has been abandoned, or
- It is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.
  - “Emergency” excludes neglect.

The court may exercise emergency jurisdiction and make temporary orders even if a proceeding has been commenced in another state.

Immediate judicial communication is mandatory to resolve:

- The emergency;
- Protect the safety of the parties and the child;
- And determine how long a temporary order should remain in effect.

Notice and opportunity to be heard must be given for the temporary order to be enforceable in other states. *Ex parte* orders are unenforceable in other states.

An emergency order remains in effect until a custody order is obtained from the home state within the specified period adequate for the party to obtain a custody order or when the specified period expires.

Emergency jurisdiction is usually only temporary but can evolve into home state jurisdiction as follows:

- State with home state or continuing jurisdiction declines on basis of inconvenient forum.
- If there is no prior order, and if there is no proceeding pending in the state with home state jurisdiction, an emergency order will become a final determination when the state becomes the child’s home state (i.e., 6 months).



#### **D. MODIFICATION JURISDICTION**

No other state can modify State 1's decree unless:

- State 2 has jurisdiction to make an initial custody determination; and
- One of the following two determinations are made:
  - State 1 decides it no longer has exclusive continuing jurisdiction, or State 1 says State 2 would be the convenient forum; or
  - State 1 or State 2 decides all parties and the child no longer live in State 1.

## **E. INCONVENIENT FORUM FACTORS**

[43 OS 551-207](#)

The forum court should decide whether it is the appropriate forum or whether another state should be required to exercise jurisdiction by considering:

- Whether domestic violence has occurred and is likely to continue, and which state could best protect the parties and the child;
- How long the child has lived out of state;
- Distance between court in this state and court in other state;
- Relative financial circumstances of parties;
- Any agreement of parties regarding which state should have jurisdiction;
- Nature and location of evidence requiring to resolve the pending litigation, including testimony of the child;
- Ability of the court of each state to decide issues expeditiously and procedures necessary to present the evidence; and
- Familiarity of the court of each state with the facts and issues in the pending litigation.

## **F. UNJUSTIFIABLE CONDUCT/UNCLEAN HANDS**

[43 OS 551-208](#)

This doctrine only comes into play after a determination of which state has proper jurisdiction.

When a party can assert proper jurisdiction because of unjustifiable conduct, the court shall decline jurisdiction, unless

- The parties acquiesce to it;
- The court that otherwise has jurisdiction says another state is the more appropriate forum; or
- No other state would have jurisdiction.

See commentary for §208

Unjustifiable conduct does not include a domestic violence victim who flees with a child to escape abuse and in the process violates a decree. However, an abusive parent who seizes the child and flees to another state to establish jurisdiction has engaged in unjustifiable conduct and the new state must decline jurisdiction.

## **G. DUTY TO ENFORCE UNDER THE UCCJEA**

[43 OS 551-301](#) et seq.

The Act requires state courts to recognize and enforce child custody determinations made in substantial conformity with the provisions of the Act. This includes not only custody orders, but also visitation orders.

The UCCJEA creates a process for registering out-of-state custody and visitation orders and parties should consider doing so as it is enforceable as if it were a local order as of the date of the registration. The process is straight forward under the Act.

The Act further provides for:

- Temporary visitation orders;
- Expedited enforcement of custody determinations;
- Warrants to take physical custody of a child;
- Public enforcement provisions giving prosecutors statutory authority to take any lawful action to locate a child, facilitate a child's return, or enforce a child custody determination.

## **II. DEPRIVED PROCEEDINGS**

[OKDHS Policy 340:75-1-14](#)

A deprived proceeding is a case brought before the court based on allegations of abuse, abandonment and/or neglect of a child by a person or persons responsible for the child's health, safety or well being. The focus of the court is the welfare of the child in the total context of the family. The court has a range of choices available to rehabilitate the family and protect the child. However, when the parents are unwilling or unable to provide care and protection for the child, the court may permanently remove the child from the home and terminate parental rights.

## **1. REPORTING ABUSE AND NEGLECT**

Every person must promptly report suspected child abuse or neglect to the Department of Human services by calling the OKDHS hotline. OKDHS will conduct a safety analysis and will either assess or investigate the reports. Any report alleging child abuse or neglect by some alleged perpetrator other than a parent or legal guardian shall be forwarded to the appropriate local law enforcement agency for purposes of conducting a possible criminal investigation. The court may order access to the child or examination of the child. At the conclusion of the assessment or investigation, OKDHS will submit its report, together with its recommendations, to the appropriate district attorney's office.

## **A. WHAT IS REPORTED: DEFINING CHILD ABUSE AND NEGLECT**

“Child abuse” is defined as harm or threatened harm to the health, safety, or welfare of a child by a person responsible for the child’s health, safety, or welfare. Included as abuse, but not limited to, are:

[10A O.S. 1-1-105\(2\)](#)

- Nonaccidental physical injury
- Nonaccidental mental injury
- Sexual abuse
- Sexual exploitation

“Drug-endangered child” is defined as a child at risk of suffering physical, psychological or sexual harm as a result of the use, possession, distribution, manufacture or cultivation of controlled substances, or attempt thereof, by the person responsible for the health, safety or welfare of the child. The term includes:

[10A O.S.1-1-105\(22\)](#)

- Circumstances where the substance abuse by the person interferes with his or her ability to parent and provide a safe and nurturing home for the child;
- Newborns who test positive for a controlled substance, with the exception of those substances administered under the care of a physician.

[10A O.S.1-1-105\(2\)\(b\)](#)

“Sexual abuse” includes, but is not limited to:

- Rape
- Incest
- Lewd or indecent acts or proposals made to a child

[10A O.S. 1-1-105\(2\)\(c\)](#)

“Sexual exploitation” includes, but is not limited to:

- Allowing, permitting or encouraging a child to engage in prostitution
- Allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming or depicting of a child in those acts

“Neglect” means:

- The failure or omission to provide any of the following:

Adequate nurturance and affection, food, clothing, shelter, sanitation, hygiene, or appropriate education;

Medical, dental, or behavioral health care;

Supervision or appropriate caretakers, or

Special care made necessary by the physical or mental condition of the child.

[10A O.S. 1-1-105\(47\)\(a\)](#)

- The failure or omission to protect a child from exposure to any of the following:

The use, possession, sale or manufacture of illegal drugs

Illegal activities, or

Sexual acts or materials that are not age-appropriate, or

Abandonment

[10A O.S. 1-1-105\(47\)\(b\)](#)

[10A O.S.1-1-105\(47\)\(c\)](#)

[10A O.S. 1-1-105\(2\)](#)

Reasonable discipline and spiritual treatment are specifically excluded from the definitions of child abuse and neglect.

[10A O.S. 1-1-105\(25\)](#)

A person responsible for the health, safety or welfare of a child who fails to protect a child from abuse or neglect is as culpable as the person responsible for the abuse or neglect. "Failure to protect" means the failure to take reasonable action to remedy or prevent child abuse or neglect. It includes the non-abusing parent or guardian who knows the identity of the abuser or the person neglecting the child, but lies, conceals or fails to report the abuse or neglect or otherwise take reasonable action to end the abuse or neglect.

[10A O.S. 1-2-101\(B\)\(2\)](#)

Also required to be reported by physicians, surgeons or other health care professionals are children who test positive for alcohol or a controlled dangerous substance at birth.

[10A OS 1-1-105\(51\)](#)

"Person responsible for child's health, safety, or welfare" includes a parent, a legal guardian, custodian, foster parent, person 18 years of age or older with whom the child's parent cohabitates, or any other adult residing in the home of the child; an agent or employee of a public or private



residential home, institution, facility or day treatment program; or an owner, operator or employee of a child care facility.

A person subject to registration as a Sex Offender for any offense in which a child was the victim is prohibited from residing with a child or establishing any other living accommodation where a child resides. Exceptions to this statutory prohibition are parents, step-parent, or grandparent of the child if the child was not the victim of the offense. Intentional violation of this law may be guilty, upon conviction, of a felony punishable by a fine up to \$3,000.00 and/or imprisonment not less than one (1) year nor more than three (3) years.

[57 O.S. 590](#)

## **B. MANDATORY REPORTERS**

Every person having reason to believe that a child is a victim of abuse or neglect must report the matter promptly to the DHS statewide centralized hotline. However, in guardianship actions for custody of a child that has been abandoned pursuant to 30 O.S. 2-117, reporting is not required.

[10A O.S. 1-2-101\(B\)](#)

Further, any health care professional attending the birth of a child who tests positive for alcohol or controlled dangerous substance must report the matter to OKDHS.

No privilege or contract may relieve any person from the requirement of reporting. This includes clergy members, attorneys, physicians or mental health therapists.

No employer, supervisor or administrator can interfere with the reporting obligation of the employee or retaliate against the employee. Any employer, supervisor or administrator who discharges, discriminates or retaliates against the employee can be held liable for damages, costs and attorney fees.

[10A O.S. 1-2-101\(C\)](#)

It is a misdemeanor for a person to knowingly and willfully fail to promptly report suspected child abuse and neglect or to interfere with the prompt reporting of suspected child abuse and neglect.

It is a felony for any person who has knowledge of at least six (6) months of child abuse or neglect to willfully fail to report the abuse or neglect.

It is a misdemeanor to willfully make a false report. The reporter must know at the time of making that it is untrue. In addition, false reports can subject the accuser up to a \$5,000.00 fine along with attorney fees.

[10A O.S. 101\(D\)](#)

[Paulson v. Sternlog, 15 P.3d 981 \(Okla.2000\)](#)

The child abuse reporting statutes do not create a private right of action. There is no provision for civil liability. Further, any person exercising due care and acting in good faith, who reports and/or testifies to suspected child abuse or neglect shall have immunity from any liability, civil or criminal. Good faith is presumed.

[10A O.S. 1-2-104](#)

**C. REFERRAL FOR INVESTIGATION IN MATRIMONIAL OR OTHER CHILD CUSTODY ACTIONS**

[10A OS §1-4-102](#)

In any court proceeding concerning child custody or visitation, the judge hearing evidence or allegations of child abuse or neglect may:

- Refer allegations of child abuse or neglect to DHS for investigation or assessment, and
- If the evidence indicates that the child's welfare is endangered by her surroundings, enter an order to have the child taken into emergency custody.

DHS will conduct an assessment or investigation and:

- Submit a report to DA and copy of report to the referring court within 30 days of the referral.
  - Parties are notified by DHS that a report to the court has been submitted.

The DA advises the referring court within 3 days after receiving DHS' report whether a deprived petition will be filed.

- If no petition filed, the court may proceed with making appropriate orders of custody and/or visitation.

If the evidence indicates that a child has been abused or neglected, an attorney shall be appointed to represent the child; a GAL may be appointed.

## **D. HUMAN TRAFFICKING**

“Human trafficking” means modern-day slavery that includes, but is not limited to, extreme exploitation and the denial of freedom or liberty of an individual for purposes of deriving benefit from that individual’s commercial sex act of labor;

[21 O.S. § 748.1](#)

“Human trafficking for labor” means:

- Recruiting, enticing, harboring, maintaining, transporting, providing or obtaining, by any means, another person through deception, force, fraud, threat or coercion or for purposes of engaging the person in labor, or
- Benefiting, financially or by receiving anything of value, from participation in a venture that has engaged in an act of trafficking for labor;

“Human trafficking for commercial sex” means:

- Recruiting, enticing, harboring, maintaining, transporting, providing or obtaining, by any means, another person through deception, force, fraud, threat or coercion for purposes of engaging the person in a commercial sex act,
- recruiting, enticing, harboring, maintaining, transporting, providing, purchasing or obtaining, by any means, a minor for purposes of engaging the minor in a commercial sex act, or
- benefiting, financially or by receiving anything of value, from participating in a venture that has engaged in an act of trafficking for commercial sex;

Human trafficking victims shall:

[21 O.S. § 748.2](#)

- Be housed in an appropriate shelter as soon as practicable;
- Not be detained in facilities inappropriate to their status as crime victims;
- Not be jailed, fined, or otherwise penalized due to having been trafficked;
- Receive prompt medical care, mental health care, food and other assistance, as necessary
- Have access to legal assistance, information about their rights, and translation services, as necessary; and

- Be provided protection if the safety of the victim is at risk or if there is a danger of additional harm by recapture of the victim by a trafficker, including:
  - Taking measures to protect trafficked persons and their family members from intimidation and threats of reprisals, and
  - Ensuring that the names and identifying information of trafficked persons and their family members are not disclosed to the public.

Upon a showing that a minor may be a victim of human trafficking or sexual abuse, the law enforcement officer shall immediately notify the Department of Human Services and the minor shall be transferred to the custody of the Department of Human Services.

- Law enforcement and the Department of Human Services shall conduct a joint investigation into the claim.
- The minor shall remain in the custody of the Department of Human Services until the investigation has been completed, but for no longer than seventy-two (72) hours, for the show-cause hearing.

If criminal charges were filed against the minor and the investigation shows, at the show-cause hearing, that it is more likely than not that the minor is a victim of human trafficking or sexual abuse, then the criminal charges against the minor shall be dismissed and the Department of Human Services case and services shall proceed.

## 2. PREADJUDICATIVE REMOVAL OF CHILD FROM THE HOME

The U.S. Supreme Court has held that the Due Process Clause of the Fourteenth Amendment provides a fundamental right to family integrity, a right of parents and children to be free of unwarranted governmental interference in matters of child rearing. Further, children have a right under the Fourth Amendment to be free from seizure – which includes the improper removal from their home.

[JB v. Washington County, 127 F.3d 919 \(10<sup>th</sup> Cir. 1997\)](#)

Consistent with that right, the state ordinarily must provide prior notice and a hearing before forcibly separating a parent and child. Courts have held that only an imminent danger to a child’s life or health can justify a removal of a child without notice and a hearing first. Even then, a prompt post-removal hearing must be held. Such post-removal hearings are often referred to as “emergency custody hearing”, “show cause hearing”, or “shelter hearings.”

[Spielman v. Hildebrand, 873 F.2d 1377 \(10<sup>th</sup> Cir. 1989\)](#)

The 10<sup>th</sup> Circuit has held that a child may be removed from the home without prior notice and hearing only when state officials have a “reasonable suspicion of an immediate threat to the safety of the child if he or she is allowed to remain there.” Only exigent circumstances may justify a warrantless seizure and detention for child protection purposes. It is this imminent danger of harm to a child that justifies the interference with parental custody.

[Gomes v. Wood, 451 F.3d 1122 \(10<sup>th</sup> Cir. 1997\)](#)

In practice, children are seldom removed on anything but an emergency basis – either placed in protective custody by law enforcement without a court order or in emergency custody with OKDHS by means of some form of *ex parte* judicial authorization. It is clear that emergency removals represent a very large percentage of all removals.

*See, e.g., e-mail from Mark Hardin, Director, ABA National Child Welfare Resource Center on Legal and Judicial Issues (Aug. 1, 2002) (“a good 90% of children enter care through emergency removal,” although “this is a pure guess” based on questioning “many courts and agencies” over the years).*

## A. PROTECTIVE CUSTODY

### 1. The Statute:

Only law enforcement or court employees can place a child in protective custody without a court order if that officer or employee has a reasonable suspicion that:

- the child is in need of immediate protection due to an imminent safety threat, or
- to allow the child to continue in the home or in the care of the parent, legal guardian or custodian will present an imminent safety threat,
- the child, including a child with a disability, is unable to effectively communicate about abuse, neglect, or safety threat or is vulnerable due to the inability to report the need of protection due to an imminent safety threat.

[10A OS 1-4-201\(1\)](#)

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

[10A OS 1-1-105\(59\)](#)

### 2. The Statutory Procedure:

It is the legislative intent that DHS and law enforcement jointly respond to a report of child abuse or neglect. Although it is only law enforcement who can place a child in protective custody, it is the responsibility of DHS to conduct a safety evaluation to determine whether:

- The child faces an imminent safety threat and, if so,
- Whether the child can be protected through placement with relatives or others thereby averting assumption of emergency custody by DHS.

DHS may conduct the safety evaluation either at the scene of law enforcement’s assumption of protective custody OR at a reception center. The child shall remain in protective custody while OKDHS is allowed to conduct the safety evaluation within 23 hours of the assumption of protective custody. Thereafter, OKDHS must either:

[10A OS 1-4-201\(B\)](#)

- Return the child home;

- Seek the parent(s)' consent to place the child with another individual until such time the investigation is completed; or
- Seek court authorization to assume emergency custody of the child.



## **B. VOLUNTARY CONSENT UPON ARREST**

A parent may voluntarily consent for his or her child to be placed in the emergency or temporary custody of another individual thereby eliminating the need for hearing. A parent who is arrested on a charge or warrant other than 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.

[10A OS 1-4-201\(J\)](#)

### **C. EMERGENCY CUSTODY ORDER**

[10A 1-4-201](#)

The Court may enter an *ex parte* emergency custody order as follows:

- Upon application of the district attorney supported by a sworn affidavit;
- Upon verbal application of the district attorney;
- When the child is in need of medical or behavioral health treatment and the parent is unwilling or unavailable to consent to treatment.

## **2C.1. WRITTEN APPLICATION OF DISTRICT ATTORNEY:**

Must state facts sufficient to establish reasonable suspicion that:

- a. The child is in need of immediate protection due to an imminent safety threat, or
- b. The circumstances of the child are such that continuation in the home or in the care of the parent would present an imminent safety threat to the child
- c. The child, including a child with a disability, is unable to effectively communicate about abuse, neglect, or other safety threat or is vulnerable due to the inability to report the need of protection due to an imminent safety threat.

## **2C.2. ORAL APPLICATION OF DISTRICT ATTORNEY:**

[10A OS 1-4-201\(A\)\(2\)](#)

- Order may be verbal.
- Law enforcement, once informed of the verbal order, must act on such order.
- Written application and proposed order must be submitted to the court within one (1) judicial day from the issuance of the verbal order.
- Written application and order must be filed with court clerk.

**2C.3. NECESSITY OF MEDICAL/BEHAVIORAL HEALTH  
TREATMENT FOR CHILD:**

- To protect the health, safety, or welfare of the child, and
- The parent, legal guardian, or custodian of the child is unwilling or unavailable to consent to treatment.
- Court must specify in the order its authorization for medical or behavioral health evaluation or treatment as the Court deems necessary.

#### **2C.4. REQUIRED FINDINGS:**

[10A OS 1-4-201\(D\)](#)

- That an imminent safety threat exists, and
- Continuation in the home of the child is contrary to the welfare of the child; and
- Whether reasonable efforts have been made to prevent the removal of the child from the child's home, or
- The absence of reasonable efforts is reasonable because removal is due to an emergency.

## **2D. Execution of Emergency Custody Order**

[10A OS 1-4-201](#)

OKDHS may execute the Emergency Custody Order only under the following circumstances:

- Where child is located in hospital, school or day care facility, and
- Assumption of custody can occur without risk to the child or OKDHS employee.

Otherwise, the Emergency Custody Order shall be executed by law enforcement or officer of the court.

Children in emergency custody may be taken to:

- Kinship care home;
- Emergency foster home designated by Department;
- Children's shelter located in the county where custody is assumed;
- Health care facility;
- Behavioral health treatment facility.
- NEVER confined to jail, adult lockup or adult or juvenile detention facility.

Court shall be notified within one (1) judicial day that child has been taken into custody.

- Court may dictate otherwise by administrative order.

## **2E. WRITTEN NOTICE TO PARENT**

The law enforcement officer, court employee or OKDHS employee must provide the parent, legal guardian or the physical custodian with immediate written notice of the protective or emergency custody of the child. The written notice informs the parents, legal guardian, or physical custodian of the following information:

- That an emergency custody hearing will occur within two judicial days from the date the child was removed;
- The date, time and place for the emergency custody hearing;
- The nature of the allegation that led to the removal of the child;
- The address and telephone number of the applicable law enforcement agency and DHS; and
- The right to contact an attorney.

The notice must contain 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.”**



## **2F. EMERGENCY CUSTODY HEARING**

This is the first court hearing in a deprived case. This hearing occurs either immediately before or immediately after a child is removed from the home due to an emergency. Ideally, if a parent is contesting the placement of a child by OKDHS, the hearing should occur prior to the removal. Due process requires prior notice and hearing. However, in almost all instances, removal generally occurs prior to the hearing by means of an *ex parte* order.

## **2F.1. TIME FRAME FOR HEARING**

[10AOS 1-4-203](#)

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.

Not conducting the emergency custody hearing timely is strongly frowned upon by the appellate courts. However, where the hearing was held three (3) days after the emergency removal of the child, the trial court was found to have retained jurisdiction as the parent failed to demonstrate that he was prejudiced by the one day delay of the hearing. The legislature did not provide consequences for an untimely hearing.

In the Matter of CRG, 276 P.3d  
1114, 1120 (OkCivApp.,2012)

## **2F.2. ISSUES TO BE RESOLVED**

### [10A OS 1-4-203\(A\)\(1\)](#)

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.

### [10A OS 1-4-203 \(A\)\(3\)](#)

The court may determine, based on the evidence presented, that the child can be immediately and safely returned home pending adjudication.

- The court should evaluate current danger and determine what can be done to eliminate that danger.

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 does not apply.

### **2F.3. ADVISE TO PARENT AT HEARING**

The Court must provide to the parent, legal guardian, or custodian, in writing, the following:

[10A OS §1-4-203\(A\)\(2\)](#)

- The right to testify and present evidence at court hearings;
- The right to be represented by counsel;
- Consequences of failure to attend any hearings;
- Right to appeal and procedure for appealing an order of the court.

#### **2F.4. CUSTODY DETERMINATION**

[10A OS §1-4-203\(A\)\(3\)](#)

At the conclusion of the hearing, the court should make one of the following custody determinations:

- Continuation of the child in emergency custody with OKDHS;
- Placement of the child in emergency custody with OKDHS;
- Placement of the child in the emergency custody of a responsible adult or licensed child-placing agency under any conditions reasonably necessary to protect the child;
- Releasing the child to the custody of the parent, legal guardian or custodian from whom the child was removed under any conditions the court finds reasonable to protect the child.

## **2F.5. CRITICAL FINDINGS IN ADDITION TO CUSTODY DETERMINATION**

If the court determines that the child should not be returned home at this time, the court should find that the continuation in the home is contrary to the welfare of the child.

The court should also determine whether reasonable efforts have or have not been made to prevent the removal, or whether the absence of efforts is reasonable due to an emergency.

## **2F. 6. ADDITIONAL ACTIONS TO BE TAKEN BY THE COURT**

[10A OS §1-4-203\(A\)\(4\), \(5\) and \(6\)](#)

Order the parent, legal guardian or custodian to complete an affidavit listing the names and contact information of any relative and any comments concerning the appropriateness of the potential placement of the child with that relative.

Ensure that DHS, within thirty (30) days of removal of a child, exercise due diligence to identify relatives and to provide notice to the following adult relatives, except those that have past or current family domestic violence

- All grandparents;
- All legal custodial parents of a sibling of a child;
- Other adult relatives, including those suggested by the parents or as ordered by the court

The notice to relatives shall advise them that:

- (a)The child has been or is being removed from the custody of the parent or parents of the child,
- (b)Of the options under applicable law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice, and
- (c)Of the requirements to become a foster family home and the additional services and supports available for children placed in the home.

Order the parent, legal guardian or custodian to furnish to OKDHS a copy of the child's birth certificate within fifteen (15) days from the date the petition is filed

Determine whether reasonable efforts were made to place siblings together or to provide for frequent contact between the siblings.

## **2F.7. Relative Placement/Custody Considerations**

[10A OS 1-4-204](#)

A. Preference is given to relatives and persons who have a relationship with the child. Diligent efforts should be made by DHS to place the child with kinship.

B. Considerations for determination of awarding custody or determining placement should be based on the following factors:

- Ability of person to provide safety for the child;
- A willingness to cooperate with the restrictions placed on contact between the child and others;
- Ability to prevent others from influencing the child with regard to the allegations of the case;
- The ability to support DHS's permanency plan for the child;
- The ability to meet the child's physical, emotional and educational needs-including the child's need to remain in the same school;
- The ability to provide placement for the child's sibling;
- Where more than one person is requesting placement, the individual who has the closest relationship with the child;
- Ability to provide a permanent home, if necessary;
- The wishes of the parent, the relative, and the child, if appropriate;
- The best interests of the child.

C. Relatives who decline placement, are not cooperative with DHS or who fail to keep DHS advised of their current address for further permanency planning, should be advised that they may forfeit the right to be considered for the child's permanent out-of-home placement.

D. DHS is required to advise the court, in writing, the reasons why a relative was denied and the written reasons should be part of the court record.

E. Siblings should be placed in the same home, or if separated, siblings should be allowed to contact or visit with each other, based on the best interests of the siblings.



Exceptions to sibling placement are:

- One sibling has resided with a foster parent for 6 months or more and has established a relationship in that foster home;
- The siblings have never resided together;
- There is no established relationship between the siblings;
- Placement of the siblings together is contrary to the safety or well-being of any of the siblings;
- It is in the best interests of the child to remain in the current foster home placement.

## **2G. RESTRAINING ORDERS**

[10A OS 1-4-206](#)

The Court may enter an order where a child is alleged to have been physically or sexually abused restraining the alleged perpetrator of the abuse from having contact with the child and requiring the alleged perpetrator to move from the household in which the child resides. This order allows the child to remain in the home with the non-perpetrator parent rather than removing the child from the home.

The Protection from Domestic Abuse Act also provides for emergency protective orders to be issued in deprived proceedings against the alleged perpetrator of abuse. The EPO may be issued at the emergency custody hearing or after a petition is filed. The protective order remains in effect until the case has been dismissed or further order of the court. The EPOs issued are confidential and not open to the general public other than copies being given to the designated law enforcement agency for purposes of service on the defendant.

[22 OS 60.19](#)

## **2G.1. THE ORDER**

[10A OS 1-4-206\(A\)](#)

### **A. When to Order:**

- If there is a reasonable suspicion that a child has been physically or sexually abused and that the person to be restrained committed the abuse and the order is in the best interest of the child.
- The order may be entered at the emergency custody hearing or after a deprived petition has been filed.

### **B. What is Ordered:**

- That the alleged perpetrator of the abused cannot contact or attempt to contact the child;
- If residing in the home of the child, the alleged perpetrator may be ordered to move from that household;
- Orders that restrict the contact of the perpetrator with other children in the home or any other person (e.g., other parent or caregiver).

### **C. What Is Included:**

- Identifying and descriptive information about the alleged perpetrator such as: name, address, age and date of birth, race, sex, height, weight, hair color, eye color, other identifying features such as tattoos
- Also may include provision for law enforcement to accompany the alleged perpetrator to the household for the removal of personal property.

## **2G.2 THE ISSUANCE OF RESTRAINING ORDER**

[10A OS 1-4-206 \(B\)\(C\)\(E\)\(F\)](#)

- A. If the court enters an order, the court clerk's responsibilities are:
- To provide, without charge, and deliver certified copies of the petition and order to the sheriff or other person qualified to serve the order for service on the restrained person.
- B. The sheriff or other qualified process server shall effect personal service on the restrained person unless that person attended the hearing.
- If unable to effect personal service within ten (10) days, a return shall be filed with the court clerk stating that service was not completed and the reason why.
- C. If the restrained person wishes to contest a part or all of the order, a written request for hearing must be filed with the court within (30) days after the order has been served.
- The court shall notify the restrained person and parties of the date and time of the hearing.
  - The hearing must be held within twenty-one (21) days after the request for hearing is filed with the court
  - At the conclusion of the hearing, the court may keep in place, cancel, or modify the restraining order.
- D. The order remains in effect for one (1) year unless sooner modified, amended, or terminated by the court.
- The order may be renewed for an additional one (1) year if the court has probable cause to believe the order is in the best interest of the child.
  - The application or motion for renewal of the order shall be filed by the State or the child's attorney.
  - Upon granting the renewal of the order, the procedures as above set forth in paragraphs 1-3 shall be applied.

### **2G.3 ENTERING ORDER IN THE NCIC DATABASE**

[10A OS 1-4-206\(D\)](#)

- A. Upon receipt of the return of service, the court clerk shall provide certified copies of the restraining order as well as any subsequent modification, vacation cancellation or extension of the order to any law enforcement agencies designated by the court.
- Upon receipt, the law enforcement agency shall be required to ensure that other law enforcement agencies have access 24 hours a day to the information contained in the restraining order.
  - This may include entry of information about the restraining order in NCIC database.

[10A OS 1-4-206\(G\)](#)

- B. If the order is terminated prior to the expiration date, the clerk of the court shall immediately deliver a certified copy of the termination order to the sheriff.
- The original order shall be promptly removed from the NCIC database.

#### **2G.4. PENALTY FOR VIOLATION OF RESTRAINING ORDER**

[10A O.S. 1-4-206H](#)

If convicted, any person who has been served and violates a restraining order, is guilty of a misdemeanor and will be punished by a fine of not more than \$1000, or by a term of imprisonment in a county jail of not more than 1 year, or by both fine and imprisonment.

## 2H. EMERGENCY CUSTODY HEARINGS FOR MEDICAL TREATMENT

Special circumstances may exist where the court is required to either assume emergency custody over or make emergency order for the child:

[10A OS 1-1-105\(j\)](#)

1. Religious Objections to Medical Treatment

The law recognizes the right of a parent or legal guardian to, in good faith, select and depend upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the medical treatment and care of a child. However, the court may immediately assume emergency custody of a child and order whatever medical treatment may be necessary to protect the child's health and welfare. The child, however, shall not be adjudicated to be deprived on this circumstance alone.

[10A OS 1-4-201\(A\)\(3\)](#)

2. Medical or Behavioral Health Evaluation and Treatment

If a child is in need of medical or behavioral health treatment for the child's health, safety, or welfare and the parent or legal guardian is unwilling or unavailable to consent to the treatment, the court should include an emergency order authorizing the medical or behavioral health evaluation or treatment as the court deems necessary.

If the child in protective custody requires emergency medical care prior to the emergency custody hearing and;

- The emergency treatment is related to the suspected abuse or neglect, or
- The parent or legal guardian is unavailable or unwilling to consent to treatment as recommended by a physician, law enforcement, court employee, or the court may authorize treatment necessary to protect the health or life of the child. Prior to authorization, however, law enforcement must exercise diligence in locating the parent or legal guardian, if known.

[10A OS 1-3-102\(B\)](#)

a. The court should enter an *ex parte* emergency order stating the circumstances of the emergency. If the recommended extraordinary medical care or treatment is not an emergency, the court should hold a hearing, upon application of the state and give notice to all parties. It may then authorize the extraordinary treatment.

[10A OS 1-3-102\(D\)](#)

[10A OS 1-4-207](#)

3. The court may immediately assume custody of a child and order whatever action may be necessary, including medical or behavioral health treatment, to protect the child's health, safety or welfare.



### **3. PETITION**

The petition, filed and verified by the District Attorney, initiates the formal proceedings in the juvenile division of the district court and sets forth the allegations that make the child “deprived.” Respondents should be named. The Petition should be styled: “In the Matter of \_\_\_\_\_, an Alleged Deprived Child.”

## **A. WHEN FILED**

- Within seven (7) judicial days from assumption of custody.
- May be extended, if compelling reason exists, to fifteen (15) calendar days from assumption of custody.
  - ADA must make this extension request at the emergency custody hearing.
- If petition not timely filed, child must be released from emergency custody.
  - ADA must file a written record with the court stating why the petition was not filed and specifying to whom the child was released.

## B. CONTENTS

[10A OS 1-4-301](#)

“...an essential element of due process is the right to know the grounds upon which a right may be affected.” Matter of ADB, 818 P.2d 483 (Okla.1991)

- Child’s name, date of birth and residence;
- Names and residence of child’s parents;
- Names and residence of child’s legal guardians, if applicable;
- Name and residence of person having custody of the child, if applicable;
- Name and residence of nearest known relative, if no parent, legal guardian or custodian can be located;
- Facts supporting the allegation of deprivation;
  - State should state what required facts are unknown and why.
- Relief requested, which may include:
  - Adjudication that the child is deprived;
  - Termination of parental rights;
  - Entry of an order for child support;
  - Judicial determination of paternity.
- Signed by District Attorney or Assistant District Attorney ;
- Must be verified.

### **C. AMENDMENTS**

- May be amended, without leave of court, up to seven (7) days prior to adjudication hearing to add, modify or supplement factual allegations.
- Only upon leave of court upon a showing of good cause within seven (7) days of the adjudication hearing.
  - If amended because of new evidence or allegation, must allow respondent sufficient time to prepare for the adjudication hearing.
- Court may allow amendment to conform the allegations with the evidence presented in court at any time prior to adjudicatory ruling by the court.
- Adjudicatory category cannot be amended.

## **D. RESPONSIVE PLEADINGS**

A. None are required.

Matter of Christina T., [590 P.2d 189 \(Okla. 1979\)](#);

Matter of Miller, [876 P.2d 747 \(Okla.App. 1994\)](#).

- 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.

## **E. POSTADJUDICATION PETITION**

### 1. Purpose:

- To provide for newly discovered conditions or allegations to support that the child is deprived.
  - Only applicable where discovery is made after the child has been adjudicated deprived pursuant to the allegations contained in the original petition.
  - Does not apply if jurisdiction of juvenile court has been terminated prior to the discovery of the new allegations.

### 2. Procedures:

- The postadjudication petition is filed in the same case as the original petition.
- Procedures and hearings that are required for the adjudication of the original petition must be adhered to for the adjudication of allegations contained in the postadjudication petition.

[10A OS §1-4-303\(C\)](#)

#### **4. SERVICE OF SUMMONS**

Necessary parties to the deprived proceedings, including the child who is 12 years of age or older, must be served by summons immediately upon filing of the petition. However, summons may be issued at any time that a necessary individual has not been served with summons.

[10A OS §1-4-303\(A\)](#)

## A. CONTENT

- Advise parties of right to counsel, including court-appointed counsel.
- State the relief requested including child support and paternity.
- Date, time and place of initial adjudicatory hearing.
- Petition is attached.
- Must contain the following language 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.”

See: 10A OS §1-4-303(A)(4) for specific language



**B. WAIVER OF SERVICE OF SUMMONS**

- In writing, or
- Voluntary appearance at hearing.
- The child's attorney may waive service of summons on behalf of the child. The child cannot.

### **C. WHO SHOULD BE SERVED**

[10A OS §1-4-303\(A\)\(1\)](#);

[10A OS §1-4-101\(A\)\(1\)](#)

- Parents;
- Legal guardian;
- Child who is 12 years of age or older;
- Custodian of the child;
- Alleged father(s);
- Step parent who resides in the child's home;
- Any adult who continues to reside in the child's home;
- Any other person the court determines to be a necessary and proper party to the proceedings.

[10A OS §1-4-304](#)

#### **D. HOW SERVICE OF SUMMONS IS EFFECTED**

[12 OS §2004 \(C\)\(1\), \(2\)](#)

- By personal delivery, certified mail or publication.
  - Specific procedure for personal service as provided for in 12 OS §2004.

Kickapoo Tribe of Oklahoma v.  
Rader, 822 F.2d 1493 (CA10  
1987)

[Tammie v. Rodriguez, 570 P.2d  
332 \(Okl.1977\)](#)

## E. PUBLICATION

1. The State must make diligent efforts, using reasonably available sources, to locate the parties. Reliance on a parent's statement that a parent no longer resides in the country may be insufficient without independent search. 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.
2. Upon conducting an unsuccessful search to locate and notify a party, the State then may proceed to:
  - File an affidavit with the court detailing its diligent search to locate the party and that the party could not be identified or located.
    - An affidavit prepared by OKDHS describing its diligent search to locate a party may be adopted by the State as evidence of additional efforts made.
  - Court enters order authorizing service by publication.
    - Copy of petition and summons required to be mailed by regular first-class mail to the party at last-known place of residence.
3. Publication Notice may be directed to several individuals who may be known or unknown, including alleged or presumed fathers.
  - If the name of the party is unknown, the notice is then directed to the "unknown father" or "unknown mother."
  - Notice shall provide;
    - i. the name of the court,
    - ii. case number,
    - iii. initials of the child,
    - iv. date and location of the birth of the child,
    - v. names of mother and/or father, if known,
    - vi. time and date of the hearing, and
    - vii. purpose of hearing.
    - viii. Must provide specific language advising of consequences of failure to appear as well as potential loss of parental rights.
  - Affidavit of publication must be filed with court clerk

- Publication only occurs once in a newspaper published in the county where petition is filed.
  - If no newspaper exists in county, then newspaper published in adjoining county may be used.
- 4. Publication may proceed simultaneously with efforts to serve notice by personal service or mail if court reasonably believes personal service to be futile.
- 5. Cost of publication is paid by court fund and assessed against the child's parents or legal guardian as applicable.

**F. CONSEQUENCES OF FAILURE TO APPEAR UPON BEING SUMMONED**

[10A OS 1-4-305](#)

- Failure to appear without reasonable cause constitutes the person's consent to the prayer or prayers contained in the petition.
- Failure to appear without reasonable cause may constitute contempt of court.

## **G. ISSUANCE OF WARRANT**

Warrant may be issued against the parent, legal guardian, custodian of the child, or the child when:

- A summon cannot be served; or
- The parties served fail to appear in court; or
- Where it is determined that service will be ineffectual to cause the appearance of the party; or
- That the health, safety or welfare of the child requires that the child should be brought into the custody of the court.

## **5. ADJUDICATION HEARING**

The adjudication hearing is held to determine whether the evidence presented supports the allegations set out in the petition. Parties may request a bench trial. After the hearing, the court must determine whether the child is deprived, as defined §1-1-105(2) of the Oklahoma Children's Code.



## **A. PURPOSE**

By definition, the adjudicatory hearing is the hearing to determine whether the child is deprived and should be made a ward of the court. This is the “first stage hearing” which must be held to determine whether the allegations of the petition are supported by the evidence. It is the status of the child that is of concern and not that of a parent. The proceedings are not designed to punish the parent but to determine whether the child has the benefit of parental care, protection, concern, or support.

[Matter of SC, 833 P2d 1249  
\(Okla.1992\)](#)

[In the Matter of CT, 983 P2d 523  
\(Okla.Civ.App. 1999\)](#)

## **B. CHILDREN SUBJECT TO COURT'S JURISDICTION PURSUANT TO CHILDREN'S CODE**

Children subject to the personal jurisdiction of the court pursuant to the Oklahoma Children's Code are those that fit within the statutory definitions of:

- deprived child
- dependent child
- drug-endangered child and
- children subjected to human trafficking.

“Harm” or “threatened harm” must be shown in order to warrant governmental interference with a family unit.

[Matter of Betty C., 632 P.2d 412 \(Okla. 1981\)](#)

A “dependent child” is a child who is homeless or without proper care or guardianship through no fault of the parent or legal guardian. The term is not intended to proscribe any parental conduct or omission, but is solely concerned with the welfare of the child and whether or not the child's essential needs are being met. For example: a child whose parents or legal guardian is now deceased and relatives are unknown or cannot be located.

[Matter of Daniel, Deborah and Leslie H., 591 P.2d 1175 \(Okla. 1979\)](#)

[10A OS 1-1-105\(20\)](#)

A “deprived child” means a child:

- who is for any reason destitute, homeless, or abandoned,
- who does not have the proper parental care or guardianship,
- who had been abused, neglected, or is dependent, whose home is an unfit place for the child by reason of depravity on the part of the parent or legal guardian of the child, or other person responsible for the health or welfare of the child,
- who is a child in need of special care and treatment because of the child's physical or mental condition, and the child's parents, legal guardian, or other custodian is unable or willfully fails to provide such special care and treatment. As used in this paragraph, a child in need of special care and treatment includes, but is not limited to, a child who at birth tests positive for alcohol or a controlled dangerous substance and who, pursuant to a drug or alcohol screen of the child and an assessment of the parent, is determined to be at risk of harm or threatened harm to the health or safety of a child,
- who is a child with a disability deprived of nutrition necessary to sustain life or of the medical treatment necessary to remedy or relieve a life-threatening medical condition in order to cause or allow the death of the child is such nutrition or medical treatment is generally provided to similarly situated children without a disability or children with disabilities; provided that no medical

treatment shall be necessary if, in the reasonable medical judgement of the attending physician, such treatment would be futile in saving the life of the child,

- who, due to improper parental care and guardianship, is absent from school as specified in Section 10-106 of Title 70 of the Oklahoma Statutes, if the child is subject to compulsory school attendance,
- whose parent, legal guardian or custodian for good cause desires to be relieved of custody,
- who has been born to a parent whose parental rights to another child have been involuntarily terminated by the court and the conditions which led to the making of the finding, which resulted in the termination of the parental rights of the parent to the other child, have not been corrected, or
- whose parent, legal guardian, or custodian has subjected another child to abuse or neglect or has allowed another child to be subjected to abuse or neglect and is currently a respondent in a deprived proceeding.

[10A OS 1-1-105\(22\)](#)

A “**drug-endangered child**” means a child who is at risk of suffering physical, psychological or sexual harm as a result of the use, possession, distribution, manufacture or cultivation of controlled substances, or the attempt of any of these acts, by a person responsible for the health, safety or welfare of the child, as defined in paragraph 51 of this section. This term includes circumstances wherein the substance abuse of the person responsible for the health, safety or welfare of the child interferes with that person’s ability to parent and provide a safe and nurturing environment for the child. The term also includes newborns that test positive for a controlled dangerous substance, with the exception of those substances administered under the care of a physician.

Children subject to human trafficking are those who are:

- subject to sex trafficking, i.e., recruitment, harboring, transportation, provision, or obtaining of a child for the purpose of commercial sex act, or
- subject to involuntary servitude, peonage, debt bondage, or slavery.

[Matter of C.A.R., Okla.App.Div.I, 882 P.2d 582 \(Okla.1994\)](#)

Actions of noncustodial parents are relevant in the court’s determination of whether a child is deprived.

### **C. WHAT IS NOT A DEPRIVED CHILD**

[10A OS 1-1-105\(8\)](#)

A “child” is defined as any unmarried person under 18 years of age. The legislature did not intend to include fetuses within the statutory definitions of “child” or “deprived child” entitled to state intervention. Therefore a “child” applies only to human beings both born and under the age of 18.

[In re Unborn Child of Starks, 18 P.3d 342 \(Okla. 2001\)](#)

[In re D.R., Okla.Civ.App. Div 4, 20 P.3d 166 \(2001\)](#)

[10A 1-1-105\(2\)](#)

A child is not “deprived” merely because her parents address injury or illness by spiritual healing, so long as the child is not in need of special treatment for illness, injury or medical condition that may have serious debilitating consequences. Nor is a child deprived by reason of a parent using ordinary force as a means of discipline (e.g., spanking, switching, or paddling). However, the American Academy of Pediatrics Committee recommends, for purposes of physicians’ duty to report suspected child abuse, that any non accidental inflicted injury that goes beyond temporary reddening of the skin should be considered abuse.

American Academy of Pediatrics,  
When Inflicted Skin Injuries  
Constitute Child Abuse, 110  
Pediatrics 64 (2002)

## D. THE NON-CUSTODIAL PARENT

It is generally in the custodial parent's home that the child has been abused and/or neglected. However, a non-custodial parent "may not delegate parental obligation to the [custodial parent] and be held harmless when she neglects these obligations." More often than not, it is the failure to protect or act in the child's best interests that will cast partial responsibility on the non-custodial parent for the child's status as a deprived child.

However, assume that the non-custodial parent was a fit parent and was not on notice that his or her child was living with the custodial parent in an unfit home. Is the child "deprived?" Can a child be deprived with respect to one parent and not the other? Although *In the Matter of CT.*, 1999 OK CIV APP 55, 983 P.2d 523 seems to lean toward requiring evidence of unfitness as to both parents, the issue has not been decided in Oklahoma.

Other jurisdictions have addressed this issue:

- *In re ML*, 757 A2d 849 (Pa. 2000): a child whose non-custodial parent is ready, willing and able to provide proper care to the child, may not be adjudicated deprived. See Dissent: the mere fact that a non-custodial parent is ready, willing and even able to take custody of a child does not necessarily mean that custody with that person is in the best interests of the child.
- *In re Russell J*, 672 A.2d 109 (Md. Ct. Spec. App. 1996): deprived child only if both parents are unwilling or unable to properly care for the child.
- *In re Bill F.*, 761 A2d 470 (NH 2000): if the court finds that one parent abused or neglect a child, the child is adjudicated and thereafter the other parent is entitled to a hearing regarding his suitability to claim custody. However, the state is entitled to present evidence of that parent's unfitness to perform his or her parental duties.
- *In the Matter of TS.*, 74 P.3D 1009 (Kan. 2003): the Kansas Supreme Court interpreted its juvenile code as allowing a court to assert jurisdiction based on evidence against only one parent, with a preference for placing the child in the legal custody of the other parent and closing the case. However, the court can enter an alternative disposition if in the best interests of the child.
- California and Florida statutes allow jurisdiction based on the custodial parent's conduct but requires that the child be placed with the non-custodial parent unless this placement would endanger the child.

The issue is divided between:

- Finding no jurisdiction because the parent is available to assume custody; or
- Court takes jurisdiction and gives the parent custody at disposition.

[10A OS §1-4-707\(A\)\(1\)\(b\)](#)

In Oklahoma, the dispositional statute provides for placement with the non-custodial parent and closure, if in the child's best interests. Hence, it appears that the legislative intent is more in line with that of Kansas.

## **E. PROOF**

[10A OS §1-4-601\(D\)\(3\)](#)

The state has the burden to prove the petition's allegations by a preponderance of the evidence.

[10A OS §1-4-302\(B\)](#)

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.

## F. TIMELINE

### [10A OS §1-4-601\(A\)](#)

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.

### [10A OS §1-4-601\(B\)](#)

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.

### [10A OS 1-4-601\(B\)\(2\)](#)

If an adjudication hearing is not conducted, within this time frame, the emergency custody order expires and the child is released from emergency custody.

### [10A OS §1-4-601\(C\)](#)

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.

The parties must be given at least twenty (20) days prior notice of the adjudication hearing. Note: §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.

### [Letteer v. Conservancy Dist., 385 P.2d 796 \(Okla. 1963\)](#)

It is a rule of statutory construction that different legislative enactments dealing with the same subject must be construed together as a harmonious whole so as to give effect to each. Hence, it could be interpreted that §1-4-304 applies to the initial appearance hearing and not to the adjudication trial.



## **G. ADJUDICATION TRIAL**

[10A OS §1-4-502](#)

The parties are entitled to a non-jury trial for the determination of whether the child is deprived. When the initial petition also requests 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.

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.

See: [Matter of MA, 832 P.2d 437 \(Okla.Civ.App.1992\)](#);

The child shall not refuse to be a witness and may be given as authorized by statute for the protection of child witnesses, e.g., prerecorded statements, televised by closed-circuit equipment.

The trial may be conducted by means of teleconference communications. This is a useful provision where:

[10A OS §1-4-503\(A\)\(4\)](#)

- 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

[In re KNL, 154 P.3d 1276 \(Okla.Civ.App. 2007\)](#)

## H. STIPULATIONS

More often than not, the parent(s) or legal guardian will admit:

- that the facts alleged in the petition are true and correct, or
- that there exists sufficient evidence to permit a finding that the factual allegations are true and correct.
  - This is similar to a no contest plea in the criminal courts.

[10A OS§1-4-601\(D\)](#)

A parent usually will have decided to proceed with a stipulation prior to the hearing; however, a parent could decide at any time, even in mid-trial, not to contest any further.

The court should not accept a stipulation without first addressing the parent personally, in open court and on the record, to ensure that the stipulation is given freely, knowingly and voluntarily. The court should determine that the parent:

- understands the allegations of the petition;
- understands the dispositions that the court may make if the allegations of the petition are found to be true;
- understands that he has a right to deny the allegations in the petition and to have a trial on them; and
- understands that if he enters into a stipulation, he is waiving his right to trial; and that the admission is voluntary and not the result of force or threats or promises.

The court should satisfy itself that there is a factual basis for accepting the stipulation. The rules of evidence do not apply to inquiries made to determine whether there is a factual basis for the stipulation.

One parent's stipulation to allegations contained in the petition may not support the allegations relating to the other parent. Further, the stipulation of one parent does not bind the other parent who is not in agreement with the stipulation.

Note: If a parent stipulates as to some but not all of the allegations in the petition, the State may proceed to prove the allegations that were not admitted to. Whether the State will want to do so depends on the nature of the allegations in the case and the importance, if any, of obtaining findings on them. The disposition is tied to the findings in the adjudication, so it may be extremely important to have a particular finding.

## **I. CONSENT TO ADJUDICATION**

[10A OS §1-4-305\(A\)](#)

“Consent” is, in essence, a default adjudication. Failure of a person properly summoned to respond or appear without reasonable cause constitutes that person’s consent to an adjudication of the child to be deprived.

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.

## **J. INSUFFICIENT EVIDENCE PRESENTED**

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.

[10A OS §1-4-602](#);

[In re Ivey, 535 P.2d 281](#)  
(Okla.1975).

## **K. ORDER OF ADJUDICATION**

### Necessary Factual Findings:

- The allegations in the petition are supported by the preponderance of the evidence;
- Such allegations are sufficient to support a finding that the child is deprived;
- It is in the best interests of the child or the child to be declared a deprived child and made a ward of the court.

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.

Although not required by statute, it is strongly recommended that the Court specify the existing conditions that must be rectified in order to avoid termination of parental rights.

## **L. DEFERRED ADJUDICATION**

The Children's Code does not provide for deferred adjudications in deprived actions.

## **M. 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.

## **6. DISPOSITIONAL HEARINGS AND ORDERS**

After finding that a child is within the jurisdiction of the court as a deprived child, the court determines who shall have custody and control of the child, order additional conditions concerning the child's placement, and may issue specific directions to the parties.

This is a critical hearing. The court makes decisions whether to continue the out-of-home placement or to remove a child from the home. If the child is placed outside of the home, the court should address terms for appropriate visitation; specify services needed to help the child deal with the separation and any special needs that may exist.

Decisions should include an appropriate plan to address the specific problems or "conditions" which necessitated state intervention in the case. Adjudication identifies the conditions that justify court involvement; dispositional hearings identify ways that the parties work out a plan to correct those conditions.

The dispositional hearing sets up the structure for review hearings whose purpose is to evaluate the progress of the case plan. Where the family issues can be specifically defined, appropriate services identified, and unambiguous objectives selected, the focus of subsequent review hearings becomes quite clear.



## **6A. DISPOSITIONAL HEARINGS**

The issue at the dispositional hearing is what disposition would serve the child's best interests. The dispositional hearing must be held if the court adjudicates the child as deprived.

[10A OS 1-4-706\(A\)\(1\)](#)

#### **6A.1 TIME FRAME:**

- May be held on the same day as the adjudication hearing, or
- No later than forty (40) days after adjudication hearing
- May be conducted pending appeal from the adjudicatory order, unless stayed by the appellate court.

See, e.g., [JDL v. Jennings, 603 P.2d1165 \(Okl.Cr.1979\)](#)

## **6A.2. CONTINUANCES:**

[10A OS 1-4-706\(A\)](#)

- Only on showing of good cause and a finding that best interests of child will be served by granting the continuance.
- Court must set forth reason(s) why continuance is necessary.

### **6A.3. EVIDENCE:**

[10A OS 1-4-706\(A\)\(2\)](#)

- Any oral and written report relevant to the child's disposition.
- Hearsay admissible.
- Written reports to be provided to all parties prior to hearing.
- Evidence may be controverted by parties.
- Rules of evidence do not apply.
- Hearings intended to be informal.

## **6B. TEMPORARY CUSTODY/PLACEMENT ALTERNATIVES**

The court may select among the following alternatives for temporary custody or placement in accordance with best interest of the child:

[10A OS 1-4-707\(A\)\(1\)](#)

1. Remain in the parent's or legal guardian's custody with DHS supervision.
2. Temporary custody and placement with noncustodial parent.
3. Temporary custody with a relative.
4. Temporary custody with a private institution or agency.
5. Temporary custody with DHS.

## **6B.1. REMAIN WITH PARENT OR LEGAL GUARDIAN**

[10A OS §1-4-707\(A\)\(1\)](#)

The court may allow the child to remain in the home with the parent or legal guardian or may place the child back in the home with the parent or legal guardian, under the protective supervision of DHS. This is not trial reunification since the parent retains custody of the child rather than DHS.

- The order shall remain in effect for a period of one (1) year.
  - The order may be extended or reduced by the court in appropriate circumstances.
- The court should make certain orders or prescribe certain conditions that will prevent the child from continuing to be deprived.
  - The court may enter orders specifying the conduct to be followed by any person living in the home.
- The court may enter a restraining order removing a party or person from the home indefinitely or for specified time period, and/or
  - Order that a parent or legal guardian prevent a particular person from having contact with the child.

## **6B.2. CUSTODY OR PLACEMENT WITH NON-CUSTODIAL PARENT**

Note: “Best Interest” is unlike other jurisdictions’ requirement that the placement would be “detrimental” to the child’s health, safety and welfare (e.g., California). Clearly, Oklahoma provides the court with more discretion regarding placement.

The child’s best interest determines whether a non-custodial parent should receive custody or placement of the child. Any party or person may present evidence to the court whether it is or is not in the child’s best interest. A home assessment is required.

The court is given several options regarding temporary custody, permanent custody, or merely placement with a non-custodial parent:

[10A OS §1-4-707\(A\)\(1\)\(b\)](#)

A. The noncustodial parent may be awarded sole custody of the child, with orders of visitation and child support by the child’s other parent. Upon entering a final permanency order, the court then terminates its jurisdiction.

i. The final permanency order controls over any custody or child support order entered by an administrative or district court action prior to the initiation of the deprived action.

ii. The final permanency order is filed in the prior administrative or district court action.

1. if none exists, the order is used to open a new district court action in the same county where the deprived action was pending or in the county where the custodial parent resides.

iii. The order is not confidential and may be enforced or modified in the prior existing or new district court action.

iv. The order should be treated as a final order. This view is taken to:

1. protect the best interests of the child, and  
2. to make certain that disgruntled parties who may have appropriately been denied custody by the deprived court cannot simply run into the family law court for a quick reversal based on no new evidence.

Note: Final permanency orders should be subject to the same “substantial change in circumstances” test for purposes of modification that applies to other family court orders.

B. The non custodial parent may be given custody under the protective supervision of OKDHS.

a. The court may order:

i. Reunification services be provided to the parent from whom the child was removed;

ii. Services be provided solely to the noncustodial parent so to allow that parent to later obtain legal custody without court supervision; or

iii. Services be provided to both parents.

Note: the noncustodial parent may wish to remain a noncustodial parent after closure of the case.

Note: e.g., where parent and child are not well acquainted with each other.

1. The court will subsequently determine which parent, if either, should have custody.
- C. An alleged father must cooperate with establishing paternity as a condition of the child's continued placement within his home.
  - D. ICPC applies if the court places the child with an out-of-state noncustodial parent and retains jurisdiction over the deprived child.



### **6B.3 TEMPORARY CUSTODY TO RELATIVE**

If unable to place with a parent, then the court is to give preference for placing the child in a relative's temporary custody, if in the best interests of the child. The court is also subject to the requirements of §1-4-705 in determining whether a relative is inappropriate:

- Convicted of certain felony offenses:
  - Physical assault, battery, or drug-related offense in the past five (5) years;
  - Domestic abuse;
  - Crime against a child, including child pornography; or
  - Crime involving violence, e.g., rape, sexual assault, homicide.
- The child may not be placed in a home where any adult is subject to the Oklahoma Sex Offenders Registration Act or is married to or living with an individual subject to the Sex Offenders Registration Act.
- The relative must meet the minimum required age.

The court should also consider the following factors:

- The physical, educational, medical and emotional needs of the child;
- Wishes of the parent, relative, and child;
- Whether all siblings can be placed together;
- Nature and duration of relationship between child and relative;
- Relative's desire to care for child permanently;
- Ability of relative to:
  - Provide stable and safe environment for child;
  - Provide necessities of life for child;
  - Protect child from the parents;
  - Facilitate court-ordered reunification efforts;
  - Facilitate visitation with child siblings and other relatives;
  - Arrange for safe child care;
  - Exercise effective care and control of the child.

If more than one appropriate relative requests custody, the court should evaluate those relatives under these factors. Each relative placement should be considered pursuant to these factors.

If custody is not placed with the relative, the court must state on the record the reasons placement with that relative was denied.

#### **6B.4. PRIVATE AGENCY OR INSTITUTION**

Temporary custody may be placed with a private agency or institution that is authorized to care for children or to place them in family homes.

- The agency or institution must be licensed by DHS or other state department that supervises or licenses those private institutions or agencies. If in another state, then licensed by the corresponding state department.
- The court must transmit, with the dispositional order, the summary of information regarding the child.
- The agency or institution must provide the court with reports as the court may require.

## **6B.5. TEMPORARY CUSTODY WITH DHS**

Lastly, but most common to courts, is giving temporary custody of the child to DHS. This provides, in most cases, access to certain contracted treatment facilities for the child, Medicaid compensable services for the child, and compensation to the placement for the care of the child.

Placement preferences for children in DHS temporary custody are as follows:

- If Indian child, preferences as set forth in ICWA;
- Home of noncustodial parent;
- Home of relative approved by DHS;
- Home of nonrelative kinship family approved by DHS;
- Approved foster home where child had been previously placed;
- Suitable nonkinship foster family approved by DHS;
- Suitable licensed group home;
- Independent living program (if age-appropriate)

DHS should make efforts to keep the child in the parent's resident county. However, the child should not be moved to match the frequent moves of the parent.

[State ex rel Dept. of Human Services v. Colclazier, 950 P.2d 824 \(Okla.1997\);](#)

[10A OS §1-4-803](#)

Note: ASFA provides that IV-E money is lost if the court names the foster home in which the child is to be placed UNLESS OKDHS and the parties are given the opportunity to present evidence and arguments regarding placement. 45 CFR §1356.21(g). The regulations provide that the child's placement and care must be responsibility of the child welfare agency in order to receive federal matching foster care funds. 42 USC §672(a)(2). However, although ASFA does not limit the court's authority regarding placement of a child in DHS custody, state law does.

DHS has the statutory duty to determine the appropriate placement of the child that is in its custody. The district court may approve or disapprove the placement according to the best interests of the child. The court cannot order a specific placement.

## 6B.6 PLACEMENT WITH SIBLINGS

[10A OS 1-4-204\(A\)\(2\)](#)  
[10A OS 1-4-707](#)

Reasonable efforts should be made to place the siblings in the same home, whether on a temporary or permanent basis, and, if separated, to provide contact with each other unless the courts finds by the preponderance of the evidence that it is not in their best interests.

Siblings may be separated if the court and DHS find:

- a. one sibling has resided in a foster family home for six (6) months and has established a relationship with that foster family;
- b. the siblings have never resided in the same home together;
- c. the siblings have not established a relationship with each other;
- d. placement of siblings together would be contrary to the safety or well-being of any of the siblings, and
- e. it is in the best interests of the child to remain in the current foster family home placement.

## 6C. ADDITIONAL DISPOSITIONAL ORDERS

[10A OS §1-4-707\(A\)\(7\)](#)

1. The Court may order a permanent guardianship in accordance with 10A OS 1-4-709.

[10A OS §1-4-707\(A\)\(8\)](#)

2. The court may dismiss the action if in the best interest of the child.

3. If the dispositional hearing results in the child being removed from the home, the court must make the following determinations:

- a. Whether this is in the best interests and health, safety and welfare of the child, and
- b. Whether reasonable efforts were made to provide for the safe return of the child to the home.
- c. If this is the initial removal, the court must find that continuation in the home is contrary to the welfare of the child.

45 CFR §1356.21(c)

4. Court shall also establish the initial permanency plan for the child; and

- a. determine if aggravated circumstances exist, or
- b. whether reunification services are appropriate.

[10A OS §1-4-706\(B\)](#)

5. Court should consider concurrent permanency planning if child is removed from parent's custody and reunification is the permanency plan.

[10A OS §1-4-704](#)

6. Court shall order the individualized service plan ("ISP") for the parties.

7. DHS may be ordered to refer to or coordinate with services provided by private agencies so that the permanency plan can be achieved.

[10A OS §1-4-707\(C\)\(2\)](#)

8. If reunification efforts are required, the court must provide that the parent has at least three (3) months to correct the conditions which led to the adjudication of the child.

- a. However, reunification services shall not be provided beyond 17 months from the date the child was removed from the home, unless the court findings compelling reasons to do so.

9. If child is age 16 or older, court must make a determination of the services needed to assist the child toward independent living.

[10A OS §1-4-707\(E\)](#)

10. The court should determine whether reasonable efforts have been made to place siblings together, or, made to provide for frequent visitation.

11. If reunification is the appropriate permanency plan, the court should order reasonable visitation with the parent, unless not in the best interest of the child, taking into consideration:

- a. Protection of the physical safety of the child;
- b. Protection of the life of the child;
- c. Protection of the child from being traumatized by contact with the parent;
- d. The child's express wishes.

12. Visitation should not be withheld based solely on:

- a. failure of parent to submit to drug testing; or
- b. failure of parent to comply with an aspect of the ISP.

[10A OS §1-4-707\(A\)\(6\)\(b\)](#)

[10A OS §1-4-702](#)

13. Child support should be ordered or deferred to the appropriate administrative court.

- a. An existing child support order may remain in effect unless not in the best interests of the child.
- b. Child support guidelines should be used in determining the amount each parent is to pay.
- c. Court may deviate from the guidelines when determined necessary to allow the parent to meet obligations of the ISP.
- d. Each parent required to pay his or her percentage, even if the parents live together.
- e. Support is subject to income assignment.
- f. Order is filed as a separate document and is not confidential and is subject to enforcement.

[43 OS §§118 & 119.](#)

[10A OS §1-4-706\(A\)\(5\)](#)

14. Court will provide all parties with dates and times for future review and permanency hearings.

## **6C.1. MANDATED FINDINGS IN EVERY DISPOSITIONAL ORDER**

Every Dispositional Order must include the following:

### 1. Notice of noncompliance with the court orders:

- a. to the parent that the consequences of noncompliance with the requirements of the court may include termination of the parent's rights to the child; or
- b. to the legal guardian or custodian that the consequences of noncompliance with the requirements of the court may include removal of the child from the legal guardian or custodian's custody.

### 2. Reasonable Efforts Findings:

- a. If the child is removed from the home, whether reasonable efforts have been made to provide for the safe return of the child to the home;
- b. if the permanency plan is OTHER than return to own home whether reasonable efforts have been made to complete the steps necessary to finalize the permanent placement of the child.
- c. Whether reasonable efforts have been made to place siblings together in the same foster care, guardianship, or adoptive placement, and
  - to provide for frequent visitation or other interaction for siblings who are not placed together.

Office on Child Abuse and  
Neglect (HHS), Washington, DC.  
Goldman, J., Salus, M. K.,  
Wolcott, D., Kennedy, K. Y.

[In the Matter of SA, 169 P.3d  
730 \(Okla.Civ.App.2007\)](#)

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

## **6D. INDIVIDUALIZED SERVICE PLAN (“ISP”)**

DHS develops, with the assistance of the family, an individual service plan (“ISP”) for each deprived child placed in its custody. It is a casework document that outlines the outcomes, goals, and tasks necessary to be achieved in order to reduce the risk of maltreatment.

Legally, the ISP is the method used to advise the parents of the standards of conduct expected of them in order to correct the conditions leading to the deprived adjudication. Compliance or non-compliance with the ISP is often used as evidence in the trial to terminate that parent’s rights to show whether the conditions leading to the adjudication have been corrected.

The plan must delineate services designed to improve the conditions in the home or facilitate permanent placement, “focusing on the most efficient path to quick reunification or permanent placement.”

The court reviews the dispositional order which includes the ISP at least every six (6) months and may direct additional services necessary to protect the child and order modification to the existing ISP as the court determines to be in the best interest of the child.



## **6D.1 PROCEDURE FOR ADOPTING ISP**

[10A OS §1-4-704](#)

### **A. Development of ISP:**

It is based on a comprehensive assessment and evaluation of the child and family. It should be developed with the participation of the following individuals:

- Parent or legal guardian;
- Attorney for the child;
- GAL, if appointed;
- Child's tribe, if applicable;
- Child, if appropriate.

The health, safety and welfare is the paramount consideration in the development of the ISP.

### **B. Court Approval of ISP:**

The ISP must be furnished to the court within thirty (30) days after the adjudication of the child and must be made available to all the parties.

An evidentiary hearing may be held if any part of the ISP is disputed or not approved by the court. The court must then determine the content of the ISP in accord with the evidence that was presented and in consideration of the health, safety and welfare of the child as well as the child's best interests.

The ISP must be signed by:

- The parent or parents or legal guardian,
- Attorney for parent, parents or legal guardian,
- Attorney for the child,
- GAL, if any,
- Tribal representative, if applicable,
- The child, if possible, and
- DHS.

The ISP, when approved, becomes a part of the dispositional order.

## **6D.2. GENERAL REQUIREMENTS OF ISP**

[10A OS §1-4-704\(C\)&\(D\)](#)

The ISP must be individualized and specific to each child and the child's family.

The ISP must be written in such a way that can be comprehended by the child's family. If in English, it must be written simply and clearly. If English is not the family's principal language and the parents are unable to read or comprehend the English language, then the ISP should be written in the principal language of the person.

The ISP should be measurable, realistic and consistent with the requirements of other court orders.

Note: there may exist other conditions that need to be addressed to ensure the safe placement of the child in the home, however, if not adjudicated to be the condition leading to the deprivation of the child, failure to correct that condition should not be used to terminate the rights of that parent.

The ISP may be modified by the court if the changing circumstances are consistent with the correction of the conditions OR other conditions inconsistent with the health, safety, or welfare of the child.

### **6D.3 CONTENT OF ISP**

[10A OS §1-4-704\(E\)](#)

#### **A. Form:**

The ISP form is devised by DHS. The court should attach this form, as approved by the court and parties, to the Dispositional Order.

#### **B. In General:**

1. History of child and family including identification of the conditions leading to the deprived child adjudication;
2. Changes the parents must make for the child to safely remain in or return to the home;
3. Identification of reunification services to be provided to the parents as well as any other adult person living in the home;
4. Identification of specific services to be provided to the child (e.g., educational, vocational, medical, substance abuse treatment, counseling);
5. Schedule of frequency of services and means by which the delivery of services will be provided to parents and child;
6. Name of social worker assigned to case;
7. Projected date for completion;
8. Performance criteria measuring the progress of the child and family toward completion of the ISP including time frames for achieving objectives;
9. Child's attorney's contact information.

#### **Additional Information If Child Placed Outside the Home:**

1. Sequence and time frame for services provided to the parent, the child and foster parent, to facilitate the child's return home or to another permanent placement;
2. Description of child's placement and whether the placement is the least restrictive, most family-like setting available;
3. Whether child's placement is in close proximity to the home of the parents when reunification is the plan;
4. Whether the placement is consistent with the best interests and special needs of the child;
5. Description of services requested by child or parent since the date of the child's placement and whether those services were provided or reason for denial;

6. Description of transition planning for successful adulthood for the child age 14 or older and how the following objectives will be met;
  - a. education, vocational, or employment training,
  - b. health care planning and medical coverage,
  - c. transportation, including, assisting the child in obtaining a driver's license,
  - d. money management,
  - e. planning for housing,
  - f. social and recreational skills, and
  - g. establishing and maintain connections with the child's family and community.
7. If child is in placement due to child's behavioral or medical health issues, then specific services related to meeting the applicable health care needs of that child and the desired treatment outcomes;
8. Plan for visitation between child and parents as well as child and siblings, if separated, UNLESS the court determines that visitation would be harmful to the child;
9. Plan for ensuring educational stability, including:
  - a. appropriateness of current education setting,
  - b. the proximity to the school that the child was enrolled prior to removal from his/her home
  - c. coordination with local educational agencies to ensure that the child remains in the child's home school, or
  - d. providing for the immediate and appropriate enrollment in the new school with the child's educational records being provided to the new school.
10. Permanency plan for the child and reasons for that selection as well as description of steps to be taken by DHS to finalize the plan.
  - a. if the permanency plan is adoption or guardianship, DHS must describe the recruitment efforts such as relative searches conducted of state, regional and national adoption exchanges to facilitate the timely placement of the child.

D. Children Subject to Inpatient Mental Health and Substance Abuse Treatment of Minors Act:

- The ISP should be amended as necessary to include the identification of treatment and services to be provided to the child and family upon discharge of the child from inpatient treatment.

[10A OS §1-4-704\(H\)](#)

Notice to Parent: The ISP should include the following statement, in bold writing

**TO THE PARENT: THIS IS A VERY IMPORTANT DOCUMENT. ITS PURPOSE IS TO HELP YOU PROVIDE YOUR CHILD WITH A SAFE HOME WITHIN THE REASONABLE PERIOD SPECIFIED IN THE PLAN. IF YOU ARE UNWILLING OR UNABLE TO PROVIDE YOUR CHILD WITH A SAFE HOME OR ATTEND COURT HEARINGS, YOUR PARENTAL AND CUSTODIAL DUTIES AND RIGHTS MAY BE RESTRICTED OR TERMINATED OR YOUR CHILD MAY NOT BE RETURNED TO YOU.**

[10A OS §1-4-704\(G\)](#)

## **7. REVIEW HEARINGS**

The purpose of review hearings is for the court to assess the need for placement, the appropriateness of the placement, progress under the treatment plans, and whether reasonable or active efforts have been made to reunify the family or to achieve the permanency goal. The court may modify the ISP to meet the current needs of the parent and best interests of the child. Modifications to visitation plans may be made.

Review hearings are generally more brief than permanency hearings and best practices indicate that more frequent reviews are beneficial to the progress of the case.

#### **7A. TIME FRAME:**

A review hearing is to be conducted no later than six (6) months from the date of the child's removal from the home and at least every six (6) months thereafter until permanency is achieved or the court otherwise terminates its jurisdiction.

Where a compelling reason exists to not terminate a parent's rights to the child and the child is not presently capable of functioning in a family home, a review shall occur every ninety (90) days until a final determination is made that the child cannot be placed in a family setting.

Review hearings may be heard concurrently with permanency hearings.

Review hearings may be heard at the request of a party and the party requesting the review must serve notice of the hearing on the remaining parties.

**7B. PARTICIPANTS:**

- Foster parents, preadoptive parents or relatives that are providing care for a child are entitled to notice of review hearings.
- Foster parents, preadoptive parents or relatives providing care for a child are entitled to be heard.
- Participants are not considered a party to the deprived proceedings solely because of notice and right to be heard.
- DHS is responsible for providing the notice of the review hearing to the participants.

[10A OK §1-4-807\(B\)](#)



## **7C. EVIDENCE**

The following may be submitted as evidence for the court's consideration in review hearings:

- Written reports submitted by DHS and any of the parties;
- Oral reports presented by DHS and any of the parties and participants;
- Evaluations, assessments and reports submitted by outside treatment agencies or professionals;
- Written and oral reports and recommendations submitted by CASA; and
- Any other evidence that may be helpful in deciding the issues.

[10A OS §1-4-807\(B\)\(C\)](#)

Review hearings are informal and the court is not required to adhere to the rules of evidence (e.g., hearsay, best evidence).

## 7D. COURT FINDINGS

[10A OS 1-4-807](#)

Relevant findings to be made by the court at the conclusion of the review hearing should include, in part:

[10A OS 1-1-105\(54\)](#)

- Whether there remains a need for the child’s continued placement;
- Whether DHS is taking appropriate steps to ensure that the foster family follows the “reasonable and prudent parent” standard;
- Whether the child’s developmental needs and best interests are met through the ISP, service and placement;
- Whether the current permanency plan is appropriate;
- Whether the ISP needs to be modified;
- Whether terms of visitation with parents and/or siblings need to be modified;
- The time frame that the child’s permanency should be finalized;
- Whether reasonable efforts have been made for the safe return of the child to his or her home if plan is reunification;
- Whether reasonable efforts have been made to place the child timely in accordance with permanency plan other than reunification;
- Whether child who is 14 or older is receiving services to assist in the transition from foster care into adulthood;
- Whether reasonable efforts have been made to place siblings together in same placement – whether temporary or permanent;
- For siblings who are not placed together, whether there is frequent visitation or ongoing interaction;
- Whether the visitation plan with the parent should be modified
- Whether a concurrent plan is necessary;
- Whether additional services, reports, evaluations or assessments are needed to ensure the safety of the child;
- Whether, during the 90 day period immediately prior to the date the child will attain 18 years of age, DHS and other representatives of the child are providing the child with assistance and support in developing an appropriate transition plan that is personalized at the direct of the child, that includes housing, health insurance, education, mentors, employment, work force supports, and other continuing support services as the child may elect;
- Whether the child should be returned to parent(s) and whether the health, safety and welfare of the child can be protected by the parents(s).

## **7E. CONTENT OF REPORTS REQUIRED FOR REVIEW HEARINGS**

[10A OS §1-4-808](#)

1. DHS or agency/individual having custody of the child must prepare and submit a written report for each review. It should include, in part:
  - Summary of child's physical, mental and emotional conditions;
  - Education progress of child;
  - Visitation exercised between parent(s) and child;
  - What transition services are being provided to a child age 14 or older to assist toward successful independent living;
  - Parent's compliance with the ISP;
  - Changes that parents still need to make to ensure the safety of their children in the home;
  - Services and assistance previously offered and services needed in the future;
  - Efforts to locate parents and involve them in planning for their child;
  - Description of placements of child with entry and exit dates;
  - Appropriateness of child's current placement;
  - Proposed timetable for trial reunification or other permanency placement.
  
2. DHS is required to make certain specific recommendations regarding the placement of the child with specific reason whether:
  - Trial reunification should be approved;
  - Trial reunification to be continued to a date certain;
  - Child should remain outside of the home;
  - Child should be placed outside of the home; or
  - Child should remain in current placement when permanency plan is other than reunification.
  
3. Reports may be submitted by the child's attorney, the foster parents, and the GAL to assist the court in reviewing the placement or status of the child.

## 8. PERMANENCY HEARINGS

“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)

A permanency hearing is fundamentally different than a review hearing. A review hearing confirms and can modify a case goal. A permanency hearing makes a long-term decision for a foster child. A permanency hearing results in a definitive and binding decision about the final direction of the case. Permanency hearings are only applicable to children in foster care.

A permanency hearing takes place after a child has been placed in foster care for a statutorily defined length of time. The purpose of a permanency hearing is to decide whether the child should return home and if not, what the permanent placement for the child should be.

## **A. TIME FRAME**

### [10A OS §1-4-811\(B\)](#)

A permanency hearing may be held concurrently with a dispositional hearing or review hearing. The court is required to conduct the hearing no later than:

- 6 months following the child entering “out-of-home placement” and every 6 months thereafter.
  - A child enters “out-of-home placement” on the earlier of:
    - The adjudication date, or
    - The date that is 60 days after the date of removal from the home.

### [10A OS §1-4-811\(A\)\(2\)](#)

- 30 days after a judicial determination that reasonable efforts to help a child safely return home are not required.
  - See 10A OS §1-4-809 or conditions that do not require reasonable efforts be made for a child to return home.

### [10A OS §1-4-908\(A\)](#)

- Within 30 days when parental rights are not terminated as a result of a trial.

**B. PARTICIPANTS**

- Foster parent, preadoptive parent, or relative providing care for a child is entitled to notice of permanency hearing.
- Foster parent, preadoptive parent, or relative providing care for a child is entitled to be heard.
- Participants are not statutorily considered a party to the deprived proceedings solely because of notice and the right to be heard.
- Notice is provided to the participants by OKDHS.

### **C. PRE-HEARING STAFFING**

[10A OS §1-4-810\(A\)\(1\)](#)

If a child has been in out-of-home care for 12 months or longer, the court may require OKDHS 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.

- To occur no later than thirty (30) days prior to the permanency hearing.
- Judicial case managers, CASA or GAL can make the arrangements for the meeting.
- Consensus recommendation shall be reported to and reviewed by the court at the permanency hearing.

## **D. DECIDING ALTERNATIVES**

Federal and state law provides four (4) permanent placement options for children. The health, safety and best interest of the child is the paramount concern in making the placement decision.

10A OS 1-4-811(E)

1. Return Child to Parent or Guardian

If a parent is working diligently on reunification, return home is the preferred option.

2. Adoption

If a child cannot be safely returned home, adoption is the preferred placement because it gives the child a sense of belonging to a stable family, it ends the need for OKDHS oversight, and it is the most permanent option.

3. Guardianship

Guardianship allows a person to make major life decisions affecting a child. This allows the guardian to have complete control of the child's care without OKDHS oversight. Guardianship is preferred when the child has bonded with a caretaker, but the caretaker does not want to adopt the child, or it would harm the child to terminate parental rights and pursue an adoption.

4. Other Planned Permanent Living Arrangements

An alternate planned permanent living arrangement is meant to be a permanent placement of the child provided the child is age sixteen (16) or older. This option is appropriate when there is a specific, long-term placement for the child. Long term foster care is not an option under state or federal law. This option requires court reviews every ninety (90) days until it is finally determined that other permanent family-like living options are not possible.

This option may be appropriate for children who need group, restrictive, institutional, or residential care over an extended period of time. However, this permanency goal should only be accepted if there is no other possibility a child, age 16 or older, can be connected to a caring family.



## **E. CONTENTS OF REPORT REQUIRED FOR PERMANENCY HEARINGS**

1. OKDHS prepares the report.
2. The report is required to be provided to court and parties not less than 3 judicial days prior to the permanency hearing.
3. The report should include, in part:
  - Proposed permanency plan;
  - Efforts by OKDHS to effectuate the plan;
  - Address permanent placement options;
  - Efforts and progress made by parents to complete the ISP;
  - Status of the child, including behavioral, physical and emotional health;
  - Recommendation whether current permanency goal should be continued or modified.
    - Set out reasons why, and
    - Anticipated date for meeting the permanency goal.
  - Recommendation regarding whether the placement should be extended and why.
4. Attorneys, foster parent, PARB Board member, GAL, or CASA may submit additional informational reports to the court.

**F. EVIDENCE**

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;
- Written reports submitted by OKDHS, relevant treatment agencies and any of the parties or participants.

All parties may be permitted to cross-examine witnesses and the court is not bound by the rules of evidence.

Transcript shall be made of each hearing OR memorialized by written findings of facts by the court.

## **G. COURT FINDINGS**

- Whether the permanency plan of the child remains appropriate.
- Whether a change of plan is necessary.
- The date by which the goal of permanency is scheduled to be achieved.
- Whether the current placement continues to be most suitable for the health, safety and welfare of the child.
- Whether the child, if age appropriate, agrees with the permanency plan.
- Whether the child, age 14 or older, is receiving appropriate planning for the transition of the child to a successful adulthood.

## **8H. COURT ORDERS**

1. One of the following is determined to be the permanency plan for the child:
  - a. Reunification with the parent(s) or legal guardian where reunification within a specified time frame consistent with the developmental needs and safety of the child;
  - b. Placement for adoption after the petition or motion to terminate parental rights has been filed or after the parental rights has been terminated;
  - c. Permanent guardianship; or
  - d. Legal custody of DHS under a planned permanent placement:
    1. This permanency plan is only available to a child age 16 or older. DHS must document compelling reasons at each hearing that include intensive ongoing, and, as of the date of the hearing, unsuccessful efforts made to:
      - a. return the child home, or
      - b. place the child with a fit and willing relative, including adult siblings, a legal guardian, or an adoptive parent, and
      - c. find biological family members for the child utilizing search technology, including social media.
    2. DHS shall also document at each permanency hearing the steps taken, including inquiry of the child, to ensure that:
      - a. the foster family home of the child or facility where the child is placed is following the reasonable and prudent parent standard, and
      - b. the child has regular, ongoing opportunities to engage in age-appropriate or developmentally appropriate activities.
    3. The court shall at each permanency hearing:
      - a. ask the child what permanency outcome he/she desires, and

b. make a judicial determination, as of the date of the hearing, why a planned alternative permanent placement is the best plan for the child.

i. the court should also note current compelling reasons why it continues to not be in the best interests of the child to return home, be placed for adoption or with a legal guardian or with a fit and willing relative.

2. Additional Findings:

a. Whether DHS has made reasonable efforts to finalize the permanency plan that is in effect for the child and summarize the efforts made.

1. Pursuant to ICWA, a finding and summary of active efforts Made by DHS should be made instead.

b. Whether the out-of-home placement continues to be appropriate and in the best interests of the child;

c. 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; and

d. Whether reasonable efforts have been made to place siblings together or provide for frequent visitation or other ongoing interaction when not placed together.

e. Any other orders to ensure timely implementation and finalization of the permanency plan.

## 9. TRIAL HOME REUNIFICATION

[10A OS §1-4-806](#)

There is no statutory or regulatory definition of the term “trial home reunification.” However, federal regulations state that “[i]n practice, a trial home visit is intended to be a short term option in preparation for return the child home permanently”.

65 FR 4056

OKDHS may continue to receive Title IV-E monies for children who are at home with their parents during trial home reunification. Trial home reunification can be for no more than six (6) months unless the court authorizes them for a longer period. The court order must explicitly extend the trial home reunification – a continuance is not sufficient.

45 CFR §1356.21(E);  
65 FR 4056.

If the trial home reunification exceeds six (6) months without court authorization, then the child’s return to foster care is considered a new placement – which will require a new “contrary to welfare” and “reasonable efforts to prevent removal” findings.

45 CFR §1356.21(l)(i)(C)

Trial home reunification should **not** be counted in calculating the 15-month period in foster care that triggers termination of parental rights provisions.

**A. STATUS OF CUSTODY DURING TRIAL HOME REUNIFICATION**

DHS must conduct a criminal background check on every adult residing in the home.

DHS continues to have temporary legal custody of the child. Therefore, DHS is allowed to visit the child at home, school, daycare, or any other setting.

DHS shall continue to provide appropriate services to both the parent and child during the period of trial home reunification.

[10A OS §1-4-806\(3\)](#)

DHS shall be permitted to terminate the trial home reunification, *without court order or authorization*, in order to protect the child's health, safety or welfare and to place the child in foster care.

## **B. TERMINATION OF TRIAL HOME REUNIFICATION**

If the court orders or authorizes the termination of trial home reunification, then OKDHS prepares a written report describing the circumstance of the child during the period of reunification as well as providing recommendations regarding any necessary orders so to provide for the safety and stability of the child.

If the child was removed from the home and placed back in foster care without benefit of a court order or authorization, then the following must occur:

[10A OS 1-4-806\(B\)\(4\)](#)

- OKDHS shall advise the court and parties within three (3) judicial days of the removal;
- A report for the court shall be prepared by OKDHS describing the circumstances of the child during the trial home reunification. The report shall also make recommendations to the court regarding any necessary orders so to provide for the safety and stability of the child;
- The court is required to conduct a hearing within fifteen (15) days of receiving the notice of termination;
- At the conclusion of the hearing, the court must determine:
  - Whether continuation of the child in the home or with the child's parent is contrary to the welfare of the child, and
  - Whether reasonable efforts were made to prevent the removal of the child from the trial home reunification.

[10A OS §1-4-806\(C\)](#)

State law provides IV- E required foster care eligibility findings in all circumstances of removal to foster care to address those instances where trial home reunification exceeded 6 months without benefit of court authorization.



## 10. PERMANENT GUARDIANSHIP

45 CFR §1355.20(a)

A “legal guardianship” is defined as a judicially created relationship between the child and caretaker that is permanent and self-sustaining. It must transfer the child’s protection, education, care and control, custody, and decision making to the caretaker. The caretaker does not have to be a relative.

Legal guardianship should be evaluated as a permanency goal during the development of a case plan and is one of the enumerated permanency options to be considered during a permanency hearing. Neither Federal regulations nor State law establish a preference for adoption over guardianship.

[In the Matter of the Guardianship of SM, 172 P.3d 244 \(Okla.Civ.App.2007\)](#)

It is also contemplated by Federal regulation and State law that legal guardianship differs from “legal custody” by ensuring that the guardianship not be easily modified or changed. The guardianship was determined to be of a “permanent” and “self-sustaining” nature. However, permanent guardianship is not the equivalent of, and is less intrusive than, termination of parental rights.

## **A. CONDITIONS FOR ESTABLISHING GUARDIANSHIP**

- The child must be adjudicated to be a deprived child.
- The proposed guardian may be a relative or other individual.

The proposed guardian shall be denied for placement if:

1. He/she, or any adult living in the home, has been convicted of any of the following felony offenses:
  - Within the last 5 years preceding the motion date, a physical assault, battery, or a drug-related offense;
  - Child Abuse or neglect;
  - Domestic Abuse;
  - A crime against a child, including, but not limited to, child pornography; or
  - A crime involving violence, including but not limited to, rape, sexual assault, homicide, but excluding the assault and/or battery.
  - He/she is subject to the Oklahoma sex Offenders Registration Act or is living with an individual subject to the Oklahoma Sex Offenders Registration Act.
- The parent must have:
  - Voluntarily consented to the guardianship; or
  - Had his or her parental rights terminated; or
  - Failed to substantially correct the conditions that led to the adjudication of the child; or
  - Been adjudicated as incompetent or incapacitated by a court; or
  - Abandoned the child; or
  - Failed to be identified or has not been located despite reasonably diligent efforts to ascertain the identity and/or whereabouts of the parent; or
  - Died.
- The child must consent if the court finds that the child has the sufficient intelligence and understanding to provide consent.

- Adoption is not the permanency plan because termination of parental rights is either legally not possible or not in the best interests of the child.
- The guardianship does not require preventive services or court supervision in order to remain stable.
- The proposed guardian is committed to the child through reaching the age of majority.
- The child must have been placed with the proposed guardian for at least six (6) months, UNLESS the proposed guardian is a relative.
- The court must give primary consideration to the child's physical and behavioral health needs.

## **B. REQUIREMENTS FOR MOTION**

The District Attorney's Office or the child's attorney are the only parties that may file the Motion for Permanent Guardianship. The Motion must be verified, however, by the prospective guardian.

The Motion must set forth the following:

- The name, gender, and date of birth of the child.
- The facts and circumstances supporting the grounds for permanent guardianship.
- The name and address of the prospective guardian.
- A statement that the prospective guardian agrees to accept the duties and responsibilities of being a guardian.
- The relationship of the child to the prospective guardian.
- A statement that prospective guardian understands that the guardianship is intended to be permanent in nature and that the person will be responsible as guardian until the child reaches the age of majority.
- Whether the child has resided with the prospective guardian prior to the motion being filed, and, if so, the length of time and the circumstances surrounding the child's stay.
- Whether there exists a loving, emotional tie between the child and the prospective guardian.

Copies of the Motion with "Notice of the Hearing" is to be served on the parties, OKDHS, CASA, and tribe of the Indian child. Service is not required on the parent whose parental rights have been previously terminated.

### **C. HOME ASSESSMENT AND REPORT**

If the child is in OKDHS custody, OKDHS is responsible to complete an assessment of the proposed guardian's home. The form of the home assessment is dictated by OKDHS policy. An updated OKDHS resource home study may be used in determining the suitability of the proposed guardian.

Note: because the guardianship is intended to be permanent, it is intended that the assessment be comprehensive – similar to that of an adoption homestudy.

- If the child is not in OKDHS custody, then the proposed guardian is responsible to obtain the home assessment.

A written report shall be submitted to the court, the district attorney's office, the child, GAL, and Indian Tribe, if any, before the hearing. The report should provide, in part, the following information:

- The results of the home assessment;
- Determination whether the proposed guardian is suitable for the permanent placement of the child;
- Whether this guardianship is in the best interest of the child;
- Any additional information that the court may require in order to make an appropriate decision.

## **D. HEARING**

The court must find by clear and convincing evidence all of the following:

- The factual basis for parental unfitness or unavailability to provide adequate care for the child;
- That adoption is not the permanency plan for the child;
- That termination of parental rights is either not legally possible or not in the best interests of the child;
- That a permanent guardianship is in the best interests of the child; and
- The proposed permanent guardian is:
  - Emotionally, mentally, physically, and financially suitable to become the permanent guardian;
  - Has expressly committed to remain the permanent guardian for the duration of the child's minority; and
  - Has expressly demonstrated a clear understanding of the financial implications of becoming a permanent guardian.

If the Motion is granted, the court must order the parents to pay child support pursuant to child-support guidelines.

[43 OS §118](#)

The court may also enter the following orders, if in the best interest of the child:

[43 OS §119](#)

- Visitation with parent(s);
- Visitation with siblings;
- Visitation with relatives;
- Any other provision or condition necessary to provide for the child's continuing safety and well-being.

## **E. SUBSEQUENT HEARINGS**

The court must conduct a review hearing within one (1) year after the order approving permanent guardianship. The guardian may be required by the court to submit any records or reports for purposes of the review.

Subsequent review hearings are not required if all parties are in agreement that such review is not necessary to serve the best interests of the child.

DHS is divested of legal custody and supervision of the child.

The court may terminate its jurisdiction over the child at the conclusion of the one year review hearing. However, the guardianship remains in full force and effect and:

Controls over any prior custody or child support ordered prior to or during the pendency of the deprived action;

May be docketed and filed in a prior existing or pending administrative or district court action. If none exists, the surviving order may be used as the basis for opening a new district or administrative court action in the same county where the deprived action was pending or in a county where the permanent guardian of the child resides.

The court clerk of the juvenile court shall transmit the guardianship order to the court clerk where the order is to be filed along with the names and last-known addresses of the parents of the child. Without assessing a filing fee, the clerk shall assign a new case number and file the order and send by mail a copy of the order with the new or prior existing case number back to the juvenile court and to the parents of the child at their last-known address(es).

The order is not confidential and may be enforced or modified.

## **F. MODIFICATION OR TERMINATION OF PERMANENT GUARDIANSHIP**

[10A OS §1-4-711](#)

1. Statutory Basis for Modification or Termination:
  - The parent of the child is presently able and willing to properly care for the child;
  - The permanent guardian is unable to properly care for the child;
  - The child has been abused or neglected while in the care of the permanent guardian;
  - The permanent guardian is deceased; or
  - Other substantial change of material circumstances.

2. Who May File the Motion:
  - Permanent Guardian;
  - The child;
  - District Attorney.

Unlike the Title 30 guardianship, this statutory provision does not provide a provision for a parent to petition the court to terminate the permanent guardianship.

3. The court must appoint a GAL for the child.
4. Prior notice to parties and an opportunity to be heard must be given.
5. Burden of Proof:
  - clear and convincing evidence that there has been a substantial change in material circumstance, and
  - that a modification or termination of the permanent guardianship is in the child's best interests.
6. Necessary findings if the child is removed from the guardian's home:
  - That the home is contrary to the welfare of the child.
  - Whether reasonable efforts have or have not been made to prevent the removal of the child from the home.
    - Whether the absence of efforts was due to an emergency to preserve the welfare of the child.
7. Child returned to legal custody of DHS pending further hearing.
  - Where termination due to abuse, neglect, guardian's death or inability to care for child.
  - DHS develops new permanency plan.



- Permanency hearing conducted within 30 days from the date the guardianship is terminated.
8. Notification to parent that guardianship has been modified or terminated:
- Only if parental rights have not been terminated.
  - Parent entitled to attend and participate in permanency hearing.
9. Permanency Plan for Reunification if in the best interests of child.
- Court may order reunification services to be provided to parent(s);
  - May consider custody to parent(s) with DHS supervision IF:
    - Parent(s) can prove by preponderance of the evidence that prior conditions existing at the time of grant of guardianship have been substantially corrected, and
    - Reunification is best alternative for the child

1. Notification to parent that guardianship has been modified or terminated:
  - Only if parental rights have not been terminated.
  - Parent entitled to attend and participate in permanency hearing.
  
2. Permanency Plan for Reunification if in best interests of child.
  - Court may order reunification services to be again provided to parent(s);
  - May consider custody to parent(s) with OKDHS supervision IF:
    - Parent(s) can prove by preponderance of the evidence that prior conditions existing at time of grant of guardianship have been substantially corrected, and
    - Reunification is best alternative for the child.

### III. TERMINATION OF PARENTAL RIGHTS

Deprived child proceedings may result in the profound consequence of termination of parental rights. The legal effects of termination are substantial. After termination, a natural parent's custodial rights are completely abolished. The order of the court terminating parental rights divests the natural parent of all legal rights and privileges with respect to the child and dispenses with the necessity for consent to or notice of adoptive proceedings.

Because termination of parental rights proceedings affect the fundamental liberty interest of natural parents in the care, custody and management of their children, they raise both procedural and substantive due process concerns. The U.S. Supreme Court has identified a fundamental privacy interest in raising one's children. The Court called the right to conceive and raise one's children "essential" in *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). In *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944), the Court stated that "it is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." The Court held, in *Santosky v. Kramer*, 455 U.S. 745 (1982), that before a state may sever the rights of parents regarding their natural child, due process requires the state to prove its allegations by at least clear and convincing evidence.

## 1. CRITERIA

- A. The child must have been adjudicated to be deprived either prior to or concurrently with the termination hearing; AND
- B. Termination of parental rights must be found to be in the best interests of the child.
- C. Statutory Basis for Termination of Parental Rights:

### 1. **Voluntary Consent**

The consent must be in writing, signed by the parent under oath and recorded before a judge of a court of competent jurisdiction. The order must find that the terms and consequences of the consent was fully understood by the parent and that the consent was voluntarily and competently made.

The consent is effective when signed by the parent and may not be revoked except where shown by clear and convincing evidence that the consent was executed by reason of fraud or duress.

Where an Indian child is the subject of the proceeding, the consent of the parent may be withdrawn for any reason at any time prior to the entry of the final decree of termination. The consent of an infant must occur at least 10 days after the birth of the child to be valid.

25 U.S.C. § 1913

### 2. **Abandonment**

The parent's rights may be terminated where the parent has abandoned the child or infant.

[10A OS §1-4-902\(A\)\(2\);](#)

### 3. **Abandonment of an Infant**

The parent rights may be terminated where the parent has abandoned an infant.

10A OS 1-4-902(A)(3)

### 4. **Failure to Correct Conditions**

The parent's rights may be terminated where the parent has failed to correct the condition(s) that led to the adjudication of the child and the parent has been given at least 3 months to correct the condition(s). The conditions must have been identified by the court at adjudication and notice given to the parents regarding the specific conditions to be corrected.

[Matter of J.M., 858 P.2d 118 \(Okla.Civ.App.1993\)](#)

- It is error to terminate parental rights where the parent's failure to correct conditions is contributed to by agents to whom is entrusted the duty to help salvage the family relationship.

[In re K.C., 46 P.3d 1289 \(Okla.Civ.App.2002\)](#)

- Failure to comply with treatment plan, in itself, is not ground for termination of parental rights.

[Matter of B.M.O., 838 P.2d 38 \(Okla.Civ.App.1992\)](#)

- Termination of parental rights can only be on the finding that the parent failed to correct the very condition which led to the deprived adjudication.

- It is error on the court not to give the parent a clear statement either in the adjudicative order or the termination order of the conditions which led to the deprived adjudication which had not been corrected.

## **5. Failure to Support**

The parental rights of a non-custodial parent may be terminated if that parent has for at least six (6) of the 12 months immediately preceding the filing of the petition for termination of parental rights has willfully failed, refused or neglected to provide child support as either ordered by a court or based on the parent's financial ability to contribute to the child's support.

[10A OS §1-4-904.7\(a\)\(b\)](#)

- Incidental or token support shall not be considered.
- Where the custodial parent attempted to secret the child from the non-custodial parent and discouraged the payment of child support, trial court's refusal to terminate non-custodial parent's rights was proper
- Where the non-custodial parent is incarcerated and received a minimal stipend each month, the appellate courts have held that failure to provide child support was not willful and that the parent's financial ability to contribute was realistically non-existent.

[Coffee v. Taylor, 884 P.2d 547 \(Okla.Civ.App.1994\)](#)

[In the Matter of the Adoption of D.L.A., 62 P.3d 796 \(Okla.Civ.App.2003\)](#)

## **6. Convictions of Certain Enumerated Offenses**

A parent who has been convicted in any state of any of the following crimes may have his or her parental rights terminated to his or her child:

[10A OS 1-4-809\(8\)](#)

- Permitting a child to participate in pornography;
- Rape or Rape by Instrumentation;
- Lewd Molestation of a Child;
- Child Abuse or Neglect;
- Murder of any child or aiding or abetting, attempting, conspiring, or soliciting to commit murder of any child;
- Voluntary manslaughter of any child; Felony Assault that has resulted in serious bodily injury to the child or any child of the parents;
- Murder or voluntary manslaughter of the child's parent or aiding or abetting, attempting, conspiring, or soliciting to commit murder of the child's parent;
- Causing the death of a child as a result of physical or sexual abuse or chronic abuse or chronic neglect of a child;
- Causing the death of a sibling of the child as a result of the physical or sexual abuse or chronic abuse or chronic neglect of the child's sibling.

[Matter of D.D.F., 801 P .2d 703 \(Okla.1990\)](#)

The convictions must be “final” – that is, all appeals concluded.

7. **Heinous or Shocking Abuse or Neglect**

A parent who has abused or neglected the child or a sibling of the child that is heinous or shocking OR has failed to protect the child or a sibling of the child from abuse or neglects that is heinous or shocking.

- Once the trier of fact has determined that the child is deprived by reason of physical or sexual abuse, immediate termination of parental rights is permitted if the abuse is heinous and shocking, based on the same set of facts relied on at the deprived adjudication.

[In re C.L.M., 19 P.3d 888 \(Okla.Civ.App.2001\)](#)

8. **Subsequent Abuse of the Child**

A parent who has previously abused or neglected the child or a sibling of the child and that child or a sibling has been subjected to subsequent abuse by that parent may have his or her parental rights

10A OS 1-4-904(10)

terminated. This is also true for the parent who has failed to protect the child or sibling and that child or sibling is subsequently abused.

**9. Rape**

When a child is conceived by reason of rape, the man's parental is subject to termination.

10A 1-4-904(11)

**10. Incarceration**

A parent's incarceration is not, in and of itself, a sufficient basis to terminate that parent's rights. However, if the continuation of parental rights would result in harm to the child, then that parent's rights may be terminated. The following factors are to be considered in determining whether rights should be terminated:

- Duration of incarceration and detrimental effect on the parent-child relationship;
- Any previous convictions resulting in incarceration;
- Parent's history of criminal behavior, including crimes against children; Age of the child;
- Whether the parent abused/neglected, or failed to protect from abuse/neglect, the child or siblings of the child;
- The current relationship between parent and child;
- Manner in which the parent has exercised parental rights and duties in the past.

[In re B.C., 15 P.3d 8 \(Okla.Civ.App.2000\)](#)

[In re S.L., 76 P.3d 77 \(Okla.Civ.App.2003\)](#)

No minimum period for a parent's incarceration is required before the state can move for termination of parental rights.

[In re C.J., 121 P.3d 1119 \(Okla.Civ.App.2004\)](#)

**11. Incapacity**

A parent's rights may be terminated to a child based on extreme physical incapacity, or medical condition, cognitive disorder including behavioral health that renders the parent incapable of adequately and appropriately exercising parental rights and responsibilities within a reasonable time considering the age of the child. All of the factors must be determined to exist:

Professional testimony required, see e.g., [Matter of L.S., 805 P.2d 120 \(Okla.Civ.App.1990\)](#)

- Diagnosis of cognitive disorder, extreme physical incapacity, medical condition, or behavioral health condition including substance dependency;
- The disorder or condition renders the parent incapable of adequately and appropriately exercising parental rights, duties and responsibilities within a reasonable time period considering the age of the child; and
- Continued custody with the parent will cause the child actual or probable harm in the near future.
  - A diagnosed cognitive disorder, extreme physical incapacity, medical condition, behavioral health or substance dependency is not insufficient, without demonstrated harm, or potential harm, to the child, to terminate a parent's rights.

[Matter of J.N.M., 655 P.2d 1032 \(Okla.1982\).](#)

A parent's refusal or pattern of noncompliance with treatment, therapy, medical, or assistance is relevant evidence that the parent is incapable of adequately exercising parental rights, duties and responsibilities.

[Matter of Baby Girl Williams, 602 P.2d 1036 \(Okla.1979\)](#)

A parent's confinement in a hospital (whether medical or psychiatric), while necessitating that someone else have custody of the child, is insufficient to terminate that parent's rights.

[In re C.R.T., 66 P.3d 1004 \(Okla.Civ.App.2003\)](#)

A termination for failure to correct conditions for which the child was adjudicated deprived cannot be predicated on a mental illness that will not respond to treatment if the failure to correct is a manifestation of the mental illness.

## **12. Prior Deprived Adjudication**

If a child or a sibling was previously adjudicated due to certain existing condition(s) and the parent was given an opportunity to correct the condition(s), and then in a subsequent deprived proceeding the child is adjudicated deprived based on the same condition(s), the parental rights of that parent may be terminated in the subsequent proceeding.

## **13. Substantial Erosion of Relationship Between Parent and Child**

The cause of the erosion of relationship must be related to the parent's serious or aggravated neglect of the child, physical or sexual abuse of the child, or the unreasonable absence of the parent



10A OS 1-4-904(B)(15)

from the child – including failure to visit or communicate in a meaningful way with the child.

**14. 15 of the Most Recent 22 Months**

10A OS 1-4-904(B)(16)

A parent's rights may be terminated to the child who is four (4) years of age or older at the time of placement and that child has been placed in foster care by DHS for 15 of the most recent 22 months preceding the filing of the petition/motion for termination. There must also be a finding that the child cannot be safely returned home.

The child is determined to enter foster care on the earlier of:

- The adjudication date, or
- 60 days after the date of removal from the home.

**15. 6 of the 12 months**

A parent's rights may be terminated to the child who is younger than four (4) years of age at the time of placement and has been placed in foster care by DHS for at least 6 of the 12 months preceding the filing of the petition/motion for termination. There must also be a finding that the child cannot be safely returned home.

The child is determined to enter foster care on the earlier of:

- The adjudication date, of
- 60 days after the date of removal from the home.

Considerations are:

- Circumstances of the failure of the parent to develop and maintain a parental bond with the child in a meaningful, supportive manner, and
- Whether allowing the parent to have custody would likely cause the child actual serious psychological harm or harm in the near future as a result of removal from the substitute caregiver due to a strong, positive bond between the child and the caregiver.

**16. Previous Termination of Parental Rights**

If the parent has had his or her parental rights involuntarily terminated to another child and the conditions that led to the prior termination have not been corrected, the rights to a subsequent child may also be terminated.

10A OS 1-4-904(B)(6)

## **2. EFFECT OF TERMINATION**

Termination of the parent-child relationship means that all parental rights and duties are extinguished.

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;
- 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.

### 3. ADDITIONAL FINDINGS

a) The child must be adjudicated to be deprived either prior to or concurrently with a proceeding to terminate parental rights; and

[10A OS §1-4-904\(A\)\(1\)](#)

b) Termination of parental rights is in the best interests of the child.

- There are instances wherein the elements required to terminate parental rights CAN be proven, however, “best interests” asks the trier of fact whether parental rights SHOULD be terminated.

[In re PS, 87 P.3d 1110 \(Okla.Civ.App.2004\)](#)

- Jury should be advised of necessity to find, by clear and convincing evidence, that it is in the child’s best interests that the parental rights be terminated.
- The court, in its order, should specifically find that termination is in the best interests of the child.

#### 4. SPECIAL ISSUES

See: Teri L. Mosier, "Trying to Cure a Seven-Year Itch": The ADA Defense in Termination of Parental Rights Actions, 37 Brandeis L.J. 785 (1998-1999).

25 U.S.C. § 1912(f)

[10A OS §1-4-904\(B\)\(4\)](#)

- a) Most courts have held either that the Americans with Disabilities Act (ADA) does not apply to child welfare proceedings or that it does not add anything to the reasonable efforts requirement. This is because the focus of the proceedings is the child's welfare and need for basic level of care.
- b) For an Indian child, a qualified expert must testify that continuing custody with the parents would result in serious emotional or physical damage to the child, and the Court must find that OKDHS made "active efforts" to reunify the family.
- c) Parents who voluntarily place their child with OKDHS may have their rights terminated. There must be a finding that they have not complied with the placement agreement and that they have not demonstrated a firm intention to resume physical custody of their child or to make legal arrangements for the care of the child.

#### 4.1 AGGRAVATED CIRCUMSTANCES

A. There are certain circumstances where the court may determine, based on the preponderance of the evidence that reasonable efforts to prevent the removal of a child from home or to reunify the child and family are not required:

1. The parent has abandoned an infant (i.e., age 12 months or younger);
2. The parent has:
  - Committed murder or manslaughter of any child,
  - Aided or abetted, attempted, conspired or solicited to commit the murder or manslaughter of any child;
  - Committed a felony assault upon any child that resulted in the child receiving serious bodily injury;
  - Subjected any child to aggravated circumstances including, but not limited to, heinous and shocking abuse or heinous and shocking neglect;
3. The parental rights of a parent to the child's sibling have been involuntarily terminated;
4. The parent has been found to have committed sexual abuse against the child or another child of the parent; or
5. The parent is required to register with a sex offender registry pursuant to Section 113(a) fo the Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C., Section 16913(2).

B. A permanency hearing is required within thirty (30) days of the determination by the court that any of the conditions exist.

C. The court's finding that any one of the conditions exist permits DHS to make reasonable efforts to finalize the permanency plan of adoption or guardianship immediately without assisting the parents in correcting any conditions found to have contributed to the child's status as a deprived child – which may be the statutory basis for the expedited termination of parental rights.

## 5. FILING OF PETITION OR MOTION TO TERMINATE PARENTAL RIGHTS

A. Mandatory Filing Petition or Motion: both the district attorney and child's attorney have standing to file a petition /motion for termination of the parent-child relationship. However, the district attorney is required to join in the petition/motion if filed by the child's attorney in the following circumstances and within the mandatory time frames:

1. No later than sixty (60) days where
  - The child has been judicially determined to be an abandoned infant;
  - After the court has determined that reasonable efforts to reunite are not required due to a felony conviction of a parent of any of the following acts:
    - i. permitting a child to participate in pornography;
    - ii. rape, or rape by instrumentation;
    - iii. lewd molestation of a child under 16 years of age;
    - iv. child abuse or neglect;
    - v. enabling child abuse or neglect;
    - vi. causing the death of a child as a result of physical or sexual abuse or chronic abuse or chronic neglect of the child.
    - vii. causing the death of a sibling of the child as a result of the physical or sexual abuse or chronic abuse or chronic neglect of the child's sibling;
    - viii. murder of any child or aiding or abetting, attempting, conspiring in, or soliciting to commit murder of any child;
    - ix. voluntary manslaughter of any child;
    - x. felony assault that has resulted in bodily injury to the child or another child of the parent;
    - xi. murder to voluntary manslaughter of the child's parent or aiding, abetting, attempting or conspiring in, or soliciting to commit murder of the child's parent.
2. After 90 days where the court has ordered an ISP and the parent has made no measurable progress in correcting the conditions.
3. Prior to the end of the 15<sup>th</sup> month where a child has been placed in foster care by DHS for 15 of the most recent 22 months.
4. The remaining 1-4-904 basis for termination that is not listed above, may be filed at the district attorney's or child attorney's discretion.

[10A OS 1-4-902:](#)

42 USC 671 (a)(15)(D)

[10A OS 1-4-902\(A\)\(1\):](#)

42 USC 675 (5)(E)

B.

Exception to Mandatory Filing of Petition/Motion: if any of the following conditions exist, the district attorney is not required to file a petition/motion as set forth in paragraph A of this section:

[10A OS 1-4-902\(B\)](#)

1. The child is placed with a relative and is being properly cared for;
2. DHS has documented that terminating parental rights would not serve the best interests of the child, in consideration of any of the following circumstances:
  - a. the parents have maintained a relationship with the child and the child would benefit from continuation of the relationship;
  - b. a child, 12 years or older, objects to the termination of parental rights.
  - c. the foster parents are unable to adopt the child because of exceptional circumstances but are willing to continue to provide a stable and permanent home for the child and removal of the child from the foster parents would be seriously detrimental to the emotional well-being of the child due to substantial psychological ties to the foster parents;
  - d. the child is incapable of achieving stability if placed in a family setting; or
  - e. the child is an unaccompanied, refugee minor and the situation regarding the child involves international legal issues or compelling foreign policy issues.
3. The state has not made reasonable efforts, if required, to provide services necessary for the safe return of the child to the parent's home.

5.1

**NOTICE OF PETITION/MOTION, CONSENT, VACATION OR  
CONSENT ORDER**

[10A OS 1-4-905](#)

A. The parent must be served with notice of the date, time and place of the termination hearing along with a copy of the petition/motion to terminate parental rights.

1. Personal service, certified mail, or publication is required.

2. The notice must contain the following language:

“FAILURE TO PERSONALLY APPEAR AT THIS HEARING CONSTITUTES CONSENT TO THE TERMINATION OF YOUR PARENTAL RIGHTS TO THIS CHILD OR THESE CHILDREN. IF YOU FAIL TO APPEAR ON THE DATE AND TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE CHILD OR CHILDREN NAMED IN THE PETITION OR MOTION ATTACHED TO THIS NOTICE.”

3. Notice must be given at least 15 days prior to the termination hearing.

4. Notice must provide that the child support remains an obligation until such time the child is adopted.

B. Default: A parent who has been properly noticed to the termination of parental rights hearing at a date and time certain and subsequently fails to appear for the hearing will be deemed to have “consented” to the termination of his/her parental rights.

1. Exception: where the parent’s attorney has been advised by his/her client to proceed *in absentia* at trial.

C. Vacation of Consent Termination Order: the court may vacate a termination order pursuant to following procedure:

1. The parent must file a Motion to Vacate within 30 days after the termination order has been filed with the court.

Failure of parent to appear at the pre-trial conference did not result in default termination of parental rights. Parent’s attorney was present and the notice was directed to the non-appearance for the jury trial. Matter of H.R.T., 2013 OK CIV APP 114.



2. Notice of the motion and hearing date must be given to all parties and attorneys.

3. The parent has the burden of proving that his/her failure to appear for the hearing was due to:

- a. no actual notice of the hearing; or
- b. unavoidable casualty or misfortune that prevented the parent from appearing in court or contacting his/her attorney.

## 5.2 TRIAL

A. Jury Trial: The parties are entitled to a jury trial on the issue of termination of the parent child relation.

1. The jury is comprised of six (6) individuals.
  - Five (5) of the six (6) jurors must agree on the verdict.
2. A jury trial cannot be denied absent an express, voluntary waiver by the parties.
  - Exception: where a party fails to appear in person for the trial, after proper notice and without good cause, the termination of parental rights shall be tried by nonjury trial unless otherwise demanded by another party or on the court's own motion to try the case to a jury.

[10A OS 1-4-502](#)

B. Burden of Proof: Termination of parental rights must be proven by clear and convincing evidence. The burden falls on the State of Oklahoma and/or the Child, if the child's attorney filed the petition/motion.

C. Teleconference Communications: The court may authorized that a parent or child participate in the trial by means of interactive telecommunications.

### 5.3 **DUE PROCESS ISSUES**

A. The only absolute due process requirements in a termination case are: prior notice of the hearing, an opportunity to be heard and the right to effective assistance of counsel.

1. An incarcerated parent does not have an absolute constitutional right to be present at the termination trial, if through the exercise of reasonable diligence his presence cannot be secured within a reasonable time period and alternate effective procedures are available to protect his/her fundamental right to “meaningful access” and an opportunity to defend.
2. The Sixth Amendment’s right to confrontation is not applicable to termination proceedings as it is not a criminal proceeding. However, a reasonable opportunity should be given the parent to confront or cross-examine witnesses.
  - a. A parent should not be excluded from the courtroom during his/her child’s testimony absent a showing at a hearing that the child would suffer significant emotional harm caused by the parent’s presence. In addition, the trial court should normally adopt alternative procedures to ensure the efficacy of the absent parent’s cross-examination of the child.

**6. FAILURE TO TERMINATE 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.

## 7. CONTENTS OF 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;
- 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;
- That termination of parental rights is in the best interests of the child.
- If ICWA is applicable, then the court must set out findings that are in compliance with ICWA

[Matter of M.D.R., 50 P.3d 1160 \(Okla.Civ.App.2002\)](#)

[Matter of L.S., 805 P.2d 120 \(Okla.Civ.App.1990\)](#)

[Matter of E.M., 976 P.2d 1098 \(Okla.Civ.App.1999\);](#)

[Matter of B.M.O., 838 P.2d 38 \(Okla.Civ.App.1992\)](#)

Rule 8.2, Rules for District Courts of Oklahoma, 12 O.S. Supp. Ch. 2, App. 1.; Matter of M.D.R., 50 P.3d 1160 (Okla.Civ.App.2002)

8. **PLACEMENT OF CHILD AND AUTHORITY TO  
CONSENT TO ADOPTION**

[10A OS 1-4-907](#)

Upon the termination of parental rights, the court may place the child with 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 with DHS, it shall 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.

Jurisdiction of the court terminates upon a final decree of adoption.

Richard Brown, Disinheriting the  
“Legal Orphan”: Inheritance  
Rights of Children after  
Termination of Parental Rights,  
70 MO.L.REV. 125 (2005)

## **8. REINSTATEMENT OF PARENTAL RIGHTS**

For children who could 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.

## **A. APPLICATION**

1. Who may request:
  - a. The child who was previously found to be a deprived child and
    1. Who is at least 15 years of age at the time the application is filed, and
    2. Who has not achieved his or her permanency plan within three (3) years of a final order of termination; and
    3. Whose parent's rights were previously terminated.
2. The child must be represented by counsel during the proceedings.
3. The application must be signed by the child and the child's attorney.

Premised on legislative intent that a child achieve 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. *Matter of TH, 348P.3d 1089 (OK 2015)*



## **B. PRELIMINARY HEARING**

The court must conduct a preliminary hearing to consider the parent's fitness and interest in reinstatement of parental rights.

Burden of Proof: preponderance of the evidence that it is in the child's best interest that parental rights be reinstated.

- If the finding is made that it is in child's best interest to reinstate parental rights, a hearing on the merits is scheduled.
- If a finding is made that it is not in child's best interest to reinstate parental rights, the application is denied and the matter is concluded.

### **C. NOTICE OF HEARING ON MERITS**

The court is responsible for [providing the Notice of Hearing on Merits to:

- OKDHS
- Child's attorney
- Child

The court requires OKDHS or child's attorney to notify the following of the hearing on merits:

- Parent whose parental rights are the subject of the application;
- Current foster parent or relative guardian of the child;
- GAL, if any;
- Child's tribe, if applicable.

The matter is dismissed if the parent cannot be located.

#### **D. NECESSARY FINDINGS FOR CONDITIONAL GRANT**

Court must find by clear and convincing evidence that:

- The child has not and is not likely to imminently achieve the permanency goal as evidenced by:
  - Information provided by OKDHS related to any efforts to achieve the permanency plan including efforts to achieve adoption or a permanent guardianship.
  
- That reinstatement of parental rights is in the child's best interest by consideration of the following:
  - Whether the parent is a fit parent by virtue of having remedied the conditions that existed at the time parental rights were terminated;
  - The age and maturity of the child and the ability of the child to express his or her preference;
  - Whether reinstatement of parental rights will present a risk to the health, safety or welfare of the child; and
  - Other material changes in circumstances, if any, that have occurred which warrant the granting of the application.

## **E. TEMPORARY ORDER OF REINSTATEMENT**

Upon the condition grant of the application, a temporary order is entered and the case continued for six (6) months.

- The child is placed with the parent;
- OKDHS develops a permanency plan for reunification; and
- Provides or ensures necessary transition services to the family.

## **F. REMOVAL OF CHILD**

If the child is removed from the parent due to allegations of abuse or neglect prior to the final order of reinstatement being entered, then the court must dismiss the application for reinstatement if the court finds the allegations have been proven by a preponderance of the evidence.

[10A OS §1-4-909\(D\)\(2\)](#)

## **G. FINAL ORDER OF REINSTATEMENT**

The final Order of Reinstatement is entered by the court when:

- The child has been placed with the parent for (6) months, and
- The placement has been successful.

The Order of Reinstatement restores all rights, powers, privileges, immunities, duties and obligations of the parent to the child, including those relating to custody, control and support of the child.

The deprived case is closed.

Certified copy of the Order of Reinstatement is provided to the parent at no cost to the parent.

It does not vacate the original order of termination of parental rights.

- The Order of Reinstatement acknowledges that the conditions of the parent and child have changed since the time of the termination proceedings, and
- That reunification is now appropriate.

## **H. RETROACTIVITY OF STATUTE**

Retroactivity of statute is explicitly provided for and applies to any child who is a ward of the court as a deprived child at the time of the final order of reinstatement regardless of the date when parental rights were terminated.

[10A OS 1-4-909\(L\)](#)

**IV. OTHER PROCEDURAL CONSIDERATIONS**

The Children's Code provides for procedures that may be utilized at any part of the proceedings such as use immunity, discovery, settlement conferences, mediations, family group conferences and provisions for Family Drug Courts. Although not mandated, these tools are provided to the Court for effective resolution of issues that may arise in a deprived child proceeding.



## 1. USE IMMUNITY

[10A OS §1-4-508](#)

See, e.g., [Kastigar v. US, 406 U.S. 441, 92 S.Ct. 1653, 32 L.Ed.2d 212 \(1992\)](#)

Use immunity is expressly provided for in the Children's Code to protect a parent or legal guardian from the use of compelled testimony and evidence derived therefore in any criminal proceeding. It does not provide a parent or legal guardian with a defense to a subsequent prosecution for perjury if he or she testifies falsely. Likewise, the parent or legal guardian may be held in contempt if he or she fails to answer questions as ordered.

It has also been held that if the information given by the parent or legal guardian is untruthful, there is no immunity since the basis for the grant of immunity is frustrated.

Use immunity not only protects statements that could be directly incriminating, but also protects testimony that would furnish a link in the chain of evidence needed to prosecute the crime.

## **A. PURPOSE**

*Ramona R. v. Superior Court*, 693 P.2d 789 (Cal.1985)

The use immunity protects the privilege against self-incrimination. Without the immunity, a parent may be forced to choose between incriminating himself or having little chance of complete reunification with his child. “To force an individual to choose...such unpalatable alternatives runs counter to our historic aversion to cruelty reflected in the privilege against self-incrimination.” Therefore, providing use immunity from criminal prosecution may be a necessary condition to compelling potentially incriminating statements as an inducement for full cooperation and disclosure during juvenile deprived proceedings.

## **B. IMPEACHMENT**

The issue presented with 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.

[New Jersey v. Portash, 440 US 450 \(1979\)](#)

[10A OS §1-4-508](#)

**C. WHO MAY APPLY FOR USE IMMUNITY**

The parent or guardian, child's attorney, or district attorney's office may apply for use immunity.

#### **D. DOCUMENTS**

The immunity may apply, if requested, to any records, documents, or other physical objects produced by the parent or legal guardian in the deprived proceeding the production of which is compelled by the court.

## **E. THERAPY**

Immunity may be applied to any statement made by the parent or legal guardian during the course of a court-ordered psychological evaluation or treatment program.

**F. DOES NOT APPLY**

[10A OS §1-4-508\(A\)\(3\)](#)

Immunity does not attach to statements made by the parent or legal guardian to OKDHS during the course of an investigation.

## **2. DISCOVERY**

The Oklahoma Discovery Code and District Court Rules addressing general case management do not generally apply to juvenile deprived proceedings, unless ordered by the court.

The Court may order the following information to be exchanged between the parties:

- Assessment and investigation reports;
  - Identification of the reporter should be redacted.
- Law enforcement reports;
- Any video or audio recording of the child's interview;
- Any exhibit either party intends to introduce at trial;
- Names of witnesses the party may call as well as a synopsis of the witness' testimony; and
- Any other information that may lead to relevant evidence.

The court may not order discovery of work product or privileged information.

All information produced, exchanged or used is confidential and subject to a protective order. Use or disclosure for any other purpose is prohibited by law.



### **3. PRE-TRIAL HEARINGS**

[Matter of L.C., 962 P.2d 29  
\(Okla.Civ.App.1998\)](#)

Due process does not require formal pretrial conferences and scheduling orders prior to child's adjudication as deprived and termination of parental rights since the action is a special proceeding rather than a pure civil proceeding.

[10A OS §1-4-401\(C\)](#)

The court may, however, enter a scheduling order, conduct pretrial conferences and order mediation, status and settlement conferences as a matter of discretion.

#### **4. JURY TRIAL**

[10A OS §1-4-502](#)

A parent, state or child has the right to request that a jury determine whether parental rights should be terminated. Jury trials are not available to determine the deprived status of a child.

The court, on its own motion, may call a jury to try the case.

The demand for a trial by jury is to be granted unless expressly waived by the party or the party's attorney. However, when one party waives his or her right to a jury trial, another party may continue to request the jury trial.

The jury consists of six (6) persons. Five (5) of the jurors must agree with a verdict. Each party is entitled to three (3) preemptory challenges.

[28 OS §162\(A\)](#)

Jury fees are assessed when jury trial is requested.

## 5. MEDIATION

Mediation is a confidential process in which a specially trained neutral person (mediator) helps the family, social worker, attorneys, and other people in a case talk about and work out the problems that were referred to mediation by the court. The goal is to come up with a plan which everyone agrees is safe and best for the children.

- The mediator cannot make decisions for the people in mediation and does not make any recommendations to the court.
- Research shows that most family members and professionals agree that mediation is usually a better way of working out disagreements and problems than going to trial.

### Who Participates:

Mediation usually includes the parents as well as other involved family members and individuals, the social worker, the CASA if one has been appointed, and all of the involved attorneys. Children may also participate in one form or another if it is likely to be helpful and if the children's attorney agrees.

### Issues Discussed:

Any issue may be sent to mediation. Examples are:

- The placement
- Return of the child
- Visitation
- Permanency plan of the child

### Confidentiality:

Confidentiality means that no one can tell the court what was said except to report the areas of agreement and disagreement. However, if a mediator reasonably suspects that a new act of child abuse or neglect has occurred, or if anyone threatens to harm self or others, the proper authorities will be informed.

## **6. FAMILY GROUP CONFERENCING OR FAMILY TEAM MEETING**

“ ‘Family team meeting’ means a structured, facilitated meeting among all possible family members and a case specific multidisciplinary team including tribes, as applicable, to collaboratively create plans that effectively address safety, permanency and well being; also referred to as family group decision making, family group conferencing, or team decision making.”OKDHS Policy 340:75-6-4

The process has four main stages, which includes a meeting where professionals inform the family of the concerns they have, followed by private family time, where the family alone develop a plan that addresses the concerns that have been raised. The plan is then presented to the professionals who should support it if the concerns have been addressed and it does not put the child at risk. To allay concerns, the program allows social work professionals or the court to veto family decisions that place the child in jeopardy. However, in practice, program staff report that family decisions are rarely vetoed.

The model is designed to involve the entire family in making decisions about the best interests of children at risk for abuse and neglect, and while often implemented to address child protection issues, the practice has proven to be effective for permanency planning as well.

## **7. SETTLEMENT CONFERENCES**

Another option for resolving issues arising in cases, especially in areas without mediator services, is the settlement conference or team decision-making. The court requires all parties and counsel to meet and discuss the issue(s) in an attempt to reach a mutual resolution. However, any resolution agreed to by the parties is not necessarily binding upon the court.

[10A OS §1-4-504](#)

## **8. IMMIGRATION CONSIDERATIONS**

There are provisions in the Immigration and Nationality Act (INA) aimed at providing routes to legal permanent residence for certain classes of undocumented children. A child who has been abused, neglected, or abandoned and whose long-term foster care can be arranged through state custody may become eligible for permanent residence as a “special immigrant.” Those working in the court systems are in a unique position to identify and assist undocumented minors eligible for these forms of relief.

[INA §101\(a\)\(27\)\(J\); 8 USC §1101\(o\)\(27\)\(J\)](#)

## **A. SPECIAL IMMIGRANT JUVENILE STATUS**

Regardless of immigration status, any abused or neglected child is eligible for certain services, including foster care placement. An undocumented child who is eligible for long-term foster care can be granted Special Immigrant Juvenile Status (SIJS) and become immediately eligible to file for permanent residency in the United States.

## **i. ELIGIBILITY**

The court must make the following findings in a special SIJS order before an administrative action requesting status can be filed:

- The child is under the jurisdiction of the court. This includes children in delinquency or deprived proceedings.
- The child must be eligible for long-term foster care due to abuse, neglect or abandonment.
- The child must have a permanency plan other than reunification. This specifically means the court must find that “family reunification is not a viable option” and that the child will go on to foster care, adoption or guardianship.
- It is not in the child’s best interest to return to his or her country of origin based on documentation pertaining to the home country and/or testimonial evidence.

[INA§101\(a\)\(27\)\(J\)\(i\); 8 USC §1101\(a\)\(27\)\(J\)](#)

[INA §101\(a\)\(27\)\(J\)\(ii\);](#)



## **ii. APPLICATION**

Application for SIJ status can either be:

- Asserted defensively for a child against whom ICE has commenced removal proceedings; or
- Asserted affirmatively for a child who is eligible for SIJ status but is not in removal proceedings.

Before submitting the application, it is important to evaluate the possible risk of deportation if the case is not approved.

### **iii. ADDITIONAL REQUIREMENTS**

See: Matter of Perez Quintanilla  
USCIS AAO Adopted Decision  
07-0005 (June 7, 2007)

These requirements should be met but do not need to be included in the court order:

- The child must be under 21 and unmarried.
- The court must continue jurisdiction. It cannot vacate, dismiss, terminate or otherwise end the judicial proceeding. Jurisdiction must continue until the child obtains permanent residence.

[10A OS §§1-4-712 et seq](#)

## **9. FAMILY DRUG COURT**

The success of the adult drug court provided inspiration for professionals struggling with the onslaught of child abuse and neglect resulting from substance abuse by parents. They drew on the concept of collaboration between the criminal justice and drug treatment fields and combined this with the best aspects of family and juvenile court practices. What emerged were the family dependency treatment courts. A family dependency treatment court is a court devoted to cases of child abuse and neglect that involve substance abuse by the child's parents or other caregivers. Its purpose is to protect the safety and welfare of children while giving parents the tools they need to become sober, responsible caregivers. To accomplish this, the court draws together an interdisciplinary team that works collaboratively to assess the family's situation and to devise a comprehensive case plan that addresses the needs of both the children and the parents. In this way, the court team provides children with quick access to permanency and offers parents a viable chance to achieve sobriety, provide a safe and nurturing home, and hold their families together.

[www.okbar.org/obj/articles07/110307hicks.htm](http://www.okbar.org/obj/articles07/110307hicks.htm)

## Indian Child Welfare Act

### A. History.

After decades of removal of Indian children from tribal homes and accompanying placement of those children in non-tribal foster homes, adoptive homes, boarding schools and other institutions, Congress decided to act in 1978 by approving the Federal Indian Child Welfare Act while making a Congressional finding “that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them ... and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions;” 25 U.S.C. § 1901 (4). Indeed, Congress found that there was a “wholesale separation of Indian children from their families.” H. Rep. 95-1386 (July 24, 1978), at 9. Six years later, Oklahoma approved its version of the Indian Child Welfare Act.

### B. Purpose.

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 ICWA to cooperate with Indian tribes in recognizing the valid tribal governmental interest in Indian children wherever those children are located.

[10 Okla. Stat. § 40.1.](#)

### C. Codification.

1. Federal Indian Child Welfare Act, 25 U.S.C. §§ 1901 – 1963.
2. Oklahoma Indian Child Welfare Act, 10 Okla. Stat. §§ 40 – 40.9.

### D. Application of Act to Indian Children and Child Custody Proceedings.

1. Federal ICWA applies to an “Indian child” which is defined as “any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;” 25 U.S.C. § 1903 (4). New BIA regulations require State Courts to ask whether a participant

knows or has reason to know whether a child is an Indian child in emergency or voluntary or involuntary child custody proceedings. BIA Regulation § 23.107, 81 Fed. Reg. 38778, 38869. Oklahoma’s ICWA includes substantially the same definition of an Indian child. 10 Okla. Stat. § 40.2 (adds “unemancipated” requirement for the child under age eighteen).

[10 OS 40.2](#)

2. ICWA establishes standards to be used in “child custody proceedings” which include foster care placements, termination of parental rights, pre-adoptive and adoptive placements. 25 U.S.C. § 1903(1). Child custody proceedings do not include divorce actions or removal of Indian children for delinquent acts. 25 U.S.C. § 1903(1). However, ICWA does apply to status offenses, such as truancy, resulting in an Indian child’s placement in foster care, pre-adoptive or adoptive placement, or termination of parental rights. 2016 BIA Regulations § 23.103(a)(iii), 81 Fed. Reg. 38778, 38868. Oklahoma’s ICWA applies to all child custody proceedings, except divorces and juvenile delinquency actions that do not involve termination of parental rights.

[10 Okla. Stat. §40.3.](#)

[In Re guardianship of Q.G.M., 1991 OK 29, 808 P.2d 684](#)

- a. ICWA applies to a guardianship action brought by the paternal grandparents of an Indian Child. In Re Guardianship of Q.G.M., 1991 OK 29, 808 P.2d 684 (reversing trial court’s refusal to allow intervention by the Seminole tribe in an action instituted by non-Indian paternal grandparents against a Seminole mother).
- b. The regulations of the BIA reject the “existing Indian family doctrine” as an exception to application of ICWA. 2016 BIA Regulations § 23.103(c), 81 Fed. Reg. 38778, 38868. Oklahoma, in a 5-4 decision, has specifically rejected the “existing Indian family exception” to ICWA. In re Baby Boy L., 2004 OK 93, 103 P.3d 1099 (relying on 1994 legislative changes to 10 Okla. Stat. §§ 40.1 & 40.3 to conclude “[t]he change in the statute is an explicit repudiation of the ‘existing Indian family exception’”). See also, Cherokee Nation v. Nomura, 2007 OK 40, 160 P.3d 967, reaffirming the Baby Boy L. holding that the existing Indian family exception is no longer viable in Oklahoma.
- c. Adoptive Couple v. Baby Girl, 133 S.Ct. 2552 (2013) (also known as the Baby Veronica case). The majority found that the language “continued custody” in Section 1912(f) of ICWA showed the heightened standard for termination of parental rights did not apply in the case because the father had never had custody of the child. The majority further found that “active efforts” to reunite the child with her Indian father under Section 1912(d) were not required

[In Re Baby Boy 103 P. 3d 1099](#)

[Cherokee Nation v. Nomura 2007 OK 40, 160 P.3d 967](#)

because the father had abandoned the child before birth and never had custody of the child. The adoption preference requirements of Section 1915(a) of ICWA were not triggered because the only persons seeking to adopt the child were her South Carolina adoptive parents.

[10 Okla. Stat. § 40.3.D.](#)

3. A determination of membership by an Indian tribe shall be conclusive.
4. ICWA applies to a proceeding prospectively from the date the record supports its application. In Re M.H.C., 2016 OK 88 (applying prospectively from the time Mother completed enrollment in the Cherokee Nation).

[In Re M.H.C., 2016 OK 88](#)

E. Jurisdiction.

1. An Indian tribe has exclusive jurisdiction over child custody proceedings involving an Indian child residing or domiciled within the reservation of the tribe. 25 U.S.C. § 1911(a).
  - a. Domicile for a parent is defined under the 2016 BIA Regulations as the physical presence in a place that the person regards as home. It is the person's true, fixed, principal, and permanent home, to which the person intends to return, if currently residing elsewhere. 25 CFR § 23.2; 81 Fed. Reg. 38778, 38865.
  - b. The domicile for a child is the domicile of the parents when married. If not married, the child's domicile is the domicile of the child's custodial parent. 25 CFR § 23.2; 81 Fed. Reg. 38778, 38865.
  - c. "On occasion, a child's domicile of origin will be in a place where the child has never been." Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 48 (1989). The Choctaw tribal court had exclusive jurisdiction over twin Indian children born off the reservation and placed up for adoption by both Indian parents. The domicile of the twin children was the domicile of their parents. The judgment of Supreme Court of Mississippi, affirming a state adoption decree, was reversed. Holyfield, 490 U.S. at 54.
  - d. A ward of a tribal court remains under the exclusive jurisdiction of that court, regardless of the residence or domicile of the child. 25 U.S.C. § 1911(a).
  - e. "Reservation" is defined broadly to mean Indian country as defined under Section 1151 of Title 18, including Indian reservations and dependent Indian communities, and any lands title to which is held by the United States in trust for the benefit of any Indian tribe or individual or held by the tribe or individual subject to a restriction against alienation. 25 U.S.C. §1903(10).
2. State courts and tribal courts have concurrent jurisdiction over children residing and domiciled off the reservation of the tribe.

Holyfield, 490 U.S. at 36. Concurrent jurisdiction is presumptively tribal jurisdiction since a case must be transferred to tribal court upon a petition from a parent or the tribe, unless there is “good cause” to the contrary, an objection by either parent, or declination of jurisdiction by the tribal court. 25 U.S.C. § 1911(b); Holyfield, 490 U.S. at 36.

F. Emergency Removal of Child.

1. Emergency removal of Indian children under State law is allowed “to prevent imminent physical damage or harm to the child.” 25 U.S.C. § 1922. The literal language of Section 1922 provides that the emergency removal provisions are applicable to Indian children residing or domiciled on a reservation. However, Oklahoma’s ICWA incorporates Section 1922 into emergency removal and appears to make it applicable to non-reservation Indian children. 10 Okla. Stat. § 40.5. See also, State ex rel. Juvenile Dept of Multnomah County v. Charles, 70 Or. App. 10, 688 P.2d 1354 (1984) (it is implicit that “emergency removal” authority extends to non-reservation Indian children); 2015 BIA Guidelines for State Courts and Agencies, 80 Fed. Reg. 10146, 10148.
2. The standards for emergency proceedings are set forth in Section 23.113 of the 2016 BIA Guidelines. 81 Fed. Reg. 38778, 38872. The emergency custody proceeding should not be continued for more than 30 days without initiating a “child custody proceeding”, which would be the filing of a deprived child petition under 10A Okla. Stat. § 1-4-301. Even though a foster care placement may be ordered at the emergency hearing, the regulation does not require qualified expert witness testimony at the emergency hearing.
3. The show cause emergency removal order is valid for 30 days without qualified expert witness testimony. 10 Okla. Stat. § 40.5. For good and sufficient cause, the show cause order can be extended an additional sixty (60) days without expert witness testimony. Id. 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 emotional or physical damage to the child.” Id. Federal ICWA also requires this expert testimony before a foster care placement is ordered. 25 U.S.C. § 1912 (e).

[10 OS 40.5](#)

[10A OS 1-4-301](#)

G. DHS Affidavit for Removal.

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

[10 Okla. Stat. § 40.5.A.](#)

- a. The names, tribal affiliations, and addresses of the Indian child, the child's parents and Indian custodians;
  - b. A specific and detailed account of the circumstances that resulted in removal of the child by the agency (DHS); and
  - c. A statement of the actions that have been taken to assist the parent/custodian in safely having the child returned to their custody.
2. The 2016 BIA Regulations require the petition for emergency removal or its accompanying documents (DHS affidavit) to contain ten listed items of information. BIA Regulation § 23.113(d), 81 Fed. Reg. 38778, 38872. 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:
- a. The steps taken to provide notice to the parents, custodians, and Tribe of the emergency proceeding;
  - b. Efforts to locate unknown parents including contacting the appropriate BIA Regional Director;
  - c. The residence and the domicile of the child;
  - d. The name of the Tribe if the residence or domicile is on a reservation (including trust land);
  - e. 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
  - f. 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.

H. Notice.

1. When seeking a foster care placement or termination of parental rights involving an Indian child, the State must give notice to the parent or Indian custodian, and the child's tribe. 25 U.S.C. § 1912(a); 10 Okla. Stat. § 40.4. In a private adoption, notice is also required to be given to the tribe. Cherokee Nation v. Nomura, 2007 OK 40, 160 P.3d 967 (rejecting claims of Florida adoption agency that Oklahoma's ICWA and federal ICWA were unconstitutional restrictions on Cherokee mother's private selection of adoptive parents).
2. The notice should be sent by certified mail with return receipt requested. 10 Okla. Stat. § 40.4. Federal ICWA requires the notice to be sent by registered mail. 25 U.S.C. § 1912(a). New regulations allow the notice to be sent by certified or registered mail. 2016 BIA Regulations, § 23.111(c). 81 Fed. Reg. 38778, 38866. Copies of the notice must be sent to the appropriate Regional Director listed in the regulations. Id.
3. The notice must be clear and include the following information:
  - a. The name and tribal affiliation of the child;

[10 OS 40.4](#)

[Cherokee Nation v. Nomura,  
2007 OK 40, 160 P.3d 967](#)



- b. A copy of the State’s petition;
  - c. A statement of the rights of the parents or custodians, and the tribe:
    - 1. To intervene in the action;
    - 2. To petition the court to transfer the case to the applicable tribal court; and
    - 3. To request twenty (20) days from receipt of notice to prepare for the hearing, and the right to request further continuances from the court.
  - d. A statement of the potential legal consequences of an adjudication on the future custodial rights of the parents or custodians;
  - e. A statement that if the parents or custodians are unable to afford counsel, counsel will be appointed to represent them;
  - f. A statement that tribal officials should keep confidential the information contained in the notice. 10 Okla. Stat. § 40.4.
4. The new regulation also requires the following to be included in the notice:
- a. The child’s birthdate;
  - b. The parent’s names and birthdates;
  - c. Tribal enrollment information for direct lineal ancestors;
  - d. The mailing address and telephone number of the court;
- 2016 BIA Regulation §23.111(d), 81 Fed. Reg. 38778, 38871.
5. State ICWA requires notice by certified mail of each review hearing. This requirement is not included in the Federal ICWA or the federal regulations.
6. Tribes with a designated agent for receipt of ICWA notices may be found at [www.bia.gov](http://www.bia.gov).
7. If a parent or Indian custodian appears in court without an attorney, the court must inform that person of the right to appointed counsel, the right to request and object to the case being transferred to tribal court, and the right to request additional time (twenty days) to prepare for the proceeding. 2016 BIA Regulation § 23.111(g), 81 Fed. Reg. 38778, 38871.

[10 Okla. Stat. § 40.4.](#)

I. Adjudication.

- 1. Following the emergency show cause hearing under Oklahoma law, the next regular deprived child hearing will be the Adjudication hearing. A court exercising emergency removal of a child, without qualified expert witness testimony, will need to conduct the adjudication hearing within thirty (30) days of the emergency order. This hearing may be continued another sixty (60) days, for good cause shown.
- 2. The court must find by **clear and convincing evidence**, supported by qualified expert witnesses, that the continued custody of the child

with the parent or custodian will likely result in serious emotional or physical damage to the child. 25 U.S.C. § 1912(e).

3. Evidence that only shows the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence that continued custody is likely to result in serious emotional or physical damage to the child. A causal connection must be shown between the condition and the likelihood that continued custody will result in serious emotional or physical damage to the child. 2016 BIA Regulation § 23.121(c)&(d). 81 Fed. Reg. 38778, 38873.

4. The State must document in detail that “active efforts” have been made to prevent removal of the Indian child. 2016 BIA Regulation § 23.120, 81 Fed. Reg. 38778, 38873.

J. Expert Witness Testimony.

1. Testimony of a qualified expert witness is required before a foster care placement may be ordered. 25 U.S.C. § 1912(e). The witness must testify that continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child.
2. Testimony of a qualified expert witness is required before the court may terminate parental rights. 25 U.S.C. § 1912 (f).
3. Who is a qualified expert witness?
  - a. The new regulations provide that the expert witness should have specific knowledge of the prevailing social and cultural standards of the Indian child’s Tribe. 2016 BIA Regulation § 23.122. 81 Fed. Reg. 38778, 38873. The social worker regularly assigned to the child may not serve as a qualified expert witness. Id.
  - b. Oklahoma social worker with some knowledge of ICWA and limited experience with Indian children did not present testimony that continued custody of child with mother would result in serious emotional or physical harm to the child. Accordingly, adjudication order was reversed.
  - c. Clinical psychologist without any experience in Indian way of life was a qualified expert witness at termination trial. In Re C.W., 479 N.W.2d 105 (Neb. 1992), overruled on other grounds, In Re Interest of Zylena R. and Adrionna R., 284 Neb. 834, 825 N.W. 2d 173 (2012). Psychologists having course work in Indian culture are also qualified expert witnesses. In Re T.J.J., 366 N.W.2d 651 (Minn. App. 1985).
  - d. When cultural bias is not implicated, as in a parent’s mental illness, the State is not required to present an expert witness having specialized knowledge of Indian life to meet ICWA

[In Re N.L., 1988 OK 39, 754 P.2d 863.](#)

requirement for termination of parental rights. State ex rel. Juvenile Dept of Lane County v. Tucker, 76 Or. App. 673, 710 P.2d 793 (1985). See also, BIA Supplementary Information; K. Adjudication – 3. Qualified Expert Witness, 81 Fed. Reg. 38778, 38829-30 (sex abuse expert need not have knowledge of Tribal social and cultural standards).

K. Placement Preferences.

1. Adoptive placement preferences under ICWA are:
  - a. A member of the child’s extended family;
  - b. Other members of the Indian child’s tribe; or
  - c. Other Indian families. 25 U.S.C. § 1915(a).
2. Foster care or pre-adoptive placement preferences under ICWA are:
  - a. A member of the child’s extended family;
  - b. A foster home licensed, approved, or specified by the child’s tribe;
  - c. An Indian foster home approved by DHS (an authorized non-Indian licensing authority); or
  - d. An institution for children approved by an Indian tribe or operated by an Indian organization having programs suitable to meet the child’s needs. 25 U.S.C. § 1915(b).
3. Placement preferences should be followed, in the absence of good cause to the contrary.
4. The first set of BIA Guidelines provided the use of the term “good cause” was designed to provide state courts with flexibility in determining the disposition of a placement proceeding involving an Indian child. 1979 BIA Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed. Reg. 67584.
5. The 2016 Regulations provide for five listed considerations for a state court to find good cause exists to depart from the statutory placement preferences:
  - a. The request of a parent;
  - b. The request of a child, if of sufficient age and capacity to understand;
  - c. Placement with a sibling;
  - d. The extraordinary physical, mental or emotional needs of the child, such as specialized treatment services that may be unavailable where the families having placement preferences reside; and
  - e. The unavailability of a suitable placement after a diligent search, considering the prevailing social and cultural standards of the Indian community. 25 CFR § 23.132; 81 Fed. Reg. 38778, 38874.

6. The 2016 Regulations exclude the following factors from consideration by the court in determining whether good cause exists to deviate from the statutory placement preferences:
  - a. The socioeconomic status of any placement relative compared with another placement;
  - b. Relying solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was in violation of ICWA. 25 CFR § 23.132; 81 Fed. Reg. 38778, 38875.
7. When a tribe fails to provide timely temporary foster care with an ICWA compliant home and an ICWA non-compliant family seeks a permanent placement, the trial court should consider harm to the child resulting from a tribe's untimely motion to move the child to an ICWA compliant home. Clear and convincing evidence is the proper burden of proof for good cause to deviate from ICWA's placement preferences. Id.
8. A tribe may establish a different order of preference which should be followed if the placement is the least restrictive setting appropriate for the child. 25 U.S.C. § 1915(c).
9. The placement preference of the child or parent shall be considered, when appropriate. 25 U.S.C. §1915(c).
10. The social and cultural standards of the Indian community are to be applied in meeting the preference requirements of ICWA. 25 U.S.C. § 1915(d).

[In Re M.K.T., 2016 OK 4](#)

L. Active Efforts.

1. ICWA requires the State seeking a foster care placement or termination of parental rights to an Indian child to satisfy the court that "active efforts" have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. 25 U.S.C. § 1912(d).
2. The 2016 BIA Regulations define active efforts to mean affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with the child's family. 25 CFR § 23.2; 81 Fed. Reg. 38778, 38865. Active efforts require DHS to assist the parent through the steps of a case plan and developing or accessing the resources necessary to satisfy the case plan. Examples of active efforts are listed in the 2016 Regulations as follows:
  - A. Conducting a comprehensive assessment of the family focusing on safe reunification;
  - B. Identifying appropriate services to overcome barriers and actively assisting the parent in obtaining services;
  - C. Identifying , notifying, and inviting tribal representatives to participate in providing services, having family team

meetings, permanency planning and resolving placement issues;

- D. Conducting a diligent search for extended family members and using extended family to provide family structure and support for the child and parents;
  - E. Using all family preservation strategies and using remedial and rehabilitative services provided by the Tribe;
  - F. Keeping siblings together;
  - G. Supporting regular visits with the parents in natural settings and providing trial home visits consistent with the health, safety and welfare of the child;
  - H. Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the parents in accessing such resources;
  - I. Monitoring progress and participation in services;
  - J. Considering alternative services if the optimum services are unavailable; and
  - K. Providing post-reunification services and monitoring.
3. A tribal social worker's effort to place father in parenting classes and a batterer's treatment program was sufficient active efforts between emergency removal hearing and adjudication hearing when father was contesting the State's contention that he had physically abused one of his five children.
  4. When mother tested positive for opiates at the time of her child's birth, the Cherokee tribe offered mother parenting education, counseling for substance abuse and domestic violence, to be provided at her home. When mother would not comply, the matter was referred to DHS which sought mother's voluntary compliance through a prevention plan. After that was unsuccessful, the State filed a deprived action and provided a treatment plan. Mother was given a psychological evaluation that recommended a medical evaluation for mother's abuse of prescription medication. Mother would not obtain the evaluation. Mother was given a substance abuse assessment that recommended a 90 day outpatient treatment program, which mother would not do. Mother was also provided parenting skills classes. The trial court properly determined the State had provided active efforts as a predicate to the jury recommending a termination of mother's parental rights.
  5. Oklahoma's DHS cited twenty-one examples of active efforts it performed in providing services to father, including providing father a gas voucher and transporting children to visit father in jail where he was being held for domestic abuse. The Cherokee tribal child welfare specialist also testified that DHS

[In Re T.S., 2013 OK CIV APP 108, 315 P.3d 1030, ¶¶ 57-64.](#)

[In Re K.P., 2012 OK CIV APP 32, 275 P.3d 161.](#)

[In Re E.P.F.L., 2011 OK CIV APP 112, 265 P.3d 764.](#)

had performed active efforts that were not successful. Father's appeal claiming the State had not used active efforts was denied.

6. Trial court improperly defined "active efforts" as pointing a parent in the direction of services and leaving the action up to a parent. "Active efforts" involves leading the parent to services, not using "passive efforts." In this case the DHS worker testified that her work in the case was no different than in every case and that the only difference between "reasonable efforts" and "active efforts" was whether the mother was provided transportation. The termination order was reversed for failure of the State to provide "active efforts" in attempting reunification with mother.
7. Social worker from the Cherokee tribe provided active efforts in supervising numerous home visits, coordinating family counseling, informing mother of housing programs with the tribe, offering help with finding housing, and offering transportation services. A panel of 25 tribal members determined that reunification efforts were unsuccessful. In Oklahoma the "active efforts" finding is made by the trial court prior to the termination of parental rights by a jury. In Re H.J., at ¶ 25.

[In Re J.S., 2008 OK CIV APP 15, 177 P.3d 590.](#)

[In Re H.J., 2006 OK CIV APP 153, 149 P.3d 1073.](#)

#### M. Removal to Tribal Court and Intervention.

1. A tribe has exclusive jurisdiction of a child custody proceeding involving an Indian child residing or domiciled within the reservation. 25 U.S.C. § 1911(a). The mother's domicile is the domicile of a child born out of wedlock. Parents of a child born out of wedlock may not divest the tribal court of jurisdiction by consenting to an adoption of a newborn child in a state court proceeding. Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989).
2. Upon a petition of either parent or the tribe, in the absence of an objection by a parent or good cause to the contrary, a state court shall transfer to the tribal court a case involving a foster care placement or termination of parental rights. The tribal court may decline the request for transfer. 25 U.S.C. § 1911(b).
3. Upon a request to transfer, the state court must ensure that the Tribal court is promptly notified in writing of the transfer petition and may request a timely response regarding whether the Tribal court wishes to decline the transfer. 25 CFR §23.116; 81 Fed. Reg. 38778, 38872. The 2015 BIA Guidelines recommended giving the Tribal court at least twenty days from receipt of the notice to respond as to declination of jurisdiction. 2015 BIA Guidelines for State

Courts and Agencies, 80 Fed. Reg. 10146, 10156. That twenty day time period was not included in the new Regulations.

4. A tribe has the right to intervene at any point of the proceeding. 25 U.S.C. § 1911(c).
5. The 2016 BIA Regulations list five factors the court may not consider in deciding whether good cause exists to deny a transfer request:
  - a. Whether the case is at an advanced stage if the parent or Tribe did not receive notice of the proceeding until an advanced stage;
  - b. Whether there were prior proceedings for which no petition to transfer was filed;
  - c. Whether the transfer could affect the placement of the child;
  - d. The child's cultural connections with the Tribe;
  - e. Socioeconomic conditions or any negative perception of Tribal social services or judicial system. 25 CFR § 23.118; 81 Fed. Reg. 38778, 38872-73.
6. The party opposing a request to transfer the case to Tribal court bears the burden of proving "good cause" by clear and convincing evidence.
7. The Oklahoma Supreme Court previously considered "good cause" to deny a petition to transfer a case to Tribal court. In Re M.S., 2010 OK 46, 237 P.3d 161. The trial court had denied a request of the Puyallup tribe to transfer the case to tribal court because of the length of time the case was pending in State court, the relationships between the children, foster parents, counsel, CASA, DHS workers, and medical providers, and the evidence was located in Oklahoma. The Oklahoma Supreme Court, applying a clear and convincing standard to the evidence, reversed, finding the delay in seeking a transfer was not caused by the tribe.
8. A trial court should not consider the "best interests of the child" in ruling on a transfer request since the matter is purely jurisdictional. "Recognizing best interests as 'good cause' for denying transfer permits state courts to decide that it is not in the best interests of Indian children to have a tribal court determine what is in their best interests." In Re Interest of Zylena R. and Adrionna R., 284 Neb. 834, 825 N.W.2d 173, 186 (2012). See also, In Re M.J.C., 2016 OK 88, ¶ 27 (stating that the best interests of the child can just as easily be determined by the tribal court).

[In Re M.H.C., 2016 OK 88](#)  
(affirming trial court's order transferring case to Cherokee tribal court).

[In Re M.S., 2010 OK 46 at ¶¶ 20-36, 237 P 3d 161](#)

N. Termination of Parental Rights.

1. Voluntary Termination by parent or custodian.
  - a. Must be executed in writing;



- b. Recorded before a judge of a court of competent jurisdiction;
  - c. Judge's certificate must state the terms and consequences of the consent were fully explained in detail and fully understood by the parent or custodian;
  - d. Judge's certificate must state the parent or custodian understood the explanation in English or that it was interpreted into a language the consenting party understood;
  - e. Must be executed at least ten days after birth of the child. 25 U.S.C. § 1913(a).
  - f. Can be withdrawn prior to the final decree of termination or adoption. 25 U.S.C. § 1913(c). Can be vacated after a final decree of adoption on the grounds of fraud or duress. 25 U.S.C. §1913(d).
2. Involuntary Termination.
- a. Requires evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or custodian would likely result in serious emotional or physical damage to the child. 25 U.S.C. § 1912(f).
  - b. In Oklahoma, a private adoption without the consent of the parent requires a hearing to determine the consent of the parent is not necessary. The hearing does not result in termination of parental rights. Accordingly, the burden of proof at this hearing is clear and convincing evidence, not beyond a reasonable doubt. The heightened burden of proof of beyond a reasonable doubt only applies to the factual determination required by 25 U.S.C. § 1912(f). In Re Adoption of G.D.J., 2011 OK 77, n. 25.

[In Re Adoption of G.D.J., 2011 OK 77, 261 P.3d 1159.](#)

O. Full Faith and Credit.

1. ICWA provides that every State should give full faith and credit to the acts, records, and judicial proceedings of any tribe for child custody proceedings to the same extent the tribe gives full faith and credit to the acts, records, and judicial proceedings of the State. 25 U.S.C. § 1911(d).
2. In 1994, The Oklahoma Supreme Court adopted Rule 30 of the Rules for District Courts setting standards for recognition of judicial proceedings in tribal courts. Rule 30.B provides that district courts shall grant full faith and credit to tribal judgments when the tribal court grants reciprocity to Oklahoma state court judgments.
3. A list of tribal courts granting full faith and credit to the courts of Oklahoma is maintained by the Administrative Office of the Courts and is available on the Oklahoma Supreme Court



Network (OSCN) by clicking on research, then clicking on Oklahoma – Full Faith and Credit of Tribal Courts. To date, twenty-six Indian tribes are listed on the website, including Cherokee, Chickasaw, Choctaw, Creek (Muskogee) and Seminole tribes.

## VI. PLACEMENT ISSUES

[Smith v. Organization of Foster Families for Equality and Reform, 431 US 816 \(1977\)](#)

“Foster care of children is a sensitive and emotion-laden subject, and foster-care programs consequently stir strong controversy...”. This observation was stated by Justice Brennan in 1977 and the passage of thirty years has not changed matters.

PolicyLab: Center to Bridge Research, Practice, and Policy at The Children's Hospital of Philadelphia Research Institute (Fall 2009).

Studies have linked multiple placements with behavioral and mental health problems, education difficulties and juvenile delinquency. Hence, stability of temporary foster care placements becomes a critical issue for judicial oversight. When removal of a child is brought to the attention of the court, however, it is incumbent upon the court to consider the best interests of a child.

[Saul v. Alcorn, 176 P.3d 346 \(Okla.2007\)](#)

## 1. PLACEMENT PREFERENCES

For many years, child welfare agencies largely overlooked relatives as resources for the foster care of abused/neglected children. However, in the 1980's, when the need for foster care exceeded the available traditional foster families, child welfare turned to relatives. Over time practitioners observed, and research confirmed, that many children placed with relatives fared better than children placed with non-related foster families. In accordance with this research, federal law requires -- as a prerequisite for receiving funding for child welfare services -- that states "consider giving preference to an adult relative over a non-related caregiver when determining placement for a child, provided that the relative caregiver meets all relevant state child protection standards."

H.R. 6893/P.L. 110-351)  
351

Further, the Fostering Connections to Success and Increasing Adoptions Act, with its stated purpose to increase the number of safe permanent placements for children, requires immediate notice to relatives when children are removed from their parents, provides grants for programs that connect relatives with the support and programs needed to care for the children, and allow states to waive non-safety related licensing standards for relatives on a case-by-case basis.

[See, e.g., 10A OS §§1-4-203](#) and  
[1-4-204](#)

The Oklahoma Children's Code was amended, in part, in 2009 to comply with the requirements of the Fostering Connections Act.

## **A. IDENTIFYING AND CONTACTING RELATIVES**

The State court shall create an affidavit form that contains a notice for the parent, legal guardian or custodian that failure to identify a parent or relative in a timely manner may result in the child being permanently placed outside the home of the parent or relative.

### [10A OS 1-4-203\(B\)](#)

The parent(s) or legal guardian are required to complete an affidavit upon removal of the child from the home listing the names, addresses and phone numbers of the following relatives:

- Any parent, whether known or alleged;
- Grandparent
- Aunt
- Uncle
- Brother
- Sister
- Half-sibling
- First cousin

The parent or legal guardian is also to provide any comments regarding appropriateness of potential placement of child with that relative.

### [10A OS §1-4-203\(A\)\(4\)](#)

If there are no relatives, then the parent(s) or legal guardian should list any other relatives or persons with whom the child has a substantial relationship or who may be a suitable placement.

### [10A OS §1-4-203\(C\)](#)

Within thirty (30) days after removal, DHS shall identify relatives and provide notice to those relatives advising that:

- The child has been removed from parent(s)
- Relatives may elect to participate in the care and placement of the child;
- Relatives may lose the opportunity to be a placement for the child if there is a failure to respond to the notice;
- There exists requirements to become a foster family home;
- There exists services and supports for children placed in the home;

Relatives with current or past domestic violence issues should not be notified.

OKDHS is required to consider placement with relative without delay.

- OKDHS should continue to search until such time fit and willing relative is identified.

A relative will not be considered for permanent placement if:

- The relative fails to keep OKDHS informed of contact information for purposes of receiving further notice of need for placement;
- The relative elects to not participate in child's initial placement planning;
- The relative does not cooperate with OKDHS in its reunification efforts to return the child to the parents' or legal guardian's home.

## **1B. DETERMINATION OF RELATIVE PLACEMENT**

[10A OS §1-4-204\(C\)](#)

DHS is required to consider placement with relatives without delay. The search should continue until such time a fit and willing relative is identified.

A relative will not be considered for permanent placement if:

- The relative fails to keep DHS informed of contact information for purposes of receiving further notice of need for placement;
- The relative elects not to participate in child's initial placement planning;
- The relative does not cooperate with DHS in its reunification efforts to return the child to the parent's or legal guardian's home.

If several relatives are potentially appropriate for placement, the court and DHS should consider the following factors in deciding the appropriate placement:

[10A OS 1-4-204\(B\)](#)

- The ability to provide for the child's safety;
- The ability to adhere to any restrictions placed between the child and others;
- The ability to support the permanency plan;
- The ability to meet the child's physical, emotional, and educational needs;
- The ability to provide placement for all siblings;
- The ability to provide care as long as is necessary, including providing a permanent home if necessary;
- The wishes of the parent, the relative, and the child;
- The person who has the closest relationship with the child;
- The best interests of the child.

If a subsequent placement is required, consideration for placement should be given to approved relatives who meet the above considerations.

[10A OS 1-4-204 \(E\)](#)

If the child is not placed with a relative, DHS shall advise the court, in writing, the reasons why the relative was denied.

[10A OS 1-4-204 \(F\)](#)

- This shall be made part of the court record.

The above requirement/considerations apply to all custody or placement proceedings – whether emergency, temporary or permanent.

[10A OS 1-4-204\(G\)](#)

### C. FOSTER PARENT PREFERENCE FOR ADOPTION

[10A OS §1-4-812](#)

A foster parent may be given great weight by the court in the adoption consideration of a child where:

- The child's permanency plan is adoption;
- The child has resided with the foster parent for at least one (1) year; and
- There is not a relative of a child who has an existing loving emotional bond with the child and is willing, able and eligible to adopt the child
  - It has been held that nothing in this statute specifies or implies that a relative with a loving bond will always be awarded custody over a foster parent. It is the trial court's duty to determine whether the adoption would be in the child's best interests.

[In The Matter of B.O., 177 P.3d 584 \(Okla.Civ.App. 2008\)](#)

The foster parent must also meet the following eligibility requirements:

- The child has become integrated with the foster family to the extent that the child's identity is with that foster family, and
- The foster family is willing to treat the child as a member of the family.

Any dispute regarding permanency placement for adoption existing between a relative and the foster parent shall be heard as part of the permanency hearing for the child. In making its findings, the court should consider, in part:

- The emotional ties existing between the child and the relatives compared to the emotional tie between the child and the foster family;
- The capacity of the relatives to meet the needs (e.g., emotional and educational) of the child compared to the capacity of the foster family;
- The length of time the child has resided with the foster family and the child's desire to remain there;

- The physical and mental health of the relatives as compared with the foster family;
- The child's experiences in the home, school and community when with the foster family as compared to the experiences of the child when residing with the parents;
- The age and preference of the child;
- The long-term best interests of the child;
- Any other factor considered to be relevant by the court.



## 2. PLACEMENT OF CHILD – WHO DETERMINES

[950 P.2d 824 \(Okla.1997\)](#)

If the court determines that the child’s best interest dictates that the child should be placed in the legal custody of DHS, §1-4-803 states:

Whenever a child is in the custody of the Department, the court shall not have authority to order a specific placement of the child but shall have the authority to approve or disapprove a specific placement if it does not conform to statutory requirements and the best interests of the child.

However, in the determination of competing adoptive placements, the court is vested with the authority to place the child in the adoptive home that meets the child’s best interests.

The federal statutes are quite clear that the state cannot receive IV-E funding if the court issues an order naming the foster home in which the child is to be placed:

65 FR 4058

“The court may sanction a permanent foster family through its oversight of the permanency plan, however, this does not give the court the authority to determine a specific placement of the child.”

HHS/ACF, *Questions and Answers on the Child Welfare Final Rule*, Question 13, <http://www.act.dhhs.gov/programs/cb/laws/qsettl.htm>, updated 12/6/2000.

However, the federal regulations further note that “as long as the court hears the relevant testimony and works with all parties, including the agency with placement and care responsibility, to make appropriate placement decision, we will not disallow the payments.”

### 3. MOVEMENT OF CHILDREN

[10A OS §1-4-804](#)

#### **DHS Discretion:**

[10A OS §1-4-805\(B\)](#)

DHS has the discretion to determine the appropriate placement of a child. DHS may remove a child from the custody of a foster placement if determined to be in the best interests of the child.

[10A OS §1-4-805\(C\)\(1\)](#)

#### **When Court Approval is Required:**

- When the court or other party receiving notice from DHS of the movement of the child has filed a request for an informal hearing;
- When the court has stayed movement pending judicial review due to verbal or written objection made by a party or foster parent during a court proceeding; or
- When a foster parent of more than six (6) months files a written objection with the court.

#### **Notice:**

When moving a custody child from one location to another, DHS must notify:

- The court;
- PARB;
- District attorney;
- Child's attorney;
- GAL; and
- Foster family.
  - GAL and child's attorney is to receive the specific location of the child.

#### **Time Frame for Notice:**

No less than five (5) days prior to the movement unless an emergency exists.

#### **What is an Emergency**

[10A OS §1-4-804\(B\)](#)

“Emergency” means movement of child that is:

- Emergency medical or mental health treatment.

- Substantial noncompliance by a foster parent or child-placing agency with placement standards and agreements that places the child in imminent danger.
- Pending investigation of abuse or neglect of a child by foster parent or child-placing agency or other person residing in the foster family home.
- Request by foster parent or child-placing agency for the immediate removal of the child;
- Order of the court authorizing placement with the parent or sibling.

[Re K.G., 48 P.3d 131 \(Okla.Civ.App.2002\).](#)

#### **4. REMOVAL FROM FOSTER CARE PLACEMENT**

Where child resided with foster parent for three (3) or more months:

[10A OS §1-4-805\(A\)\(1\)](#)

- DHS gives at least 5 days' advance notice to foster parent, and
- Provide the foster parent a written statement regarding the reasons for the removal.
  - Exception: where an “emergency” exists.
- Foster parent, party or representative of a group home may provide an oral or written opinion to the court regarding the planned placement.
- The court should discuss and resolve any concerns regarding the proposed placement that are raised by the parties, foster parent, or group home representative.
  - This may be addressed during any hearing where the concerns are raised, or
  - The court may conduct an informal placement hearing within fifteen (15) days from the date the concerns are brought to the attention of the court.
    - The foster parent is entitled to submit, at any hearing, written reports or present testimony concerning any relevant information about the child in that foster parent's care.

Where child resided with foster parent for more than six (6) months:

10A OS §1-4-805(C)

- DHS gives at least 5 days' advance notice to foster parent, and
- Provide the foster parent a written statement regarding the reasons for the removal.
  - Exception: where an “emergency” exists.
- Foster parent's objection must be in writing and filed with the court within five (5) judicial days after receipt of notice from DHS.
- Notice must be served on all parties by the court.
  - The removal is stayed pending hearing, unless removal is due to an emergency.
- Court must conduct a hearing within fifteen (15) judicial days.
  - The hearing is conducted informally.
- The court may order that the child remain in or be returned to the home of the objecting foster parent if the court finds that DHS'

placement decision was arbitrary, inconsistent with the permanency plan, or not in the best interests of the child.

## **5. RELEASING A CHILD FROM STATE CUSTODY**

Releasing a child from the State's custody and placing them back in the custody of a parent who had previously abused or neglected the child may be one of the most difficult decisions that a judge must make in a deprived proceeding.

The Kelsey Smith-Briggs Child Protection Reform Act was passed in an effort to reform how DHS as well as the courts handle cases of child abuse in Oklahoma. It is named after a child who was murdered as a result of child abuse, despite the authorities being aware that she was already being maltreated.

[10A OS §1-4-801](#)

The Kelsey Smith-Briggs Act, in part, requires judges to stay their placement orders for at least 24 hours when either the district attorney or the child's attorney indicates that implementing the court's order immediately will place a child at risk of serious injury. The Act further provides for input from all parties, DHS, foster parent, CASA and the child regarding the placement of the child or release of the child from state custody.

[10A OS §1-4-802](#)

**5A. STAY PENDING REVIEW OF RELEASE**

At any hearing where it is determined that a deprived child will be released from state custody, the district attorney or the child's attorney may object to the order of the court and give the court notice of his or her intention to seek review of that order.

**5A.1 GROUNDS:**

[10A OS §1-4-802\(A\)](#)

That releasing the child from state custody creates a serious risk of danger to the health or safety of the child.



## **5A.2 STAY**

Upon the court receiving notice of the objection, the court must stay the custody order pending the completion of review of the custody order.

[10 OS §1-4-801\(D\)](#)

- The failure of the court to issue a stay subjects the court's decision to immediate mandamus to an appropriate court.

**5A.3 APPLICATION:**

The district attorney or attorney for the child is required to file with the presiding judge of the administrative judicial district a written application for review within three (3) judicial days from the announcement of the custody order.

- If the application is not timely filed or is withdrawn within that time period, the object is deemed to be abandoned and the stay shall expire.

#### **5A.4 REVIEW:**

The presiding judge assigns the review of the custody order to another judge with juvenile docket responsibilities within that administrative judicial district.

The review is required to be completed within five (5) judicial days from the filing date of the application.

The reviewing court shall review the record of the hearing and any evidence deemed relevant to its determination of whether release of the child from state custody poses a serious risk of danger to the health or safety of the child.

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.

## VII. APPEALS

[10A OS §1-5-101](#)

Any party may appeal to the Oklahoma Supreme Court.

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,

[10A OS §1-5-102](#)

UNLESS the Supreme Court orders otherwise.

Appeal from an adjudication order will not prevent the trial court from conducting a dispositional hearing.

The appellate courts are required to use the initial of the child's surname rather than the child's name.

[10A OS §1-5-103\(B\)](#)

Petition in Error must be filed with the Supreme Court within thirty (30) days of the order appealed from.

- The record on appeal must be completed within sixty (60) days from the date of the order.

### Briefing Schedule:

- Brief-in-Chief: Twenty (20) days after parties notified by trial court clerk that the record is complete and notice has been filed in the office of the Clerk of the Supreme Court
- Answer Brief: Fifteen (15) days after brief- in-chief is filed.
- Reply Brief: Ten (10) days after answer brief is filed.

Appeals should be expedited by the appellate courts and a decision rendered within six (6) months from the briefing completion date.

[10A OS §1-5-103\(C\)](#)

### Standard of Review on Appeal:

- The standard of review on appeal of a judgment terminating parental rights is to determine whether the trial court's judgment is supported by clear and convincing evidence.
- To prove ineffective assistance of counsel, a parent must show both that the attorney's performance was deficient, and that it prejudiced the defense. The reviewing court must look at the proceedings as a whole.
- If a fundamental constitutional right is violated, it is the duty of the Appellate Court to raise the issue sua sponte.

[In the Matter of SBC, 64 P.3d 571 \(Okla.Civ.App.2004\)](#)

[In the Matter of SS, 90 P.3d 571 \(Okla.Civ.App.2004\)](#)

[In re Adoption of FRF, 870 P.2d 799 \(Okla.Civ.App.1994\).](#)

## VIII. CONFIDENTIALITY

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.

[42 U.S.C. § 5103\(b\)\(2\)\(E\)](#)  
(1982).

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.

[42 U.S.C. § 671 \(2000\)](#)

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 are often read and discussed during the hearings.

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.

## 1. HEARINGS

[10A OS §1-4-503\(A\)\(1\)\(a\)](#)

Public access to deprived proceedings is prohibited. Only by court order may the public be allowed to attend.

Persons having a direct interest in the case shall be admitted, e.g., parties, attorneys for the parties, CASA, participants, DHS social worker, private agency's representative or counselor involved with the family, and necessary court personnel. However, the court may also determine otherwise.

10A OS §1-4-503(1)(b); PL 108-36

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.

[10A OS §1-6-101](#)

## **2. 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.

[10A OS §1-6-102\(C\)](#)

There are different statutory procedures for obtaining and disclosing the confidential records or information.

## **A. DEFINITIONS 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 also includes information entered into and maintained in an automated or computerized information system (i.e., OSCN, KIDS)

“Records” are categorized as:

- Juvenile court record: records filed with the court.
- Agency record: 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 record: petition, docket, motion, orders, judgments, pleadings and other documents other than social records that are filed with the court.
- Social record: family social histories, medical reports, psychological and psychiatric evaluations or assessments, clinical or other treatment reports, educational records, or home studies.



**B. THOSE ENTITLED WITHOUT BENEFIT OF COURT ORDER**

Juvenile court records and the Department of Human Services records pertaining to a child may be inspected, and their contents shall be disclosed, without a court order, to the following persons upon showing of proper credentials and pursuant to their lawful duties:

1. The court having the child currently before it in any proceeding , any district court or tribal court to which the case may be transferred, employees and officers of the court, including CASA and GAL;
2. A district attorney, U.S. Attorney, Attorney General of this or another state and the employees of such offices;
3. The attorney representing a child who is the subject of a proceeding where child custody or visitation is at issue;
4. Employees of juvenile bureaus and employees of DHS in the course of their official duties;
5. Employees of a law enforcement agency of this or another state or military enclave and employees of a child protective service of another state or military enclave;
6. The Oklahoma Commission on Children and Youth;
7. The Office of Juvenile Affairs;
8. A federally recognized Indian tribe in which the child who is the subject of the record is a member or is eligible to become a member of the tribe and is the biological child of a member of an Indian tribe pursuant to provisions of ICWA and the OICWA if the tribe is:
  - a. Investigating a report of known or suspected child abuse or neglect or crimes against children or for the purpose of determining whether to place a child in protective custody,
  - b. Providing services to or for the benefit of a child including but not limited to protective, emergency, social and medical services, or
  - c. The tribe, the tribal court or the tribal child welfare program has asserted jurisdiction or intervened in any case in which the child is the subject of the proceedings or is a party to the proceedings pursuant to the authority provided in the Oklahoma Indian Child Welfare Act.

### **C. SOCIAL RECORDS**

“Social Records” are defined as: any family social histories, medical reports, psychological and psychiatric evaluations or assessments, clinical or other treatment reports, educational records, or home studies. 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. The records remain designated as “social records” even if attached to DHS reports that are submitted to the court.

[10A OS §1-6-101\(B\)\(8\)](#)

Social records are not to be filed in the court file unless specifically ordered by the court. If the court requires the social record to be filed as a court record, the social records are to be placed in envelopes, marked “CONFIDENTIAL” and may only be accessed by:

[10A OS 1-6-106](#)

- The person who is the subject of the record, and/or
- The attorney for that person who is the subject of the record.

**D. PENALTY FOR UNLAWFUL DISCLOSURE OF  
CONFIDENTIAL RECORDS**

[10A OS §1-6-107\(B\) and \(D\)](#)

Persons or agencies obtaining records pursuant to law 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.

## **E. WHAT THE COURT MAY NOT ORDER**

- That the parties to a deprived proceeding be limited access to those records relevant to the deprived proceeding that are filed with or submitted to the court.
- Limiting access of agencies to information that is subject to disclosure, review, or inspection by contract or as necessary for the receipt of public funds or participation in any program that is administered by the agency.
- Prohibiting DHS from summarizing the outcome of an investigation to the person who reported a known or suspected incidence of child abuse or neglect or to any person that provides services to a child who is or alleged to be a victim of child abuse.
- Prohibiting DHS from summarizing the allegations and findings of a child abuse/neglect investigation that involves a child care facility and provide same to parents who are evaluating the child care facility.
- Prohibiting DHS from disclosing necessary information to any educational institution, facility or educator that is necessary to provide educational services to the child and to protect the safety of the students.
- Prohibiting DHS from obtaining the nondirectory educational records of a child currently in DHS custody.

**F. RECORDS OR INFORMATION NOT SUBJECT TO RELEASE WITH OR WITHOUT COURT ORDER**

- Provision of benefits or service funded, in whole or in part, by federal funds, except as authorized by federal law.
- Disclosure of records or information relating to the adoption of a child.
  - Disclosure of adoption information or records is governed by the Oklahoma Adoption Code.
- Any record or information that abrogates any legal privilege, including attorney-client privilege.
- Disclosure of information which identifies any person who reported an allegation of known or suspected child abuse or neglect.
  - Court may, however, specifically order disclosure of this information

## **G. RELEASE OF RECORDS IN A DEPRIVED CASE**

See: [10 OS §1-4-401](#)

Any request for records in a deprived proceeding shall be released pursuant to discovery orders issued by the court.

## **H. DISCOVERY OF RECORDS IN CRIMINAL, CIVIL OR ADMINISTRATIVE PROCEEDING**

In any criminal, civil (other than child custody litigation) or administrative proceedings, the party seeking release of confidential records must file a petition or motion with the court.

The motion must specifically describe the confidential records being sought.

The motion must detail the compelling reason why the inspection, release, disclosure, correction, or expungement of confidential records should be ordered by the court. Failure to provide this information may subject the motion to dismissal.

The court is required to set a hearing date and require notice of at least twenty (20) days to:

- The custodian of the records;
- The person who is the subject of the records, if that person is 18 years of age or older;
- The parents of a child younger than 18 years of age who is the subject of the record;
- The attorneys, if any, of that person or child or parents;
- Any other person the court deems necessary.

The hearing date may be shortened if exigent circumstances exist.

The court may enter an *ex parte* order requiring that the records be provided to the court on or prior to the hearing date.

Hearing:

- The hearing may be closed to the public at the discretion of the court.
- Burden of Proof: court must find compelling reason that the records should be produced for a judicial review. Otherwise the matter is dismissed.

The court must judicially review the records prior to the release to the parties.

- A determination must be made by the court as to whether an order should be entered authorizing the inspection, release, disclosure, correction, or expungement of the records based upon the need for the protection of a legitimate public or private interest. This must be balanced with:

- Due regard for the confidentiality of the records and the privacy of persons who are the subject of the records.

[10A OS §1-6-102\(F\)](#)

Court's order may:

- Prohibit the release of records or testimony;
- Authorize a release of the records or testimony only upon conditions as the court finds to be necessary;



## **I. REQUEST FOR RECORDS IN CHILD CUSTODY/VISITATION PROCEEDING**

[10A OS § 1-6-102\(D\)](#)

A party to the custody proceedings and who is the subject of the DHS records must make the motion for production of the records to the court hearing the child custody/visitation matter. The motion for production must contain the following allegations:

- That the movant is a parent, legal guardian or child who is the subject of the safety analysis records;
- That child custody or visitation is at issue;
- That upon receipt, the records shall remain confidential and disclosed only to the movant, the attorneys for the movant, and those persons employed by or acting on behalf of the movant;
- That copies of the motion have been provided to the parties, their attorneys, and the attorney and/or GAL of the child, if any.

The court may enter an *ex parte* order for production of the safety analysis records, the order being in the form as provided for in §1-6-102(D)(3).

DHS should be given a minimum of five (5) judicial days to deliver the records to the court.

The court is not required to review the records; rather, the court shall release the records to the litigants in the case pursuant to a protective order.

ONLY the DHS safety analysis records shall be subject to the production order. An DHS employee is not statutorily required to testify about the records unless the court specifically directs the testimony.

[10A OS §1-6-102\(D\)\(4\)](#)

Any subpoena or subpoena duces tecum is invalid as a means to produce the records.

This statutory section does not apply to:

- Deprived proceedings;
- Discovery by person not subject to the DHS records being sought;
- Discovery of DHS records in criminal, other civil or administrative proceedings.

**J. REDACTION OF OTHER CHILDREN'S INFORMATION**

The court may order that the names and information of siblings or other children that are also included in the record to be disclosed be redacted.

The court may deny access or disclosure of the record if redaction is not practical or possible.

### **3. DISCLOSURE OF INFORMATION IN CASES OF DEATH OR NEAR-DEATH OF A CHILD**

In a case where a child has died or is in serious or critical condition as a result of abuse or neglect by the person responsible for the child, certain information is required to be disclosed to the public if that person responsible for the child is criminally charged:

- Whether a report has been made concerning the victim or other children living in the same home and whether an investigation has been initiated;
- Whether previous reports have been made and the dates, summary of those reports, outcome of the investigations or actions taken by DHS, and specific recommendations made to the DA and action taken by the DA;
- The dates of judicial proceedings prior to the death or near death of the child;
- Recommendations made by each participant in writing at the court proceedings as they relate to the custody or placement of the child; and
- Rulings of the court.
- DHS may also release specific recommendations in the pending court case as well as services provided.

This information may be released by DHS, the district attorney's office, the court clerk, the judge having jurisdiction over the case, and OCCY.

The following information remains confidential from the public:

- Identification of the victim's siblings or other children living in the home;
- The adults living in the home who are not criminally charged for the death or near death of the child.

## **IX. FEDERAL LAWS AFFECTING STATE PROCEEDINGS**

Beginning with the passage of the Child Abuse and Prevention and Treatment Act (CAPTA) in 1974, federal law has implemented a number of laws that have a significant impact on the protection of children and child welfare services.

The federal law on child abuse and neglect is found primarily in Title IV-B and Title IV-E of the Social Security Act. Title IV-B and IV-E offer funds to the states for family preservation and support services, child welfare services, state administrative costs in administering child welfare programs, foster care payments, and adoption subsidies.

State-level responses to these federal laws include:

- Enacting state legislation;
- Developing or revising state agency policy and regulations;
- Implementing new programs.

States must comply with specific Federal requirements and guidelines in order to be eligible for the Federal funding that is available for child welfare, foster care and adoption activities. These funds can be withdrawn if the requirements are not met.

**1. TIMELINE OF MAJOR FEDERAL LEGISLATION  
CONCERNED WITH CHILD PROTECTION, CHILD  
WELFARE AND ADOPTION**

- ✓ 1974: Original Child Abuse Prevention and Treatment Act (CAPTA)
- ✓ 1978: CAPTA amended; Indian child Welfare Act (ICWA)
- ✓ 1980: Adoption Assistance and Child Welfare Act
- ✓ 1984: CAPTA amended
- ✓ 1988: CAPTA amended
- ✓ 1992: CAPTA amended
- ✓ 1993: Family Preservation and Family Support Services Program
- ✓ 1994: Multiethnic Placement Act (MEPA)
- ✓ 1996: Multiethnic Placement Act – Interethnic Placement Provision amends MEPA
- ✓ 1997: Adoption and Safe Families Act (ASFA)
- ✓ 1999: Foster Care independence Act
- ✓ 2000: Intercountry Adoption Act
- ✓ 2002: Promoting Safe and Stable Families
- ✓ 2003: Keeping Children and Families Safe Act
- ✓ 2008: Fostering Connections to Success and Increasing Adoptions Act

## **A. CHILD ABUSE PREVENTION AND TREATMENT ACT OF 1974**

.P.L. 93-247; 42 U.S.C. §5101 et seq., 42 U.S.C. §5116 et seq., 45 CFR §1340

### **1. Reasons Bill Initiated**

- Recognition of and response to Battered Child Syndrome findings in 1961.
- 1 out every 10 children brought to ER were victims of physical abuse.
- Majority of cases went unreported.
- Federal government urged to take interest in the welfare of abused and neglected children.
- States developed reporting laws and responses to reports of abuse and neglect; however, federal government sought national uniformity.

### **2. Objectives/Goals**

- To increase identification, reporting and investigation of child maltreatment;
- To monitor research and publish materials for child welfare professionals.

### **3. Services Provided/Measures Taken**

- Appointment of GAL on every child abuse/neglect case.
- Assistance to States to develop child abuse identification and prevention programs.
- Enhanced Federal government's role
- Authorized limited government research into child abuse prevention and treatment.
- Created the National Center on Child Abuse and Neglect within the dept. of Health and Human Services

## **B. INDIAN CHILD WELFARE ACT OF 1978**

### 1. Reasons Bill Initiated

- State courts were removing a high proportion of Indian children from their families and tribes and placing them in non-Indian environments.
- As many as 25%-35% of Indian children were being placed in foster care; 85% of those children were placed in non-Indian homes.
- Growing concern that these children were losing their Indian culture and heritage.
- The State court systems did not take into consideration the tribal relations of Indian people and the cultural and social standards of Indian communities.

### 2. Objectives/Goals:

- To protect the best interests and stability of Indian children and families.
- To establish minimum Federal standards for the removal of Indian children from their homes and for the placement of Indian children in homes that reflect the values of Indian culture.
- To raise the standards of termination of parental rights of Indian parents.
- To recognize and strengthen the role of Tribal governments in determining child custody issues.

### 3. Services Provided:

- Established minimum Federal Standards for the removal of Indian children from their families.
- Required Indian children to be placed in foster or adoptive homes that reflect Indian culture.
- Provided for assistance to tribes in the operation of child and family service programs.
- Created exclusive tribal jurisdiction over all Indian child custody proceedings when required by tribe, parent, or Indian custodian.
- Granted preference to Indian family environments in adoptive or foster care placement.

- Provided funds to tribes, non-profit Indian organizations for purpose of improving child welfare services to Indian children and families.
- Required state and Federal courts to give full faith and credit to tribal court decrees.
- Raised standard of proof for terminating Indian parents' parental rights.



## **C. CHILD ABUSE PREVENTION AND TREATMENT ACT AND ADOPTION REFORM ACT OF 1978**

### 1. Reasons Bill Initiated:

- Original CAPTA did not cover adoption issues.

### 2. Objectives/Goals:

- To promote enactment of comprehensive adoption assistance legislation in each State.
- To provide new grants for improving adoption of children with special needs.

### 3. Services Provided:

- Facilitate placement of children with special needs in permanent adoptive homes.
- Promote quality standards for adoptive placement and the rights of adopted children.
- Provide for national adoption information exchange system.

## **D. ADOPTION ASSISTANCE AND CHILD WELFARE ACT OF 1980**

### **1. Reason Bill Initiated:**

- Initiated in response to discontent with public child welfare system.
- Problems of “Foster Care Drift” – concerns about children placed in multiple foster placements over an extended period of time.

### **2. Objectives/Goals:**

- Prevent unnecessary separation of children from families.
- Protect the autonomy of the family.
- Shift support of Federal government away from foster care alone and toward placement prevention and reunification.
- Promote the return of children to their families when feasible.
- Encourage adoption when it is in the child’s best interest.
- Improve the quality of care and services.
- Reduce number of children in foster care.
- Reduce duration of child’s stay in foster care.

### **3. Services Provided:**

- Requires adoption assistance payments taking into account AFDC-eligible parents with a special needs child.
- Defined “special needs” child
- Required that States make “reasonable efforts” to prevent removal of child from home and return those who have been removed as soon as possible as a condition of receiving foster care matching funds.
- Required states to establish reunification and preventive programs for all in foster care.
- Required placement of child in the least restrictive setting and, if beneficial to child, one close to parent’s home.
- Court must review status of child in any foster care every 6 months to determine what is in best interests of child.

## **E. CHILD ABUSE, DOMESTIC VIOLENCE, ADOPTION AND FAMILY SERVICES ACT OF 1992**

P.L. 95-608; 25 U.S.C. 1901

### 1. Reasons Bill Initiated:

- CAPTA needed reauthorization

### 2. Objectives/Goals:

- Modify requirements regarding grants to states for child protective services systems, including covering neglect as well as abuse.
- To make prevention activities community-based.

### 3. Services Provided:

- Revised research and assistance activities to include cultural distinctions relating to child abuse and neglect; culturally sensitive procedures with respect to child abuse cases; and the relationship of child abuse and neglect to cultural diversity.
- Provided grants for community-based child abuse and neglect prevention activities.

## **F. FAMILY PRESERVATION AND SUPPORT SERVICES PROGRAM OF 1993**

P.L. 103-66

### 1. Reason Bill Initiated:

- The number of reported and substantiated abuse and neglect cases was rising.
- The focus of services needed to be changed from crisis intervention to prevention.
- Services often did not feed the real needs of families.
- Child welfare services were often isolated from other services needed by vulnerable families.

### 2. Objectives/Goals:

- To promote the safety and well-being of all family members.
- To enhance parental ability to create a safe, stable, nurturing home.
- To assist families in resolving crises and connect them with services that would enable children to remain safely at home.
- To prevent the need for out-of-home placement.
- To help children already in placement, return home or enter another permanent living arrangement.
- To promote family strength and stability.

### 3. Services Provided:

- Encouraged states to create a continuum of family-focused services for “at risk” children and families.
- Encouraged states to use funds to integrate preventive services into treatment-oriented child welfare systems; improve service coordination within and across state service agencies; engage broad segments of the community in program planning at state and local levels.
- Broaden the definition of “family” to include people needing services regardless of family configuration: biological, adoptive, foster, extended, or self-defined.
- Defined services to be provided by the states: preservation and support.

## **G. MULTIETHNIC PLACEMENT ACT OF 1994**

P.L. 103-66

### 1. Reasons Bill Initiated:

- Growing number of children waiting for adoptive homes for excessive periods of time.
- Minority children were over-represented in out-of-home care.

### 2. Objectives/Goals:

- Decrease the time children awaiting adoption.
- Prevent discrimination on basis of race, color or national origin when making foster care or adoptive placements.
- Facilitate identification and recruitment of foster and adoptive families.

### 3. Services Provided:

- Prohibiting states from delaying, denying or otherwise discriminating when making a foster care or adoption placement decision based on race, color or national origin.
- Prohibiting discrimination against persons seeking to become a foster or adoptive placement.
- Require states to develop plans for recruitment of foster and adoptive families that reflect the ethnic and racial diversity of children in the state for whom families are needed.
- Made failure to comply with this Act a violation of Title VI of the Civil Rights Act.

## **H. INTERETHNIC ADOPTION PROVISIONS OF THE SMALL BUSINESS JOB PROTECTION ACT OF 1996**

P.L. 104-188, Title I, Subtitle H(1808)

### **1. Reason Bill Initiated:**

- To eliminate discrimination on the basis of race, color, or national origin against prospective foster and adoptive parents as well as discrimination against children who are waiting for foster and/or adoptive parents.

### **2. Objectives/Goals:**

- To affirm and strengthen existing prohibitions against discrimination in foster care and adoptive placements.
- To affirm prohibitions against routinely considering race, color or national origin when making foster care and/or adoption placement decisions.
- To affirm diligent recruitment efforts.

### **3. Services Provided:**

- Requirement that states that receive funds from the Federal government and are involved in foster care or adoption placements may not deny any individual the opportunity to become a foster or adoptive parent based upon the race, color or national origin of the parent or the child.
- That states may not delay or deny a child's foster care or adoptive placement based upon the race, color or national origin of the parent or the child.
- Subject states to graduated financial penalties if they do not comply with the requirements established under this law.
- Repealed language that allowed states to consider the "cultural, ethnic or racial background" of a child, as well as the "capacity" of the prospective parent to meet the needs of such a child.

## **I. CHILD ABUSE PREVENTION AND TREATMENT ACT AMENDMENTS OF 1996**

P.L. 104-235

1. Reasons Bill Initiated:
  - Immunity to child abuse reporters had led to concerns about false reporting of abuse and neglect.
  - Reauthorization of CAPTA.
  
2. Objectives/Goals:
  - Reauthorize CAPTA.
  - Consolidate and reorganize Federal agencies to facilitate better child maltreatment research and more coordinated response to the issues facing the states.
  
3. Services Provided:
  - Abolished NCCAN and created the Office on Child Abuse and Neglect
  - Reauthorized CAPTA through Fiscal Year 2001
  - Added new requirements to address the problems of false reports of abuse and neglect, delays in termination of parental rights, and lack of public oversight of child protection.
  - Required states to institute an expedited TPR process for abandoned infants or when the parent is responsible for the death or serious bodily injury of a child.
  - Set the minimum definition of child abuse to include death, serious physical or emotional injury, sexual abuse or imminent risk of harm.
  - Recognized the right of parental exercise of religious beliefs concerning medical care.

## **J. ADOPTION AND SAFE FAMILIES ACT (ASFA) OF 1997**

P.L. 105-89

### 1. Reason Bill Initiated:

- Many children in foster care were waiting several years for permanent placement.
- Focus on reasonable efforts to reunify with families led to placement decisions that were not, at times, in the best interests of the child and not adequately focused on child safety.
- To move children into permanent homes in a more timely manner.

### 2. Objectives/Goals:

- To promote permanency for children in foster care.
- To ensure safety for abused and neglected children.
- To accelerate permanent placements of children.
- To increase accountability of the child welfare system.

### 3. Services Provided:

- Reauthorized Safe and Stable Families Program and extended categories of services to include time-limited reunification services and adoption promotion and support services.
- Ensured safety for children by ensuring health and safety concerns when state determines placement for children; requires reporting on scope of substance abuse in child welfare population and outcomes of services provided to that population; added safety of the child to every step of the case plan and review process; required criminal records checks for foster/adoptive parents who receive Federal funds on behalf of a child, unless State opted out.
- Accelerated permanent placement by requiring states to initiate court proceedings to free a child for adoption once the child has been in foster care for at least 15 of the most recent 22 months, unless an exception exists; allowed children to be freed for adoption more quickly in extreme cases.
- Promoted adoptions by rewarding states with incentive funds; requiring states to use reasonable efforts to move eligible foster children toward permanent placements; promoted adoptions of all special needs children and ensured health coverage for adopted special needs children; prohibited states from delaying



placements of children based on the geographic location of the prospective adoptive families.

- Clarified “reasonable efforts” to emphasize children’s health and safety; required states to specify situations when services to prevent foster placement and reunification of families are not required.
- Implemented shorter time limits for making decision about permanent placements by requiring permanency hearings to be held no later than 12 months after entering foster care; must initiate termination of parental rights proceedings after child has been in foster care 15 of previous 22 months, except if not in best interest of the child or if the child is in the care of a relative.

## **K. FOSTER CARE INDEPENDENCE ACT OF 1999**

### 1. Reasons Bill Initiated:

- Concerns for the poor outcomes of former foster youth who “age out” of the child welfare system.
- Concerns that States were not adequately preparing youth for the transition from foster care to independent living.

### 2. Objective/Goals:

- To improve independent living programs for current and former foster youth up to age 21.
- To expand access to medical care.
- To extend services to age 21 for former foster youth.

### 3. Services Provided:

- Revised the program of grants to states and expanded opportunities for independent living programs providing education, training and employment services, and financial support for foster youth to prepare for living on their own.
- Allowed funds to be used to pay for room and board for former foster youth aged 18 to 21.
- Provided states with the option to extend Medicaid coverage to 18 to 21-year olds who have been emancipated from foster care.
- Efforts to find permanent placement may continue concurrently with independent living activities.
- Mandated that state plans for foster care and adoption assistance include certification that prospective parents will be adequately prepared to provide for the needs of the child and that such preparation will continue after placement of the child.

## **L. CHILD ABUSE PREVENTION AND ENFORCEMENT ACT OF 2000**

### 1. Reason Bill Initiated:

- Concern about inadequate responses to reports of child maltreatment.

### 2. Objective/Goals:

- To address concerns about the level and quality to responses to reports of child maltreatment.

### 3. Services Provided:

- Allowed use of Federal law enforcement funds by states to improve the criminal justice system to provide timely, accurate, and complete criminal history record information to child welfare agencies, organizations and programs that are engaged in the assessment of activities related to the protection of children.
- Allowed the use of Federal grants by law enforcement to enforce child abuse and neglect laws; to promote programs designed to prevent child abuse and neglect; to establish and support cooperative programs between law enforcement and media organizations to collect, record, retain, and disseminate information useful in the identification and apprehension of suspected criminal offenders.

## **M. INTERCOUNTRY ADOPTION ACT OF 2000**

P.L. 106-279; 42 U.S.C. 14901 et seq.

### **1. Reasons Bill Initiated:**

- Needed federal legislation to ratify the Hague Convention on Protection of Children and Cooperation in Respect to Intercountry Adoption.
- Hague Convention sets minimum standards and procedures for adoptions between implementing countries that: prevents abuses such as abduction or sale of children; ensures proper consent for adoption; allows for child's transfer to receiving country; establishes the adopted child's status in the receiving country.

### **2. Objectives/Goals:**

- To provide for implementation by the US of the Hague Convention.

### **3. Services Provided:**

- U.S. Central Authority to be established within the Department of State.
- State Department to enter into agreements with one or more accrediting entities to provide for accreditation of non-profit agencies and approval of person who seek to provide adoption services covered by the Convention.
- Accrediting entities to process applications for approval, be responsible for oversight, enforcement of compliance by adoption service providers and perform information collection activities.
- State and INS to establish a case registry for all intercountry adoptions – incoming, outgoing, Hague Convention cases and others.
- State Department to monitor each accrediting entity's performance of duties and compliance with the Convention.
- Convention adoptions finalized in other countries party to Convention to be recognized in the US.
- Procedures and requirements to be followed for adoption of children residing in US by residents of other country.
- State courts prohibited from finalizing Convention adoptions or granting custody for a Convention adoption unless such a court

has verified that the required determinations have been made by the country of origin and the receiving country.

- Immigration and Nationality Act amended to provide for a new category of children adopted, or to be adopted, under the Convention and meeting other requirements to qualify for immigrant visas.
- The preservation of Convention records on individual adoptions held by the State Dept. and INS.
- The admissibility of documents with regard to Convention adoptions without their legalization.

## **N. STRENGTHENING ABUSE AND NEGLECT COURTS ACT OF 2000**

P.L. 106-314

1. Reasons Bill Initiated:
  - Improve effectiveness of court practice related to child abuse and neglect proceedings.
2. Objectives/Goals:
  - To improve efficiency and effectiveness of courts.
3. Services Provided:
  - Award of grants to state and local courts to enable courts to develop and implement automated data collection and case-tracking systems for proceedings conducted by abuse and neglect courts;
  - Require use of such systems to evaluate a court's performance in compliance with part B and part E of title IV of the Social Security Act.
  - Directs Administrator of Office of Juvenile Justice and Delinquency Prevention of the Department of Justice to make a grant to CASA for purposes of expanding recruitment of CASA programs located in the 15 largest urban areas; develop regional, multi-jurisdictional CASA programs serving rural areas, and providing training and supervision of CASA volunteers.

## **O. PROMOTING SAFE AND STABLE FAMILIES AMENDMENTS OF 2001**

P.L. 107-133

### **1. Reasons Bill Initiated:**

- Continued need to protect children and strengthen families.
- Rapid increase in numbers of adoptions created a need for post-adoption services.
- Concerns for children with incarcerated parents and negative outcomes for these children.
- Educational deficiencies of youth who age out of foster care.

### **2. Objectives/Goals:**

- Encourage states to develop or expand programs for family preservation services, community-based family support services, adoption promotion and support services, and time-limited family reunification services.
- Reduce risk behavior by children of incarcerated parents by providing adult mentors.
- Continue improvements in State courts.
- Provide educational opportunities for youth aging out of foster care.

### **3. Services Provided:**

- Included infant safe haven programs within definition of family preservation services.
- Added strengthening parental relationship and promoting healthy marriages to allowable activities.
- Created a matching grant program to support mentoring networks for children of prisoners.
- Authorized voucher program as part of John H. Chafee Foster Care Independence Program.

## **P. KEEPING CHILDREN AND FAMILIES SAFE ACT OF 2003**

### 1. Reasons Bill Initiated:

- CAPTA needed reauthorization.
- Concern that many children and families fail to receive adequate protection or treatment.

### 2. Objectives/Goals:

- To reauthorize CAPTA, Adoption Opportunities, Abandoned Infants Assistance, and Family Violence Prevention and Services Acts.

### 3. Services Provided:

- Emphasizes enhanced linkages between child protective service agencies and public health, mental health, and developmental disabilities agencies.
- Mandates changes to state plan eligibility requirements, including policies and procedures to address needs of infants affected by prenatal drug exposure, provisions address the training of CPS workers regarding the protection of the legal rights and safety of children and families and enabling the disclosure of confidential information to any governmental entity requiring such information.
- Implementation of programs to increase number of older foster children placed in adoptive families.
- Requiring priority of program to infants and young children who are infected with or exposed to HIV or have a life-threatening illness, or, have been prenatally exposed to a dangerous drug.



## **Q. DEFICIT REDUCTION ACT OF 2005**

P.L. 109-171

### 1. Reasons Bill Initiated:

- Increased need for court/agency collaboration in order to improve outcomes for abused children.

### 2. Objectives/Goals:

- To improve training for judges, attorneys and others who work in child protection.

### 3. Services Provided:

- Provides new court improvement grants for improved data collection and training for judges, attorneys, and other legal personnel in child welfare cases.
- Requires collaboration between courts and agencies.
- Provides for the use of child welfare records in state court proceedings.

## **R. SAFE AND TIMELY INTERSTATE PLACEMENT OF FOSTER CHILDREN ACT OF 2006**

P.L. 109-239

1. Reasons Bill Initiated:
  - Concerns regarding procedures placing children in other states.
2. Objectives/Goals:
  - Improve practice related to interstate placement of children.
3. Services Provided:
  - Each State plan shall have procedures for orderly and timely interstate placement of children; complete home studies within a specified period; accept home studies received from another state.
  - Requires each state to not impose any restrictions on contracting with private agencies to conduct home studies.
  - Increases the required frequency of state case worker visits to child placed in foster care outside the state.
  - Requires child's health and education record to be supplied to the child at no cost when he or she leaves foster care by emancipation.
  - Foster parent given the opportunity to be heard in any proceeding respecting their foster child.
  - Requires that foster parents, pre-adoptive parents and relative caregivers of a child in foster care are notified of any court proceedings.
  - Provides for consideration of out-of-state placements in permanency hearings, case plans and case reviews.
  - Each state to assure that the state will eliminate legal barriers to facilitate timely adoptive or permanent placements for children.

## **S. CHILDREN AND FAMILY SERVICES ACT OF 2006**

P.L. 109-288

### 1. Reason Bill Initiated:

- Need to reauthorize Promoting Safe and Stable Families through 2011.

### 2. Objective/Goals:

- Also to increase set-asides for Indian tribes.

### 3. Services Provided:

- Reserves funds for states to develop activities designed to improve caseworker retention, recruitment, training and ability to access the benefits of technology.
- Awarding grants to increase the well-being of, and to improve the permanency outcomes for, children affected by methamphetamine or other substance abuse.
- To provide competitive grants to provide services and activities designed to increase the well being of, improve permanency outcomes for, and enhance the safety of children who are in an out-of-home placement or are at risk of being placed in an out-of-home placement as a result of a parent's methamphetamine or other substance abuse.
- Requires each state plan to describe standards for content and frequency of caseworker visits for children in foster care and to ensure that (minimally) children are visited on a monthly basis and that the visits are well-planned and focused on issues pertinent to case planning and service delivery to ensure child's safety and permanency.
- Extends court improvement program through FY2011.
- Requires consultation with the child in foster care proceedings.

## **T. ADAM WALSH CHILD PROTECTION AND SAFETY ACT OF 2006**

P.L. 109-248

1. Reasons Bill Initiated:
  - Concerns about sexually abused and exploited children.
2. Objectives/Goals:
  - To protect children from exploitation and violent crime..
  - Prevent child abuse and pornography.
  - Promote Internet safety.
3. Services Provided:
  - Requires national criminal background and child abuse registry checks before approval of any foster or adoptive placement.
  - Requires Dept. of Health and Human Services to establish a national registry of substantiated cases of child abuse and neglect.

## **U. FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT 2008**

P.L. 110-351

### **1. Reasons Bill Initiated:**

- To connect and support relative caregivers for children who have been removed from parents.
- To continue to address the needs and deficiencies of youth in foster care.
- To address the needs of Indian children who are in foster care.
- To continue to address and promote special needs adoptions and older child adoptions.

### **2. Objectives/Goals:**

- To promote permanent families for children in foster care.
- To improve outcomes for children and youth in foster care.
- To increase support for American Indian and Alaska Native children.
- To improve the quality of staff working with children in the child welfare system.

### **3. Services Provided/Measures Taken:**

- Allows the states to enter into agreements to provide kinship guardianship assistance payments to grandparents and other relatives who have assumed legal guardianship of foster children.
- Provides matching grants to governmental welfare agencies to children in foster care or at risk for foster care to reconnect with family members.
- Requires that within 30 days of removal, the state exercise due diligence to identify and notify the child's adult relatives of the removal and provide them with information regarding placement.
- Increases incentives to states to find adoptive families for special needs children and older youth.
- Preserves sibling bond by requiring states to make reasonable efforts to place siblings together when removed from parents' home.
- Provides continued federal support to youth who turn 18 in foster care without permanent families.

- Requires states to allow children, when placed in foster care, to remain in their same school where appropriate or to get help transferring promptly to a new school.
- Providing American Indian and Alaska Native children federal assistance and protections through the federal foster care and adoption and assistance programs.
- Extends federal support for training of child welfare staff.

V. THE PREVENTING SEX TRAFFICKING AND STRENGTHENING FAMILIES ACT (2014)

1. Reasons Bill Initiated:

- To protect children and youth in foster care from becoming victims of sex trafficking.
- Makes improvements to processes and practices that will increase the likelihood for positive outcomes for foster children and youth.
- Improves adoption incentives.

2. Objectives/Goals:

- Identification and protection of children and youth at risk of sex trafficking
- Improving opportunities for children in foster care
- Provide normalcy for children in foster care
- Empowering children to participate in case plan and transition planning.

3. Services Provided /Measures taken:

- States are required to identify children and youth at risk of sex trafficking, collect data, and determine appropriate services for them. This requirement only applies to children adjudicated to be deprived.
- State agencies must inform law enforcement within 24 hours of receiving information on a child identified as a victim.
- States must develop a plan to locate any child missing from foster care.
- States must determine primary factors that contributed to a child's running away from care and determine the child's experiences while absent.
- States are required to implement a "reasonable and prudent parent standard" for decisions made by foster parents or officials in child care institutions. This standard is applied when determining whether to allow children in foster care to participate in age-and developmentally- appropriate extracurricular, cultural, social, and enrichment activities.
- Another Planned Permanent Living Arrangement (APPLA) is prohibited for children under the age of 16 years.
- Children age 14 years or older have the right to be consulted in the development of their case plan and are allowed to invite two individuals other than foster parents or caseworkers to be part of the case planning team.
- The children must be provided with a written "list of rights" that outlines the youth's rights relating to education, healthcare, visitations, court hearings, and the right to stay safe.

- Youth aging out of foster care must receive copies of important documents: birth certificate, Social Security card, health insurance information, medical records, and a driver's license or state identification card.
- Additional incentive payments are available to states for timely adoptions.
- All parents of a child's siblings (when the parent has legal custody of the sibling) must be identified and notified within 30 days after removal of a child from parent's custody.



#### 4. INPATIENT MENTAL HEALTH AND SUBSTANCE ABUSE TREATMENT OF MINORS ACT

The due process issue of institutionalizing a child in need of mental health treatment was first addressed by the United State Supreme Court in *Parham v. J.R.*, 442 U.S. 584 (1979). The class action sought a declaratory judgment for procedural safeguards similar to those required to commit an adult to a mental hospital involuntarily. The Court determined that whether it is a parent who attempts to commit a child or the State, an inquiry by a “neutral factfinder” is required to determine whether the statutory requirements or admission are satisfied. The inquiry must probe into the child’s background and must include an interview with the child. The decision maker is required to have the authority to refuse to admit the child. Further the child’s continuing need for commitment must be reviewed periodically by a similarly independent procedure. The Court rejected the claim that a judge or administrative hearing officer must be the neutral factfinder.

However, in 1992, the U.S. House of Representatives held hearings regarding numerous reports of abuse in juvenile civil commitments by private psychiatric hospitals. Evidence was presented of “recruitment” efforts by hospitals to attract parents to place children in care; insurance companies were billed daily for unnecessary medications; children were held in-patient for extraordinary lengths of time, but released as “cured” when insurance benefits were exhausted. As a result, the children’s behavioral problems became worse, rather than better, after their inpatient treatment.

“Who Are You To Say What My Best Interest Is?” Minors’ Due Process Rights When Admitted By Parents for Inpatient Mental Health Treatment, 71 Wash. L. Rev. 1187, (1996).

Inpatient Mental Health and Substance Abuse Treatment of Minors Act, [43A OS §§5-501](#) et seq.

Many states do not allow a state agency to place a child in a mental health treatment facility without a judicial finding during the course of the juvenile court proceedings that such care is necessary. Oklahoma provides far more due process protections to a child who is a ward of the court and in need of placement in a mental health treatment facility.

## **A. ADMISSION INTO IN-PATIENT FACILITY**

This procedure is required for all children who are wards of the court – whether in state custody or custody of a parent or legal guardian.

- The child may be admitted to a hospital on an emergency basis not to exceed five (5) business days from the time of admission.
- On the next business day following admission, notice must be given by DHS to the child’s attorney, CASA, the court and the DA.
- An evaluation must be completed within 48 business hours by a licensed mental health professional at the facility.
- If a parent having physical custody of the ward arranges for the emergency admission, the parent is required to immediately notify the DHS/OJA/Bureau case worker responsible for supervision of the case, who will, in turn, notify the other parties.

## **B. EVALUATION REPORT**

The evaluation report must make the following findings before the child may qualify for in-patient treatment:

- The child is in need of treatment and is reasonably likely to benefit from treatment, AND
- Inpatient treatment is the least restrictive alternative that meets the needs of the child.
  - Reasonable effort have been made to provide for the treatment needs of the child through the provision of less restrictive alternatives and such alternatives have failed to meet the treatment needs of the child; OR
  - After thorough consideration of less restrictive alternatives, the condition is such that less restrictive alternatives are unlikely to meet the treatment needs of the child.

The child must have been provided with a clinically appropriate explanation of the nature and purpose of the treatment.

The reports must be signed by the individual who examined the child.

All parents, public agencies, and providers or programs which have treated or are treating the child shall cooperate in providing records related to previous and current treatment of the minor.

**C. PETITION: "In the Matter of \_\_\_\_\_, a Minor Alleged to be in Need of Inpatient Mental Health or Substance Abuse Treatment"**

The District Attorney shall file the petition after receiving the evaluation report that supports the in-patient treatment and upon the request of the legal custodian or guardian (i.e., parent, OKDHS, OJA).

- The petition must be filed within three (3) days after receiving the evaluation report.
  - The evaluation report must be attached to the petition.
  - The petition must allege that the child has a demonstrable mental illness or is drug or alcohol dependent and as a result can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or herself, or another person if services are not provided AND
    - Has engaged in one or more recent overt acts or made significant threats which substantially support the expectation.
  - The petition must be verified.
  - The petition must set forth the following:
    - With particularity the facts which bring the child within the purview of the Act;
    - The name, age and residence of the child;
    - The name and residence of the legal guardian of the child;
    - The name and residence of the person(s) having custody of the child;
    - If a parent or guardian cannot be found, the name and residence of the nearest known relative;
    - The relief requested, and
    - Endorsement of witnesses expected to testify.
- The child is discharged if the DA declines to file the petition.
- An individual treatment plan must be submitted to the court at least twenty-four (24) hours prior to the time set for the hearing.

#### **D. PREHEARING DETENTION ORDER**

The child shall not remain in-patient on an emergency basis for more than five (5) business days unless the facility receives a prehearing detention order authorizing detention pending a hearing on the petition.

The prehearing detention order is requested from the court by the district attorney. If the court finds probable cause exists that the child is in need of treatment, then the court enters the detention order authorizing the facility to detain the child until the hearing on the petition.

The court sets a date and time for a hearing on the petition.

A certified copy of the prehearing detention order is provided to the facility to detain or to continue to detain the child.

If the court fails to find probable cause, then the petition is dismissed and the child is released.

## **E. NOTICE OF HEARING**

The hearing on the merits of the petition must be set within 1-3 judicial days from the date of the filing of the petition.

Notice of hearing date, time, place and purpose is given to:

- District Attorney
- Parent(s) or Legal Custodian
- Person in charge of the facility
- State agency responsible for supervision of the case in which the minor was adjudicated to be a ward of the court.

Notice must be given at least 24 hours prior to the date set for the hearing.

The court must direct the method of notice to be given.

## **G. RIGHTS OF CHILD**

### [43A OS §5-511](#)

- The child has the right to appear in person at the hearing on the merits, unless the child elects to waive his or her appearance.
- The hearing on the merits must be held not less than one (1) day and not more than three (3) judicial days from the date of the filing of the petition.
  - Only the child's attorney can request a continuance for up to an additional three (3) judicial days.

### [43A OS §5-510](#)

- The child has a right to a jury trial of six (6) persons.
- The child has the right to remain silent. However, the testimony of the child cannot be used against the child in any other legal proceeding.
- The child has the right to cross-examine witnesses.

## **G. LEGAL COUNSEL**

The court must appoint legal counsel to represent the child if the child is without counsel.

The attorney must consult with the child at least 24 hours prior to the date set or the hearing on the petition.

The court may appoint a guardian ad litem *sua sponte* or upon request of the child's attorney.



## **H. TRIAL**

The hearings must be private with only persons having direct interest in the case being present.

Transcript of the hearing must be kept and not open to inspection, unless otherwise ordered by the court.

The decision of the court must be based on sworn testimony that is subject to cross-examination. However, the facts may be stipulated to.

- The court should ascertain from the child if the child agrees with the stipulation and understands the consequences of the stipulation.

Only the child may demand a jury trial. The jury shall consist of 6 persons.

If approved by the court, the proceedings may be conducted by teleconference communications provided that the attorney for the child appears personally at the hearing.

The District Attorney's burden of proof is clear and convincing evidence.

## I. JUDICIAL FINDINGS AND ORDER OF COMMITMENT

[43A OS §5-512](#)

1. The court must determine, by clear and convincing evidence, whether:
  - The child has a demonstrable mental illness or is drug or alcohol dependent, and
    - As a result of that illness or dependence can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or herself or another person if services are not provided, and
    - Has engaged in one or more recent overt acts, or
    - Made significant threats which substantially support that expectation; and
    - The child is likely to benefit from the treatment as proposed in the treatment plan.
  - The court should order the child to receive the least restrictive care and treatment that is appropriate for the needs of the child.
    - Inpatient treatment shall be ordered only where the court finds:
      - ◆ That all reasonable efforts have been made to provide treatment by utilizing less restrictive alternatives to inpatient treatment and that the alternatives have failed to meet the treatment needs of the child; or
      - ◆ After thoroughly considering the less restrictive treatment alternatives, the child's condition will unlikely be met by those alternatives, and
        - There are no comparably effective services available that are less intrusive or restrictive.
2. If the court fails to find that the child is need of treatment, the matter is dismissed and the child immediately released from the facility.
3. The court may find that the child is in need of treatment but does not require inpatient care. The court may order lesser restrictive treatment or services and further, may order the parent to comply with reasonable conditions relating to the treatment of the child.

## **J. POST ADJUDICATION HEARINGS**

[43A OS §5-512](#)

Whenever the court commits a child to inpatient treatment, the court must review the matter not more than thirty (30) days from the date of the commitment and should continue to review the matter every thirty (30) days until such time the child is released from the facility.

- Not less than three (3) days prior to the review hearing, the facility must submit a report regarding the child's progress and treatment and make recommendation as to whether the child continues to require inpatient care and state the reasons for continued care.

## **K. DISCHARGE PLAN**

The child shall be discharged when:

- The facility determines that the child not longer meets the criteria for inpatient treatment.
- Upon the expiration of the court's order (i.e., 30 days after the entry of the order).
- Entry of a court order discharging the child from inpatient treatment.

Prior to discharge, a discharge plan shall be prepared and provided to the child and parent or person responsible for the supervision of the case. The plan should include, in part:

- Services required in the community to meet the treatment, education, housing and physical care and safety for the child;
- Identification of the agencies that will be involved in providing treatment and support for the child;
- Information regarding medication which should be prescribed to the child; and
- An appointment for follow-up outpatient treatment and medication management.

## XI. RELATED PROCEEDINGS

### 2. Establishing Paternity (10A OS 1-4-702)

The Oklahoma Children's Code requires the trial court to establish paternity of an alleged or adjudicated deprived child if not previously established. This must be established within six (6) months after the filing of the deprived petition. Paternity is established in conformance with the provisions of the Uniform Parentage Act.

When paternity is at issue, an alleged father and mother of the child shall be given notice in the summons and petition that paternity may be established in the deprived action.

- Oklahoma child support services shall proceed with the paternity establishment for any case deferred to the administrative or other district court division.

After establishment of paternity, child support must be addressed. Also the court may:

- Order the father to pay child support for the past months that were missed; or
- Reserve or refer the issue of prior support to Oklahoma Child Support services.

The order establishing paternity shall not be confidential and shall be filed as a separate document.

## XI. RELATED PROCEEDINGS

### 2.1 CHILD SUPPORT

Child support shall be ordered for each parent named in the petition.

- Each parent of any child named in a deprived petition shall be given notice in the summons and petition that child support may be ordered or modified in this action.
- The courts are required to address child support or defer the issue of establishment or enforcement of child support within six (6) months after the filing of the petition.
- If child support is already being paid, the court may order it continue or may modify the amount.
- The court may deviate from the child support guidelines when it is deemed necessary while the parent is complying with the ISP.
- Each parent shall be individually ordered to pay his or her percentage of the total monthly child support obligation including the parents who reside together.
- The court shall order the parent to provide medical insurance when it is available.
- Child support computation form shall be completed by the court, counsel of record, or OCCS.
- Child support may be modified upon a material change in circumstances.
- After a deprived action is dismissed, the most recent child support order entered in the deprived action shall remain in full force and effect, unless the judge presiding over the deprived action orders otherwise.
- The change in custody shall transfer child supports payments to the new caretaker unless the caretaker is receiving foster care payments or Temporary Assistance to Needy Families payments for the care of the child.

### **3. WITHDRAWAL OF LIFE-SUSTAINING MEDICAL TREATMENT AND DNR ORDERS**

The Oklahoma Children's Code specifically prohibits OKDHS from consenting to the termination of life support or "Do Not Resuscitate" orders on behalf of children in the Department's custody. The Children's Code provides that a court may authorize the withdrawal of life-sustaining medical treatment or a DNR order on behalf of a DHS custody child upon the written recommendation of a licensed physician and after having given notice to the parties and conducting a hearing.

[10A OS §1-3-102\(C\)\(2\)](#)

The juvenile court may enter a DNR order for a child under protective custody for children with, for example, no cognitive brain function, who are in a comatose state, or have several and incurable conditions with major neurological impairments. Courts in other jurisdictions outside of Oklahoma have applied both the best interests standard and the substituted judgment standard in making the decision as to whether a DNR Order is appropriate.

In re K.I., 735 A.2d 448  
(D.C.1999)

Custody of a Minor, 434 N.E.2d  
601 (Mass.1982)

## A. BEST INTERESTS TEST

77 C.J.S. Right to Die §30

The best interest standard focuses solely on whether it is in the current best interests of the child to withhold life-sustaining treatment. Courts should presume that continuing life is in the best interest of the child and should err on the side of life and assume that a patient would choose to defend life in exercising his or her right of privacy. The court's role as *parens patriae* in deprived proceedings allows it to provide the relief necessary to protect the best interests of the child. Therefore, other jurisdictions have upheld the juvenile court's decision to issue the DNR order based upon the guidance from medical experts and consistent with the best interests of the child, rather than abiding by a parent's wishes that may be contrary to expert medical advice.

Some of the factors courts have considered under this standard include:

- The patient's current level of physical, sensory, emotional and cognitive functioning;
- The degree of physical pain resulting from the medical condition, treatment, and termination of the treatment;
- Degree of humiliation, dependence and loss of dignity probably resulting from the condition and treatment;
- Quality of life, life expectancy and prognosis for recovery with and without treatment, including the futility of treatment;
- Whether the minor's preference has been or can be ascertained;
- The various treatment options, and the risks, side effects and benefits of each of those options;
- The opinions of the family, the reasons behind those opinions, and the reasons why the family either has no opinion or cannot agree on a course of treatment; and
- The motivations of the family in advocating a particular course of treatment.

Similar analysis as used in termination of parental rights considerations, [In re T.H.L., 636 P.2d 330 \(Okla.1981\)](#).

In re Christopher I, 131 Cal.Rptr.2d 122 (2003); In re K.I., 735 A.2d 448 (D.C.1999); In re Rosebush, 491 N.W.3d 633 (Mich.1992); In re Guardianship of Grant, 747 P.2d 445 (Wash.1987).



## **B. SUBSTITUTE DECISIONMAKING STANDARD**

The substituted judgment standard has been invoked in cases of adults who at one time were competent but later became incompetent. In applying the doctrine, the court, as surrogate for the incompetent, is to determine as best it can what choice the individual, if competent, would make with respect to medical procedures. However, the substituted judgment doctrine is difficult to apply to children, if not impossible, who have lacked the ability to express a preference regarding their course of medical treatment.

In re Barry, 445 So.2d 365  
(Fla.App.2Dist.,1984).

### C. HEARING AND PARENTAL RIGHTS

The Oklahoma Children's Code requires notice to the parties, including the parents if parental rights have not been terminated, and a hearing. As noted in other jurisdictions, there may be occasions where the court has the authority to consent to a DNR directive over parental objection. However, the issuance of a DNR order is tantamount to a termination of parental rights, and as such, "the same due process must be afforded in a [DNR] hearing as is required in a proceeding to terminate parental rights." It has further been held that there may exist situations, in a non abuse or neglect matter, where a DNR could be ordered over the objection of a caring parent, but before such action could be taken, "[a]t the very least, the hospital must establish by clear and convincing evidence that [the mother's] treatment decision should not be respected because it would constitute abuse or neglect of the respondent." Therefore, it can be assumed that where a child is found to be deprived, and that child's parent takes a position that is clearly beyond the child's best interests, or displays judgment that is contrary to all competent medical evidence, the court should act in the child's best interests regardless of the contrary direction provided by the child's parents or guardians.

In re Tabatha R., 564 N.W.2d  
(Neb.1997)

In re Baby K, 83 F.Supp. 1022  
(E.D.Va.1993)

In re K.I., 735 A.2d 448  
(D.C.1999).

## **1. BURDEN OF PROOF**

Most jurisdictions have held that, given the impact of this decision on the child and the deprivation of the parent's right to the custody of the child (i.e., death is the termination of parental rights), the evidentiary standard employed in considering withholding or withdrawal of life-sustaining treatment or issuance of a DNR order is clear and convincing evidence of the minor's best interests.

In re K.I., 735 An2d 448  
(D.C.1999);

[Cruzan v. Director, Mo. Health  
Dept., 497 U.S. 261\(1990\)](#)

## **XII. RELATED PROCEEDINGS**

In a deprived action, the court may be required to determine paternity, order child support, finalize an adoption, and decide whether a child should be admitted to a hospital for mental health inpatient care.