



# Council of the Cherokee Nation

Cherokee Nation Tribal  
Council  
17763 S. Muskogee Ave.  
Tahlequah, OK 74464

## Legislation Text

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**File #:** CNCA-10, **Version:** 1

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### **TITLE 10 - CHILDREN** **Oklahoma Statutes**

Children, see 10 O.S. § 1 et seq.

Oklahoma children's code, see 10A O.S. § 1-1-101 et seq.

### **Code of Federal Regulations**

Courts of Indian Offenses and Law and Order Code,

Child protection and domestic violence procedures, see 25 C.F.R. § 11.1200 et seq.

Children's court, see 25 C.F.R. § 11.900 et seq.

Juvenile offender procedure, see 25 C.F.R. § 11.1000 et seq.

Minor-in-need-of-care procedure, see 25 C.F.R. § 11.1100 et seq.

Financial assistance and social services programs, see 25 C.F.R. § 20.100 et seq.

Indian child protection and family violence prevention, see 25 C.F.R. § 63.1 et seq.

Indian child welfare act, see 25 C.F.R. § 23.1 et seq.

Tribal reassumption of jurisdiction over child custody proceedings, see 25 C.F.R. § 13.1 et seq.

### **United States Code**

Indian child protection and family violence prevention, see 25 U.S.C. § 3201 et seq.

Indian child welfare, see 25 U.S.C. § 1901 et seq.

Indian youth programs, alcohol abuse prevention and treatment, see 25 U.S.C. § 2431 et seq.

Indian youth suicide prevention, see 25 U.S.C. § 1667 et seq.

## **CHAPTER 1**

### **GENERAL PROVISIONS**

### **Cross References**

Guardianship, definitions, see 30 CNCA § 4.

#### **§ 1. Purpose**

This title shall be liberally interpreted and construed to fulfill the following expressed purposes:

1. To preserve and retain the unity of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this Title;
2. To recognize that alcohol and substance abuse is a disease which is both preventable and treatable;
3. To achieve the purposes of this title in a family environment whenever possible, separating the child from the child's parents or extended family only when necessary for the child's welfare or in the interest of public safety;
4. To provide judicial and other procedures through which the provisions of this title are executed and enforced and in which the parties are assured a fair hearing and their civil and other legal rights recognized and enforced;
5. To protect the interest of Cherokee Nation in preserving and promoting the heritage, culture, tradition and values of Cherokee Nation for its children;
6. To protect the child from abuse and to encourage a healthy, comfortable and constructive family life and environment for the children of Cherokee Nation.

### **Library References**

Indians <KEY>133.

Westlaw Topic No. 209.

C.J.S. Indians § 150.

#### **§ 1.2. Application of Title**

This Title shall apply to children subject to the jurisdiction of Cherokee Nation as defined by federal and Cherokee Nation law.

### **History**

**Amended.** LA 24-12, eff. July 24, 2012.

### **Library References**

Indians <KEY>133.

Westlaw Topic No. 209.

C.J.S. Indians § 150.

### **§ 1.3. Presumption of legitimacy**

All children born in wedlock are presumed to be legitimate.

#### **Library References**

Children Out-of-Wedlock <KEY>3.

Indians <KEY>133.

Westlaw Topic Nos. 76H, 209.

C.J.S. Children Out-of-Wedlock §§ 10 to 14.

C.J.S. Indians § 150.

### **§ 1.4. Children deemed legitimate**

All children born shall be legitimate.

#### **Library References**

Children Out-of-Wedlock <KEY>1.

Indians <KEY>133.

Westlaw Topic Nos. 76H, 209.

C.J.S. Children Out-of-Wedlock §§ 1 to 8.

C.J.S. Indians § 150.

### **§ 2. Children born after dissolution of marriage or before wedlock**

All children of a woman who has been married, born within ten (10) months after the dissolution of the marriage are presumed to be legitimate children of that marriage.

#### **Library References**

Children Out-of-Wedlock <KEY>3.

Indians <KEY>133.

Westlaw Topic Nos. 76H, 209.

C.J.S. Children Out-of-Wedlock §§ 10 to 14.

C.J.S. Indians § 150.

### **§ 3. Reserved**

### **§ 4. Support and education**

The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the parent having custody is able to give are inadequate, the other parent must assist to the extent of his or her ability.

#### **Library References**

Child Support <KEY>22.

Children Out-of-Wedlock <KEY>21.

Indians <KEY>137.

Westlaw Topic Nos. 76E, 76H, 209.

C.J.S. Children Out-of-Wedlock §§ 39 to 44.

C.J.S. Divorce §§ 1079, 1082, 1096.

C.J.S. Indians § 152.

C.J.S. Parent and Child §§ 156 to 161, 164, 167 to 172, 177, 199.

### **§ 5. Grandparental visitation rights**

A. Pursuant to the provisions of this section, any grandparent of an unmarried minor child shall have reasonable rights of visitation to the child if the district court deems it to be in the best interest of the child.

1. The right of visitation to any grandparent of an unmarried minor child shall be granted only so far as that right is authorized and provided by order of the District Court. Visitation may be subject to supervision as directed by the Court.

2. Except as otherwise provided by paragraphs 5 and 6 of this subsection, if a child is born out of wedlock, the parents of the father of such child shall not have the right of visitation authorized by this section unless such father has been judicially determined to be the father of the child.

3. If one natural parent is deceased and the surviving natural parent remarries, any subsequent adoption proceedings shall not terminate any Court-granted grandparental rights belonging to the parents of the deceased natural parent unless said termination of visitation rights is ordered by the Court after opportunity to be heard, and the District Court determines it to be in the best interest of the child.

4. Except as otherwise provided by paragraphs 5 and 6 of this subsection, if the parental rights of one or both

parents have been terminated, any person who is the parent of the person whose parental rights have been terminated may be given reasonable rights of visitation if the Court determines it to be in the best interest of the child.

5. If the child has been born out of wedlock and the parental rights of the father of the child have been terminated, the parents of the father of such child shall not have a right of visitation authorized by this section to such child unless:

- a. the father of such child has been judicially determined to be the father of the child;
- b. the Court determines that a previous grandparental relationship existed between the grandparents and the child; and
- c. the Court determines such visitation rights to be in the best interest of the child.

6. If the child is born out of wedlock and the parental rights of the mother of the child have been terminated, the parents of the mother of such child shall not have a right of visitation authorized by this section to such child unless:

- a. the Court determines that a previous grandparental relationship existed between the grandparents and the child; and
- b. the Court determines such visitation rights to be in the best interest of the child.

7. For the purposes of paragraphs 5 and 6 of this subsection, the District Court shall not grant to the grandparents of an unmarried minor child, visitation rights to that child:

- a. subsequent to the adoption of the child, provided however, any subsequent adoption proceedings shall not terminate any prior Court-granted grandparental visitation rights unless said termination of visitation rights is ordered by the Court after opportunity to be heard and the District Court determines it to be in the best interest of the child, or
- b. if the child had been placed for adoption prior to attaining six (6) months of age.

B. The District Court is vested with jurisdiction to issue orders granting grandparental visitation rights and enforce such visitation rights, upon the filing of a verified application for such visitation rights or enforcement thereof. Notice as ordered by the Court shall be given to the person or parent having custody of said child.

C. Any transportation costs or other costs arising from any visitation ordered pursuant to this section shall be paid by the grandparent or grandparents requesting such visitation.

### **Cross References**

Delinquent, dependent and neglected children, definitions, see 10 CNCA § 1101.

Effect of final decree; grandparental rights, see 10 CNCA § 60.16.

### **Library References**

Child Custody <KEY>282.

Indians <KEY>136.

Westlaw Topic Nos. 76D, 209.

C.J.S. Indians §§ 154 to 176.

### **§ 5.1. Death of custodial parent-Custody of child**

The question of custody of a minor child upon the death of the custodial parent shall always be based upon what is in the best interests of the minor child.

#### **Library References**

Child Custody <KEY>23.

Indians <KEY>136.

Westlaw Topic Nos. 76D, 209.

C.J.S. Divorce § 1041.

C.J.S. Indians §§ 154 to 176.

C.J.S. Parent and Child §§ 56 to 57.

### **§ 5.2. Certain information and records to be available to both custodial and noncustodial parent**

Any information or any record relating to a minor child which is available to the custodial parent of the child, upon request, shall also be provided the noncustodial parent of the child. Provided, however, that this right may be restricted by the Court, upon application, if such action is deemed necessary in the best interests of the child. For the purpose of this section, "information" and "record" shall include, but not be limited to, information and records kept by the school, physician and medical facility of the minor child.

### **§ 6. Custody of child born out of wedlock**

Except as otherwise provided by law, the mother of an unmarried minor child born out of wedlock is entitled to the care, custody, services and earnings and control of such minor.

#### **Library References**

Children Out-of-Wedlock <KEY>20.1.

Indians <KEY>136.

Westlaw Topic Nos. 76H, 209.

C.J.S. Children Out-of-Wedlock § 36.

C.J.S. Indians §§ 154 to 176.

### **§ 6.5. Use of certain words in reference to children born out of wedlock prohibited**

A. On and after the date upon which this act becomes operative, the designations "illegitimate" or "bastard" shall not be used to designate a child born out of wedlock.

B. No person, firm, corporation, agency, organization, Cherokee Nation nor any of its agencies, boards, commissions, officers or political subdivisions, nor any hospital, nor any institution supported by public funds, nor any employee of any of the above, shall use the term "illegitimate" or "bastard" in referring to or designating any child born on or after the operative date of this act.

### **§ 7. Allowance out of child's property for support and education**

The District Court may direct an allowance to be made to a parent of a child out of its property, for its past or future support and education, on such conditions as may be proper whenever such direction is for its benefit.

#### **Library References**

Indians <KEY>137.

Westlaw Topic No. 209.

C.J.S. Indians § 152.

### **§ 8. Parent without control over child's property**

The parent as such, has no control over the property of the child.

#### **Library References**

Indians <KEY>133.

Parent and Child <KEY>8.

Westlaw Topic Nos. 209, 285.

C.J.S. Indians § 150.

C.J.S. Parent and Child §§ 290 to 298.

### **§ 9. Abuse of parental authority-Civil action**

The abuse of parental authority is the subject of judicial cognizance in a civil action in the District Court brought by the child, or by its relatives within the third degree, and when the abuse is established, the child may

be freed from the dominion of the parent, and the duty of support and education enforced.

### **Library References**

Child Custody <KEY>558.

Indians <KEY>136, 137.

Westlaw Topic Nos. 76D, 209.

C.J.S. Divorce § 1055.

C.J.S. Indians §§ 152, 154 to 176.

### **§ 10. Cessation of parent's authority**

The authority of a parent ceases:

1. upon the appointment by a court of a guardian of the person of the child;
2. upon the marriage of the child; or
3. upon its attaining majority.

### **Library References**

Indians <KEY>133.

Parent and Child <KEY>16.

Westlaw Topic Nos. 209, 285.

C.J.S. Indians § 150.

C.J.S. Infants § 153.

C.J.S. Parent and Child §§ 13 to 37.

### **§ 11. Public action for support of deceased parent's child**

If a parent chargeable with the support of a child dies, leaving it chargeable upon the Nation, and leaving an estate sufficient for its support, the Office of Attorney General, in the name of the Nation, may claim provision for its support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditors against that estate, and against the heirs, devisees, and next of kin to the parent.

### **§ 12. Reserved**

### **§ 13. Parent's liability for value of child's necessities**



If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessities and recover the reasonable value thereof from the parent.

### **Library References**

Indians <KEY>137.

Parent and Child <KEY>4.

Westlaw Topic Nos. 209, 285.

C.J.S. Indians § 152.

C.J.S. Parent and Child §§ 278 to 281.

### **§ 14. Compensation for support of child**

A parent is not bound to compensate the other parent or a relative for the voluntary support of his child without an agreement for compensation, nor to compensate a stranger for the support of a child who has abandoned the parent without just cause.

### **§ 15. Support of stepchildren**

A person is not bound to maintain his spouse's children by a former spouse; but if he receives them into his family and supports them, it is presumed that he does so as a parent, and where such is the case, they are not liable to him for their support, nor he to them for their services.

### **Library References**

Child Support <KEY>30, 33.

Indians <KEY>137.

Westlaw Topic Nos. 76E, 209.

C.J.S. Adoption of Persons § 141.

C.J.S. Divorce §§ 1080, 1096.

C.J.S. Indians § 152.

C.J.S. Parent and Child §§ 167, 371 to 375.

### **§ 16. Services and support after majority**

Where a child, after attaining majority, continues to serve and to be supported by the parent, neither party is

entitled to compensation in the absence of an agreement therefor.

### **Library References**

Indians <KEY>137.

Parent and Child <KEY>16.

Westlaw Topic Nos. 209, 285.

C.J.S. Indians § 152.

C.J.S. Infants § 153.

C.J.S. Parent and Child §§ 13 to 37.

### **§ 17. Relinquishment of rights by parent**

The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

#### **§ 17.1. Assignment by parent to child of right to recover for injury to child**

The parent or parents having the right to recover damages for an injury to a minor child may assign to said child their right to recover said damages, and where the parent or parents of a minor child bring an action as guardian or guardian ad litem or next friend on behalf of said child and ask for a judgment for him for damages to which said parent or parents are entitled, said parent or parents will be deemed to have assigned to the minor child their right to recover such damages. Any damages recovered pursuant to this section shall be disposed of in the same manner as provided by 12 O.S. § 83, as amended.

### **Oklahoma Statutes**

Conserving moneys obtained for or on behalf of persons under eighteen years of age in court proceedings, see 12 O.S. § 83.

### **§ 18. Payment of minor's wages**

The wages of a minor employed in service may be paid to him until the parent or guardian entitled thereto gives the employer notice that he claims such wages.

### **§ 19. Parent's right to change child's residence**

A parent entitled to the custody of a child has a right to change his residence, subject to the power of the District Court to restrain a removal which would prejudice the rights or welfare of the child.

### **Library References**

Child Custody <KEY>101, 260.

Indians <KEY>136.

Westlaw Topic Nos. 76D, 209.

C.J.S. Indians §§ 154 to 176.

C.J.S. Parent and Child § 83.

## **§ 20. Parent or child not answerable for other's act**

Neither parent or child is answerable, as such, for the act of the other.

### **Library References**

Indians <KEY>133.

Parent and Child <KEY>13.5(2).

Westlaw Topic Nos. 209, 285.

C.J.S. Indians § 150.

C.J.S. Parent and Child § 330.

## **§ 21. Custody during parents' separation-Habeas corpus**

When husband and wife live separately and apart from each other, and while they so live in a state of separation without being divorced, the judge of the District Court upon application of either, may issue any civil process necessary to inquire into the custody of any minor unmarried child of the marriage, and may award the custody of such child to such party as he sees fit in accordance with the best interest of the child, for such time and under such regulations as the case may require.

### **Library References**

Indians <KEY>136.

Westlaw Topic No. 209.

C.J.S. Indians §§ 154 to 176.

### **§ 21.1. Custody-Order of preference-Death of custodial parent-Preference of child**

A. Custody should be awarded in the following order of preference according to the best interests of the child to:

1. a parent or to both parents jointly except as otherwise provided in subsection (B) of this section;

2. a grandparent;
3. a person who was indicated by the wishes of a deceased parent;
4. a relative of either parent;
5. the person in whose home the child has been living in a wholesome and stable environment; or
6. any other person deemed by the Court to be suitable and able to provide adequate and proper care and guidance for the child.

B. When a parent having physical custody and providing support to a child becomes deceased, in awarding custody or appointing as guardian of the child the noncustodial parent, the Court may deny the custody or guardianship only if:

1. the noncustodial parent has willfully failed, refused, or neglected to contribute to the support of the child for a period of at least twelve (12) months immediately preceding the determination of custody or guardianship action:

a. in substantial compliance with a support provision contained in a decree of divorce, or a decree of separate maintenance or an order adjudicating responsibility to support in a reciprocal enforcement of support proceeding, paternity action, juvenile proceeding, guardianship proceeding, or orders of modification to such decree, or other lawful orders of support entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support, or

b. according to such parent's financial ability to contribute to such child's support if no provision for support is provided in a decree of divorce or an order of modification subsequent thereto;

2. the noncustodial parent has abandoned the child; or

3. the Court finds it would be detrimental to the health or safety of the child for the noncustodial parent to have custody or be appointed guardian.

C. The Court may consider the preference of the child in awarding custody of said child if the child is of sufficient age to form an intelligent preference.

### **Cross References**

Order of preference, see 30 CNCA § 18.

### **Library References**

Guardian and Ward <KEY>9.5.

Indians <KEY>136.

Westlaw Topic Nos. 196, 209.

C.J.S. Guardian and Ward §§ 7 to 8.

C.J.S. Indians §§ 154 to 176.

**§§ 22, 23. Reserved**

**§ 24. Appointment of counsel-Compensation**

A. When it appears to the Court that the minor or his parent or guardian desires counsel but is indigent and cannot for that reason employ counsel, the Court shall appoint counsel. The Office of the Attorney General shall represent the interest of the child unless there appears to be a conflict. In the event of conflicts the Court shall appoint an attorney for the child.

B. The child and the parents may not be represented by the same attorney.

**History**

**Source.** LA 8-91, eff. May 13, 1991.

**CHAPTER 1A**

**CARE AND CUSTODY**

**§ 25. Definitions**

As used in this Title, the terms hereinafter enumerated shall have the following meanings:

1. **"Before the court"** as used in 10 CNCA § 28, means in-person or electronically via telephone or internet.
2. **"Cherokee Nation"** means the government of Cherokee Nation or the administrative agency within Cherokee Nation designated by the Principal Chief to administer laws and programs involving children and juveniles.
3. **"Child"** means any unmarried or unemancipated person under the age of eighteen (18) years.
4. **"Court"** means any court of competent jurisdiction which may hereafter be established for such purposes authorized to officiate in matters relating to children.
5. **"DHS"** means the Oklahoma Department of Human Services.
6. **"District Court"** means the District Court of Cherokee Nation.
7. **"Foster home"** means a home or other place, other than the home of a parent, or a guardian of the child concerned, duly licensed by Cherokee Nation, wherein a child is received for care, custody and maintenance.
8. **"Indian"** means a person as defined by 10 CNCA § 40.2.
9. **"Nation"** means Cherokee Nation.

10. **"Person"** means any natural person, corporation, association, organization, institution, or partnership.

Definitions provided in 10 CNCA § 1101 are incorporated for this title.

### **History**

**Amended.** LA 24-12, eff. July 24, 2012.

### **§ 26. Right to custody**

No person, other than the parents, or relatives within the fourth degree, of the child concerned, may assume the permanent care and custody of a child except in accordance with the provisions of this act, or in accordance with the decree of a court of competent jurisdiction.

### **Library References**

Child Custody <KEY>42.

Indians <KEY>136.

Westlaw Topic Nos. 76D, 209.

C.J.S. Divorce § 995.

C.J.S. Indians §§ 154 to 176.

C.J.S. Parent and Child §§ 59, 90, 93.

### **§ 27. Authority to assign, relinquish or otherwise transfer**

No person may assign, relinquish, or otherwise transfer to another his rights or duties with respect to the permanent care or custody of a child, except to the parents, or to the relatives within the fourth degree, of the child concerned, unless specifically authorized or required so to do by an order or judgment of a court of competent jurisdiction or unless by a relinquishment executed in writing in accordance with the provisions of this act.

### **History**

**Amended.** LA 24-12, eff. July 24, 2012.

### **Library References**

Child Custody <KEY>35, 68.

Indians <KEY>136.

Westlaw Topic Nos. 76D, 209.

C.J.S. Divorce § 1010.

C.J.S. Indians §§ 154 to 176.

C.J.S. Parent and Child §§ 60 to 62, 87 to 91.

## **§ 28. Parties to whom relinquishments may be made**

Relinquishments may be made only to:

1. Cherokee Nation, and shall be executed in writing before the Court;
2. a child-placing agency duly licensed or recognized under Cherokee Nation law;
3. any other person, with the written consent of the administrative officer of Cherokee Nation designated by the Principal Chief or the District Court.

### **History**

**Amended.** LA 24-12, eff. July 24, 2012.

### **Library References**

Child Custody <KEY>68.

Indians <KEY>136.

Westlaw Topic Nos. 76D, 209.

C.J.S. Indians §§ 154 to 176.

C.J.S. Parent and Child §§ 87 to 91.

## **§ 29. Execution of relinquishments**

Relinquishments may be executed by:

1. the parents of a child;
2. one (1) parent alone, if:
  - a. the other parent consents thereto in writing; or
  - b. the other parent is dead; or
  - c. the other parent has been adjudicated incompetent and such incompetence is permanent in its nature and such fact has been proven to the satisfaction of the Court; or

- d. the other parent, for one (1) year preceding, has abandoned the family; or
  - e. the other parent is imprisoned in a penitentiary, state or federal, for crime, provided such parent has been given proper notice and is authorized by the institutional head to attend said hearing and show cause why the child should not be taken from the parent or why such relinquishment should not be granted; or
  - f. the other parent has been declared by the Court to be morally unfit to provide for the care of the child; or
  - g. by the mother, if the child is born out of wedlock;
3. the guardian of the person of the child, if both parents are dead or if one (1) parent is a person whose consent is not required under the terms of subdivision 2 of this section.

### **Library References**

Child Custody <KEY>68.

Indians <KEY>136.

Westlaw Topic Nos. 76D, 209.

C.J.S. Indians §§ 154 to 176.

C.J.S. Parent and Child §§ 87 to 91.

### **§ 29.1. Termination of parental rights-Petition-Notice-Hearing-Orders**

A. Whenever the mother of a child born out of wedlock who has custody of the child executes a relinquishment for the purpose of adoption pursuant to the provisions of 10 CNCA § 28, the person or agency to whom such relinquishment is made shall file a petition with the District Court in which the relinquishment was executed for the termination of the parental rights of the persons entitled to notice pursuant to subsection (B) of this section unless such rights have been previously terminated or relinquished.

B. Persons entitled to notice, pursuant to this section, shall include:

- 1. any person adjudicated by a court to be the father of the child;
- 2. any person who is recorded on the child's birth certificate as the child's father;
- 3. any person who is openly living with the child and the child's mother at the time the proceeding is initiated or at the time the child was placed in the care of an authorized agency, and who is holding himself out to be the child's father;
- 4. any person who has been identified as the child's father by the mother in a sworn statement;
- 5. any person who was married to the child's mother within ten (10) months prior or subsequent to the birth of the child.



C. Notice and hearing pursuant to this section shall comply with the provisions of 10 CNCA § 1131. The notice shall also apprise such person of his legal rights and shall include a clear statement that failure to appear at the hearing shall constitute a denial of interest in the child which denial may result, without further notice of this proceeding or any subsequent proceeding, in the termination of his parental rights and the transfer of the child's care, custody, or guardianship or in the child's adoption.

D. A person may waive his right to notice under this section. Such waiver signed by such person, shall include a statement affirming that the person signing such waiver understands that said waiver shall constitute grounds for the termination of his parental rights pursuant to the provisions of this section and 10 CNCA § 60.6.

E. 1. At the hearing the Court may, if it is in the best interest of the child:

- a. accept a relinquishment or consent to adoption executed by the father or putative father of the child; or
- b. determine that the consent of the father or putative father to the adoption of the child is not required and may terminate any parental rights which such father or putative father may have; or
- c. terminate the parental rights of the father or putative father, pursuant to the provisions of this section or 10 CNCA § 1130; or
- d. grant custody of the child to the father or putative father, if the Court determines such person to be the father of the child.

2. The Court shall terminate the rights of a father or putative father if he fails to appear at the hearing or has waived notice under this section.

F. No order of the Court shall be vacated, annulled, or reversed upon the application of any person who was properly served with notice in accordance with this section but failed to appear or who waived notice pursuant to subsection (D) of this section.

### **History**

**Amended.** LA 24-12, eff. July 24, 2012.

### **Library References**

Indians <KEY>134.

Westlaw Topic No. 209.

C.J.S. Indians § 150.

### **§ 30. Requisites of relinquishment**

The relinquishment shall:

- 1. be signed by the person or persons by whom it is executed;

2. identify the child or children relinquished; and
3. be acknowledged before the Court.

### **Library References**

Child Custody <KEY>68.

Indians <KEY>136.

Westlaw Topic Nos. 76D, 209.

C.J.S. Indians §§ 154 to 176.

C.J.S. Parent and Child §§ 87 to 91.

### **§ 31. Recovery of child after relinquishment**

A child whose care and custody has been surrendered by a written relinquishment under this act may not be recovered by the parents or other person who executed the relinquishment except through order of a court of competent jurisdiction, based on a finding, supported by proof, that the child is neglected by its foster parents, guardian, or custodian, within the meaning of neglect as defined by the statutes relating to neglected children.

### **Library References**

Child Custody <KEY>68.

Indians <KEY>136.

Westlaw Topic Nos. 76D, 209.

C.J.S. Indians §§ 154 to 176.

C.J.S. Parent and Child §§ 87 to 91.

### **§ 32. Placement of child in foster home**

No person except:

1. the parent or parents of the child involved;
2. a relative within the fourth degree of such child, having lawful custody thereof;
3. the legal guardian of such child, duly authorized thereto by the Court by which he was appointed; or
4. Cherokee Nation or a child welfare agency enumerated in 10 CNCA § 28, if the care and custody of the child has been relinquished to the Cherokee Nation or the agency under the terms of this act or has been committed

thereto by order of judgment of a court of competent jurisdiction

shall place or offer to place a child for care in a foster home without securing the consent of Cherokee Nation or the District Court.

### **Library References**

Indians <KEY>136.

Westlaw Topic No. 209.

C.J.S. Indians §§ 154 to 176.

### **§ 33. Importation and exportation of children**

No person shall bring, or cause to be brought, or sent, or cause to be sent, into this Nation, or take, or cause to be taken, or sent, or cause to be sent, out of this Nation any child for the purpose of placing such child in a foster home or procuring his adoption, without first having obtained the consent of the Court; but this section shall not apply to a resident who brings a child into the Nation for adoption in his own family, nor to a parent or guardian who takes or sends a child outside of the Nation for placement in a foster home.

### **§ 34. Application of act**

All requirements established by this act, except as otherwise provided herein, shall be incumbent equally upon all public and private child welfare agencies and upon all private child placing or home finding agencies or institutions and upon all individuals.

### **§ 35. Violation of act**

Violation of any of the provisions of this act shall be a crime and one who is convicted of such a violation shall be punished in accordance with law.

### **§ 36. Severability of provisions of act**

If any provision or section of this act or the application thereof to any person, corporation, organization, or institution shall be held to be invalid or unconstitutional, the remainder of the act and the application of such provision or section to other persons, corporations, organizations and institutions shall not be affected thereby.

### **Library References**

Indians <KEY>128.

Statutes <KEY>1533.

Westlaw Topic Nos. 209, 361.

C.J.S. Statutes §§ 110, 112 to 116.

### **§ 37. Construction of act**

Except as otherwise set forth or except in case of conflict between the provisions hereof and other law, the provisions of this act shall be cumulative to existing law.

### **§ 38. Voluntary relinquishment of physical custody-Presumption**

When an order has been entered which provides for payment of child support and the legal custodian relinquishes physical custody of the child to any person, subject to the provisions of 10 CNCA § 27, without obtaining a modification of the order to change legal custody, the relinquishment, by operation of law, shall create a presumption that such person to whom the child was relinquished has legal custody of the child for the purposes of the payment of child support and the obligee shall remit such child support obligation to the person to whom the relinquishment was made.

#### **History**

**Source.** LA 8-91, eff. May 13, 1991.

#### **Library References**

Child Custody <KEY>68.

Indians <KEY>136.

Westlaw Topic Nos. 76D, 209.

C.J.S. Indians §§ 154 to 176.

C.J.S. Parent and Child §§ 87 to 91.

## **CHAPTER 1B**

### **INDIAN CHILD WELFARE ACT**

#### **Oklahoma Statutes**

Indian child welfare act, see 10 O.S. § 40 et seq.

### **§ 40. Short title**

10 CNCA §§ 40.1 through 40.11 shall be known and may be cited as the "Cherokee Nation Indian Child Welfare Act."

#### **History**

**Amended.** LA 26-07, eff. June 15, 2007.

#### **Library References**

Indians <KEY>133.

Westlaw Topic No. 209.

C.J.S. Indians § 150.

#### § 40.1. Purpose-Policy of Nation

The purpose of the Cherokee Nation Indian Child Welfare Act is the clarification of Nation policies regarding Indian children.

#### History

**Amended.** LA 26-07, eff. June 15, 2007.

#### Library References

Indians <KEY>133.

Westlaw Topic No. 209.

C.J.S. Indians § 150.

#### § 40.2. Definitions

For the purposes of the Cherokee Nation Indian Child Welfare Act:

1. **"Child custody proceeding"** means:

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

b. **"Termination of parental rights"** which shall mean any action resulting in the termination of the parent-child relationship;

c. **"Preadoptive placement"** which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

d. **"Adoptive placement"** which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption. Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

2. **"Custodian"** means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody and control has been transferred by the parent

of such child.

3. **"Indian"** means a person who is either:

- a. a member of an Indian tribe; or
- b. eligible for membership in an Indian tribe.

4. **"Indian child"** means any unmarried or unemancipated person who is under the age of eighteen (18) and is either:

- a. a member of an Indian tribe; or
- b. eligible for membership in an Indian tribe.

5. **"Indian-operated institution"** means a residential care facility, group home or crisis foster care facility operated under a governing body or Board of Directors consisting of a minimum fifty percent (50%) whose board members are members of a federally-recognized Indian tribe.

6. **"Indian tribe"** means any Indian tribe, band, nation or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians.

7. **"Involuntary custody proceeding"** means any action removing an Indian child from its parent or custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or custodian cannot have the child returned upon demand, but where parental rights have not been terminated.

### **History**

**Amended.** LA 26-07, eff. June 15, 2007.

**Amended.** LA 24-12, eff. July 24, 2012.

### **Cross References**

Definitions, see 10 CNCA § 25.

### **§ 40.3. Application of act-Exemptions-Determination of Indian status**

A. The Cherokee Nation Indian Child Welfare Act applies to all child custody proceedings involving any Indian child who is subject to the jurisdiction of Cherokee Nation under federal, state or tribal law, except the following:

- 1. A child custody proceeding arising from a divorce proceeding; or
- 2. A child custody proceeding arising from an adjudication of delinquency, unless there has been a request for termination of parental rights.

B. The Cherokee Nation Indian Child Welfare Act applies to a child who is a member of an Indian tribe or who is eligible for membership in an Indian tribe.

C. The Court shall seek a determination of the Indian status of the child in accordance with the preceding standard in the following circumstances:

1. The Court has been informed by an interested party, an officer of the Court, a tribe, an Indian organization or a public or private agency that the child is Indian; or
2. The child who is the subject of the proceeding gives the Court reason to believe he is an Indian child; or
3. The Court has reason to believe the residence or domicile of the child is a predominantly Indian community.

D. The Court shall seek verification of the Indian status of the child from the Indian tribe. A determination of membership by an Indian tribe shall be conclusive.

E. The determination of the Indian status of a child shall be made as soon as practicable in order to ensure compliance with the notice requirements of 10 CNCA § 40.5.

### **History**

**Amended.** LA 26-07, eff. June 15, 2007.

**Amended.** LA 24-12, eff. July 24, 2012.

### **Library References**

Indians <KEY>133, 136.

Westlaw Topic No. 209.

C.J.S. Indians §§ 150, 154 to 176.

### **§ 40.4. Indian child custody proceedings-Notice**

In any Indian child custody proceeding under the Cherokee Nation Indian Child Welfare Act the Court or party initiating the action, if it is a private action, shall send notice to the parents or to the Indian custodians, if any, and to the tribe that may be the tribe of the Indian child, by registered mail return receipt requested, personal service by a court-approved process server, or after an affidavit of due diligence to locate, publication as provided for elsewhere in this title. The notice shall be written in clear and understandable language and include the following information:

1. The name and tribal affiliation of the Indian child;
2. A copy of the petition by which the proceeding was initiated;
3. A statement of the rights of the biological parents or Indian custodians, and the Indian tribe:

- a. to intervene in the proceeding,
- b. to request an additional twenty (20) days from receipt of notice to prepare for the proceeding; further extensions of time may be granted with court approval;
4. A statement of the potential legal consequences of an adjudication on the future custodial rights of the parents or Indian custodians or in a private proceeding, the legal consequences of failure to appear and contest the proceeding;
5. A statement that if the parents or Indian custodians are unable to afford counsel, counsel will be appointed to represent them; and
6. A statement that tribal officials should keep confidential the information contained in the notice.

### **History**

**Amended.** LA 26-07, eff. June 15, 2007.

**Amended.** LA 24-12, eff. July 24, 2012.

### **Library References**

Indians <KEY>134(5), 136.

Westlaw Topic No. 209.

C.J.S. Indians §§ 154 to 176.

### **§ 40.5. Emergency removal of Indian child from parent or custodian-Order**

A. When a court order authorizes the emergency removal of an Indian child from the parent or Indian custodian of such child in accordance with 25 U.S.C. § 1922, the order shall be accompanied by an affidavit containing the following information:

1. The names, tribal affiliations, and addresses of the Indian child, the parents of the Indian child and Indian custodians, if any;
2. A specific and detailed account of the circumstances that lead the agency responsible for the removal of the child to take that action; and
3. A statement of the specific actions that have been taken to assist the parents or Indian custodians so that the child may safely be returned to their custody.

B. No pre-adjudicatory custody order shall remain in force or in effect for more than thirty (30) days without a determination by the Court, supported by the preponderance of the evidence that the placement is in the best interest of the child. However, the Court may, for good and sufficient cause shown, extend the effective period of such order for an additional period of sixty (60) days.



### History

**Amended.** LA 26-07, eff. June 15, 2007.

### United States Code

Emergency removal or placement of child; termination; appropriate action, see 25 U.S.C. § 1922.

### Library References

Indians <KEY>136.

Westlaw Topic No. 209.

C.J.S. Indians §§ 154 to 176.

#### § 40.6. Placement preference

The placement preferences specified in 25 U.S.C. § 1915, shall apply to all pre-adjudicatory placements, as well as pre-adoptive, adoptive and foster care placements as defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., as amended by Legislative Resolution 03-04.

### History

**Amended.** LA 26-07, eff. June 15, 2007.

### United States Code

Placement of Indian children, see 25 U.S.C. § 1915.

### Library References

Indians <KEY>136.

Westlaw Topic No. 209.

C.J.S. Indians §§ 154 to 176.

#### § 40.7. Agreements with Indian tribes for care and custody of Indian children

The Principal Chief of Cherokee Nation or his designee is authorized to enter into agreements with the State of Oklahoma regarding care and custody of Indian children as authorized by the federal Indian Child Welfare Act, 25 U.S.C. § 1919, as amended.

### History

**Amended.** LA 26-07, eff. June 15, 2007.

## United States Code

Agreements between States and Indian tribes, see 25 U.S.C. § 1919.

## Library References

Indians <KEY>136, 137.

Westlaw Topic No. 209.

C.J.S. Indians §§ 152, 154 to 176.

### § 40.8. Payment of foster care expenses under certain circumstances

A. In the event the Oklahoma Department of Human Services (DHS) has legal custody of an Indian child, and that child is placed with a tribal-licensed or approved foster home, the state shall pay the costs of foster care in the same manner and to the same extent the state pays the costs of foster care to state-licensed or state-approved foster homes, provided that the tribe shall have entered into an agreement with the state pursuant to 10 CNCA § 40.7, which shall require tribal cooperation with state plans required by federal funding laws.

B. The state shall pay the costs of foster care of a child placed with a tribal licensed or approved foster home where the placement is made by a tribe having jurisdiction of the proceeding, provided that the tribe shall have entered into an agreement with the state pursuant to 10 CNCA § 40.7, which shall require tribal cooperation with state plans required by federal funding laws.

C. The Principal Chief of Cherokee Nation or his designee shall be authorized to enter into agreements to obtain any and all benefits from the state which are available to residents of the state.

D. The Principal Chief of Cherokee Nation or his designee shall be authorized to enter into agreements with the state and other institutions or agencies for providing residential, group home and crisis foster home care.

## History

**Amended.** LA 26-07, eff. June 15, 2007.

## Library References

Indians <KEY>136.

Westlaw Topic No. 209.

C.J.S. Indians §§ 154 to 176.

### § 40.9. Records

Cherokee Nation shall establish a single location where all records of every involuntary foster care, pre-adoptive placement and adoptive placement by the courts of any Indian child in the custody of Cherokee Nation

will be available within seven (7) days of a request by the state, the tribe of the Indian child or by the Secretary of Interior. The records shall include, but not be limited to, all reports of the Nation caseworker, including a summary of the efforts to rehabilitate the parents of the Indian child, a list of the names and addresses of families and tribal-approved homes contacted regarding placement, and a statement of reason for the final placement decision.

### **History**

**Source.** LA 8-91, eff. May 13, 1991.

**Amended.** LA 26-07, eff. June 15, 2007.

### **Library References**

Indians <KEY>134(4), 136.

Westlaw Topic No. 209.

C.J.S. Indians §§ 154 to 176.

### **§ 40.10. Involuntary custody placement orders-Evidence-Determination of damage to child**

No involuntary custody placement may be ordered in an involuntary custody proceeding, in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or custodian is likely to result in serious emotional or physical damage to the child, provided that nothing in this section shall prohibit a default order being entered by the Court in cases where a parent or custodian fails to appear for a hearing after receiving proper notice of that hearing; and provided further that nothing in this section will require the specified testimony if a parent or custodian appears before a Judge and admits, stipulates, or enters a no-contest stipulation to the allegations in a petition.

### **History**

**Source.** LA 26-07, eff. June 15, 2007.

### **§ 40.11. Parental rights termination orders-Evidence-Determination of damage to child**

No termination of parental rights may be ordered in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or custodian is likely to result in serious emotional or physical damage to the child, provided that, nothing in this section shall prohibit a default order being entered by the Court in cases where a parent or custodian fails to appear for a hearing after receiving proper notice of that hearing; and provided further that nothing in this section will require the specified testimony if a parent or custodian appears before a judge and admits, stipulates, or enters a no-contest stipulation to the allegations in a petition or relinquishes parental rights for the purpose of an adoption not arising out of a deprived case.

### **History**

**Source.** LA 26-07, eff. June 15, 2007.

**Amended.** LA 24-12, eff. July 24, 2012.

### **Library References**

Indians <KEY>134(4).

Westlaw Topic No. 209.

## **CHAPTER 2**

### **ADOPTION**

#### **Oklahoma Statutes**

Adoption code, see 10 O.S. § 7501-1.1 et seq.

#### **§ 55. Adoption of child born out of wedlock by father**

The father of an child by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such, and such child is thereupon deemed for all purposes legitimate from the time of its birth. The status thus created is that of a child adopted by regular procedure of court.

### **Library References**

Indians <KEY>138.

Westlaw Topic No. 209.

#### **§ 55.1. Notice of intent to claim paternity-Acknowledging paternity-Paternity registry**

A. The father or putative father of a child born out of wedlock may file notice of intent to claim paternity of the child or an instrument acknowledging paternity of the child as provided in this section.

B. Cherokee Nation shall utilize the centralized paternity registry established by the Oklahoma Department of Human Services which records the names and addresses of:

1. any person adjudicated by a court of this state to be the father of a child born out of wedlock;
2. any person who has filed with the registry before or after the birth of a child out of wedlock a notice of intent to claim paternity of the child;
3. any person adjudicated by a court of another state or territory of the United States to be the father of a child born out of wedlock, where a certified copy of the Court order has been filed with the registry by such person or any other person; and

4. any person who has filed with the registry an instrument acknowledging paternity.

C. A person filing a notice of intent to claim paternity of a child or an acknowledgment of paternity shall include therein his current address and shall notify the registry of any change of address pursuant to procedures prescribed by regulations of the Oklahoma Department of Human Services.

D. A person who has filed a notice of intent to claim paternity may at any time, by filing a notice to disclaim, revoke a notice of intent to claim paternity.

E. An unrevoked notice of intent to claim paternity of a child or an instrument acknowledging paternity may be introduced in evidence by any party in any proceeding in which such fact may be relevant.

F, G. Deleted.

### **Library References**

Children Out-of-Wedlock <KEY>34.

Indians <KEY>138.

Westlaw Topic Nos. 76H, 209.

C.J.S. Children Out-of-Wedlock §§ 50, 88 to 96.

### **§ 56. Reserved**

### **§ 57. Records to be kept confidential-Release of medical history and other information**

A. Except as otherwise provided by this section, all records of proceedings in adoption cases and all papers and books relating to such proceedings, shall be kept in a separate confidential file in the Court Clerk's vault by the Court Clerk, and shall not be open to inspection or copy except upon order of a court of record for good cause shown.

B. Upon application and for good cause being shown, any court of record may, by written order reciting its findings, permit the necessary information to be released, or may restrict the purposes for which it shall be used.

C. No person in charge of adoption records in the District Court shall disclose the names of the natural or adoptive parents of a child unless ordered to do so by a court of record.

D. 1. The Cherokee Nation, any certified adoption agency or any licensed child-placing agency having custody of a child who is legally available for adoption is authorized to release the medical history, available to the Nation or agency, of the child, of the natural parents of the child and of the grandparents of the child to prospective parents of the adoptive child.

2. The release of any medical history of the natural parents of the child or the natural grandparents of the child shall be released in such a way that no person can be identified.

3. The medical history may include the information received pursuant to 10 CNCA § 60.5A or any other medical information or records regarding the child obtained by the Cherokee Nation or agency during the custody of the child.

E. Any person in charge of adoption records who discloses any information pertaining to an adoption proceeding, contrary to the provisions of this section, shall be guilty of a crime.

F. A child reaching the age of sixteen (16) may upon petition to the Court obtain his adoption records.

G. A child establishing his tribal citizenship or obtaining his Certificate of Degree of Indian Blood may obtain his adoption records.

### **Library References**

Indians <KEY>138.

Westlaw Topic No. 209.

### **§ 58. Limitation on challenge to adoption after entry of final decree**

No adoption may be challenged on any ground either by a direct or collateral attack more than one (1) year after the entry of the final adoption decree regardless of whether the decree is void or voidable, and the minority of the natural parent shall not operate to prevent this time limit from running.

### **History**

**Source.** LA 8-91, eff. May 13, 1991.

### **Library References**

Indians <KEY>138.

Westlaw Topic No. 209.

## **CHAPTER 2A**

### **UNIFORM ADOPTION ACT**

#### **Cross References**

Trafficking in children, elements of offense, see 21 CNCA § 866.

### **Oklahoma Statutes**

Adoption code, see 10 O.S. § 7501-1.1 et seq.

### **§ 60.1. Definitions**

As used in this act, unless the context otherwise requires, "**child**" means any minor person, and "**agency**" means any person, authority or agency legally empowered to place children for adoption. Singular words may extend and be applied to several persons or things, as well as to one person or thing. Plural words may extend and be applied to one person or thing as well as to several persons or things.

### **Library References**

Indians <KEY>138.

Westlaw Topic No. 209.

### **§ 60.2. Eligibility for adoption**

Any Indian child present within Indian country within Cherokee Nation or in the custody of Cherokee Nation at the time the petition for adoption is filed, may be adopted.

### **Library References**

Indians <KEY>138.

Westlaw Topic No. 209.

### **§ 60.3. Eligibility to adopt**

The following persons are eligible to adopt a child:

1. A husband and wife jointly, or either the husband or wife if the other spouse is a parent of the child.
2. An unmarried person who is at least twenty-one (21) years old.
3. A married person at least twenty-one (21) years old who is legally separated from the other spouse.
4. In the case of a child born out of wedlock, its unmarried father or mother.

### **Library References**

Indians <KEY>138.

Westlaw Topic No. 209.

### **§ 60.4. Court and jurisdiction**

Proceedings for adoption must be brought in the District Court, or any specially created court having jurisdiction where the petitioners reside. This act shall apply to Indian children present in Indian country within Cherokee Nation.

### **Library References**

Indians <KEY>138.

Westlaw Topic No. 209.

### **§ 60.5. Consent to adoption**

Unless consent is not required by 10 CNCA § 60.6, an adoption of a child may be decreed when there has been filed written consent to adoption executed by:

1. Both parents, if living, or the surviving parent if one parent be deceased. Consent shall not be required from one whose parental rights have been judicially terminated. If the child is born out of wedlock, its parents, if sixteen (16) years of age or older, shall be deemed capable of giving consent. If the mother or father be below the age of sixteen (16), consent to the adoption shall be deemed sufficient if given by such mother or father before a Judge of the District Court, in writing, and if accompanied by the written consent of the legal guardian of the person of such parent. If such underage mother or father has no such guardian, the consent shall be accompanied by the written consent of his or her parents, but if one parent be deceased or the parents be divorced, then the written consent of the parent having the custody shall be deemed sufficient; if both parents of the underage mother or father be deceased, then the written consent of the person having his or her physical custody shall be deemed sufficient. If in any case consent cannot be secured from the person, other than the underage mother or father, authorized herein to give consent, notice by mailing shall be given by the Court, unless notice is waived by personal appearance, to such person or persons authorized herein to give consent, directing such person to show cause, at a time appointed by the Court, which shall be not less than ten (10) days from the date of mailing, why adoption should not be granted without that person's consent. If such person shall not appear to contest the adoption or if the Court should find that consent of such person is unreasonably withheld, the adoption may be granted without the consent of that person; or
2. The legal guardian of the person of the child or the guardian ad litem of the child if both parents are dead, or if the rights of the parents have been terminated by judicial proceedings, and such guardian or guardian ad litem has authority by order of the Court appointing him to consent to the adoption; or
3. Cherokee Nation if both parents are dead, or if the child has been relinquished for adoption to such agency, or if the rights of the parents have been judicially terminated and custody of the child has been legally vested in such agency with authority to consent to adoption of the child; or
4. Any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption, and a certified copy of its order shall be attached to the petition. The consent required by subparagraphs 1, 2 and 3 hereof, including the consent required by the parent, guardian or party having physical custody as required for mothers or fathers under sixteen (16) in subparagraph 1 hereof, shall be acknowledged before a Judge of the District Court or the judge of any specially created court having jurisdiction in adoption proceedings. Provided, that when the person whose consent is necessary does not reside in Cherokee Nation Indian country may execute such consent before a district judge of this state or probate judge or judge having adoption jurisdiction of any other state of the county of his residence. Provided, further, that when such consent for adoption is necessary for children in custody of Cherokee Nation, the Director of the appropriate department may designate, authorize, and direct in writing an employee of the Department to appear in the Court and to give written consent for the adoption of such child by the family whose application for adoption has been approved by the department. This provision shall apply to consents heretofore given as well as to those given after the approval of this act; or



5. In the event the person having the legal custody or the parents of a child desired to be adopted in this Nation reside in a country or place other than the United States of America, the consent of such person to the adoption may be obtained by a written instrument signed by such person and acknowledged before an officer of the legal subdivision of government of the place of his, her or their residence who is authorized to administer oaths under the laws of such country or place; or, when the party seeking to give such consent is a member of the United States Armed Services stationed in a country or place other than the United States, then such consent may be acknowledged before an officer of the Judge Advocate General's Office or other legal officer possessing the authority to administer oaths. Where consent is so obtained, it shall not be necessary for such person to appear before the District Court having jurisdiction of the adoption proceedings. If the written instrument containing such consent is written in any language other than the English language, the person adopting the child must have it translated into the English language by a person qualified so to do, and must file the original instrument together with the translation with the Court, and the translation must be sworn to as being a true and correct translation by the translator.

### **Cross References**

Termination of parental rights in certain situations, see 10 CNCA § 1130.

### **Library References**

Indians <KEY>138.

Westlaw Topic No. 209.

### **§ 60.5A. Medical history form to be completed for certain children-Contents-Filing**

A. When ordered by the Court, any person required to consent to the adoption of a child pursuant to the provisions of 10 CNCA § 60.5 shall complete a medical history form which shall remain confidential pursuant to the provisions of 10 CNCA § 60.17 containing, as far as is ascertainable, the medical history of the child to be adopted, the medical history of the natural parents of the child, and the medical history of the natural grandparents of the child. Specifically, the form shall only contain information concerning:

1. the child, which shall include:

- a. any medical or psychological evaluations, and
- b. diseases, illnesses, accidents, allergies, and congenital defects; and

2. parents of the child, which shall include:

- a. allergies, diseases, and illnesses, including but not limited to diabetes, high blood pressure, alcoholism, heart disease, venereal disease, and epilepsy, and
- b. drugs taken and consumption of alcohol during the pregnancy of the mother; and

3. grandparents of the child, which shall include allergies, diseases, and illnesses including but not limited to high blood pressure, diabetes, heart disease, and epilepsy.

B. A copy of the medical history form shall be attached to the consent for adoption, or may be filed after the filing of the petition with the consent of the Court.

### **Cross References**

Records to be kept confidential; release of medical history and other information, see 10 CNCA § 57.

### **Library References**

Indians <KEY>138.

Westlaw Topic No. 209.

### **§ 60.6. Consent of parents-Exceptions**

A child under eighteen (18) years of age cannot be adopted without the consent of its parents, if living, except that consent is not required from:

1. A parent whose parental rights have been terminated pursuant to the provisions of 10 CNCA § 29.1, 1130 or 1131; or

2. A parent who, for a period of twelve (12) months immediately preceding the filing of a petition for adoption of a child, has willfully failed, refused, or neglected to contribute to the support of such child:

a. in substantial compliance with a support provision contained in a decree of divorce, or a decree of separate maintenance or an order adjudicating responsibility to support in a reciprocal enforcement of support proceeding, paternity action, juvenile proceeding, guardianship proceeding, or orders of modification to such decree, or other lawful orders of support entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support, or

b. according to such parent's financial ability to contribute to such child's support if no provision for support is provided in a decree of divorce or an order of modification subsequent thereto; or and where any of the above conditions exist it shall not be necessary to terminate parental rights under 10 CNCA § 1130 prior to the adoption of said child.

3. The father or putative father of a child born out of wedlock if:

a. prior to the hearing provided for in 10 CNCA § 29.1, and having actual knowledge of the birth or impending birth of the child believed to be his child, he fails to acknowledge paternity of the child or to take any action to legally establish his claim to paternity of the child or to exercise parental rights or duties over the child, including failure to contribute to the support of the mother of the child to the extent of his financial ability during her term of pregnancy, or

b. at the hearing provided for in 10 CNCA § 29.1:

i. he fails to prove that he is the father of the child, or

ii. having established paternity, he fails to prove that he has exercised parental rights and duties toward the child unless he proves that prior to the receipt of notice he had been specifically denied knowledge of the child or denied the opportunity to exercise parental rights and duties toward the child. As used in this subparagraph, specific denial of knowledge of the child or denial of the opportunity to exercise parental rights and duties toward the child shall not include those instances where the father or putative father fails to prove to the satisfaction of the Court that he made a sufficient attempt to discover if he had fathered the child or to exercise parental rights and duties toward the child prior to the receipt of notice, or

c. he waives in writing his right to notice of the hearing provided for in 10 CNCA § 29.1, or

d. he fails to appear at the hearing provided for in 10 CNCA § 29.1 if all notice requirements continued in or pursuant to 10 CNCA § 1131 have been met.

A determination that the consent of the father or putative father of a child born out of wedlock to the adoption of the child is not required shall not, by itself, act to relieve such father or putative father of his obligation to provide for the support of the child as otherwise required by law.

### **Cross References**

Action to adopt not to be combined with action to terminate parental rights, see 10 CNCA § 1134.

### **Library References**

Indians <KEY>138.

Westlaw Topic No. 209.

### **§ 60.7. Notice and hearing in cases of adoption without consent of parents-Procedure**

A. Prior to a court hearing on a petition for adoption without the consent of a parent or parents, as provided for in 10 CNCA § 60.6, the consenting parent, legal guardian, or person having legal custody of the child to be adopted shall file an application stating the reason that the consent of the other parent or parents is not necessary. The application shall be heard by the Court and an order entered thereon in which said child is determined to be eligible for adoption pursuant to the provisions of 10 CNCA § 60.6.

B. Prior to a hearing on the application, notice shall be given the parent whose consent is alleged to be unnecessary. The notice of the application shall contain the name of each child for whom application for adoption is made, the date for hearing on the application, and the reason that said child is eligible for adoption without the consent of said parent. Notice shall be served upon said parent in the same manner as a summons is served in civil cases, not less than ten (10) days prior to the hearing. If said parent resides outside of the Nation, said notice shall be served upon said parent in the same manner as a summons is served in civil cases, not less than fifteen (15) days prior to the hearing. If the location of said parent is not known and this fact is attested to by affidavit of the consenting parent, legal guardian, or person having legal custody of the child, notice by publication shall be given by publishing notice one (1) time in a newspaper qualified as a legal newspaper, pursuant to the laws relating to service of notice by publication, in the county where the petition for adoption is filed. The publication shall not be less than fifteen (15) days prior to the date of the hearing.

C. The provisions of this section shall not be construed to require notice to a parent whose parental rights have

been previously terminated pursuant to 10 CNCA § 29.1, 1130 or 1131.

### **Library References**

Indians <KEY>138.

Westlaw Topic No. 209.

### **§ 60.7A. Court Clerk or Deputy may affix signature of Judge to order and notice of hearing**

Whenever the Uniform Adoption Act requires that an order setting date of hearing and giving notice thereof be signed by a judge, the Chief Judge may by judicial order provide that such order or notice may be signed by the Court Clerk or his Deputy affixing his signature beneath the place where the Judge's name appears followed with the word "by" and then followed with the signing officer's title.

### **Library References**

Indians <KEY>138.

Westlaw Topic No. 209.

### **§ 60.8. Reserved**

### **§ 60.9. Effect of act on prior adoptions**

This act shall not invalidate any adoption heretofore granted by any court.

### **Library References**

Indians <KEY>138.

Westlaw Topic No. 209.

### **§ 60.10. Withdrawal of consent-Notice and hearing-Limitation**

A. Withdrawal of any consent for adoption of a child pursuant to 10 CNCA § 60.5 shall not be permitted, except that the Court pursuant to the provisions of this section may, if it finds that the best interest of the child will be furthered thereby, issue a written order permitting the withdrawal of such consent if a petition for leave to withdraw consent is submitted in writing not later than thirty (30) days after consent was executed.

B. Notice of the petition to withdraw the consent and hearing on the petition to withdraw consent to the adoption shall be provided to:

1. the person who filed for adoption of the child;
2. any agency participating in the adoption; and
3. any person or agency in whose favor the consent was given.

The Court shall provide an opportunity to be heard to the person who has filed for adoption and to any agency participating in the adoption as to why the withdrawal of consent would not be in the best interest of the child.

C. The entry of the interlocutory or final decree of adoption renders any consent irrevocable.

### **Library References**

Indians <KEY>138.

Westlaw Topic No. 209.

### **§ 60.11. Consent of child**

Consent of the child, if twelve (12) years of age or over, shall be required. Such consent shall be given before the Court in such form as the Court shall direct.

### **Library References**

Indians <KEY>138.

Westlaw Topic No. 209.

### **§ 60.12. Petition for adoption**

A. A petition for adoption shall be filed in duplicate, verified by the petitioners, and shall specify:

1. The full names, ages and places of residence of the petitioners and, if married, the place and date of the marriage.
2. When the petitioners acquired or intend to acquire custody of the child and from what person or agency.
3. The date and place of birth of the child and sex and race.
4. The name used for the child in the proceeding and, if a change in name is desired, the new name.
5. That it is the desire of the petitioners that the relationship of parent and child be established between them and the child.
6. A full description and statement of value of all property owned or possessed by the child, if any.
7. Facts, if any, which excuse consent on the part of the parents, or either of them, to the adoption.
8. The tribal membership or tribes in which the child may be eligible for membership.

B. Any written consent required by this act may be attached to the petition, or may be filed, after the filing of the petition, with the consent of the court.

### Library References

Indians <KEY>138.

Westlaw Topic No. 209.

#### § 60.13. Investigations and reports

A. Upon the filing of a petition for adoption, the Court shall order or receive a preplacement investigation and report to be made by:

1. The agency having custody or legal guardianship of the child; or
2. The Oklahoma Department of Human Services; or
3. A licensed child-placing agency or certified adoption agency; or
4. A person qualified by training or experience, designated by the Court; or
5. Cherokee Nation.

B. The Court shall order that a report of such preplacement investigation be filed with the Court by the designated investigator within the time fixed by the Court and in no event more than sixty (60) days from the issuance of the order for preplacement investigation, unless time therefor is extended by the court.

C. The preplacement investigation shall include an appropriate inquiry to determine whether the proposed home is a suitable one for the child; and any other circumstances and conditions which may have a bearing on the adoption and of which the Court should have knowledge; and, in this entire matter of investigation, the Court is specifically authorized to exercise judicial knowledge and discretion.

D. A supplemental report including a determination as to the legal availability or status of the child for adoption shall be filed prior to the final adoption petition.

E. The Court may order agencies named in subsection (A) of this section located in one or more counties to make separate investigations on separate parts of the inquiry, as may be appropriate. Provided, that if the child petitioned to be adopted shall be the natural or adopted child of either of the petitioners then no investigation shall be made.

F. The report of such preplacement investigation shall become a part of the files in the case and shall contain a definite recommendation for or against the proposed adoption and the reasons therefor.

### Library References

Indians <KEY>138.

Westlaw Topic No. 209.

#### § 60.14. Waiver of interlocutory decree and waiting period

If the child is related by blood to one of the petitioners, or is a stepchild of the petitioner, or the Court finds that the best interests of the child will be furthered thereby, the Court, after examination of the report required in 10 CNCA § 60.13, in its discretion, may waive the entry of an interlocutory decree and the waiting period of six (6) months provided in 10 CNCA § 60.15 and grant a final decree of adoption, if satisfied that the adoption is for the best interests of the child.

### **Library References**

Indians <KEY>138.

Westlaw Topic No. 209.

### **§ 60.15. Interlocutory decree-Hearing-Final decree**

Upon examination of the report required in 10 CNCA § 60.13, and after hearing, the Court may issue an interlocutory decree giving the care and custody of the child to the petitioners, pending the further order of the Court. Thereafter the investigator shall observe the child in his proposed adoptive home and report in writing to the Court on any circumstances or conditions which may have a bearing on the granting of a final adoption decree. After six (6) months from the date of the interlocutory decree the petitioners may apply to the Court for a final decree of adoption. The Court shall thereupon set a time and place for final hearing. Notice of the time and date of the hearing shall be served on Cherokee Nation, in those cases where said Cherokee Nation has original custody, or the investigator. The investigator shall file with the court a written report of its findings and recommendations and certify that the required examination has been made since the granting of the interlocutory decree. After hearing on said application, at which the petitioners and the child shall appear unless the presence of the child is waived by the Court, the Court may enter a final decree of adoption, if satisfied that the adoption is for the best interests of the child.

### **Library References**

Indians <KEY>138.

Westlaw Topic No. 209.

### **§ 60.16. Effect of final decree-Grandparental rights**

A. After the final decree of adoption is entered, the relation of parent and child and all the rights, duties, and other legal consequences of the natural relation of child and parent shall thereafter exist between the adopted child and the adoptive parents of the child and the kindred of the adoptive parents. From the date of the final decree of adoption, the child shall be entitled to inherit real and personal property from and through the adoptive parents in accordance with the statutes of descent and distribution, and the adoptive parents shall be entitled to inherit real and personal property from and through the child in accordance with said statutes.

B. After a final decree of adoption is entered, the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent, shall be relieved of all parental responsibilities for said child and shall have no rights over the adopted child or to his property by descent and distribution.

C. A grandparent, who is the parent of the child's natural parents, may be given reasonable rights of visitation to

the child, pursuant to the provisions of 10 CNCA § 5.

### Library References

Indians <KEY>138.

Westlaw Topic No. 209.

### § 60.17. Confidential character of hearings and records-Release of medical history

A. Unless otherwise ordered by the Court, all hearings held in proceedings pursuant to the Uniform Adoption Act shall be confidential and shall be held in closed court without admittance of any person other than interested parties and their counsel.

B. All papers and records including the original medical history forms pertaining to the adoption shall be kept as a permanent record of the Court and withheld from inspection except as otherwise provided by this section. No person shall have access to such records except upon order of the Judge of the Court in which the decree of adoption was entered, for good cause shown.

C. All files and records pertaining to said adoption proceedings shall be confidential and withheld from inspection except upon order of the Court for good cause shown. The adopted child may upon petition of the Court obtain his adoption records.

D. 1. Cherokee Nation, any certified adoption agency or any licensed child-placing agency having custody of a child who is legally available for adoption is authorized to release the medical history, available to the department or such agency, of the child, of the natural parents of the child and of the grandparents of the child to prospective parents of the adoptive child.

2. The release of any medical history of the natural parents of the child or the natural grandparents of the child shall be released in such a way that no person can be identified.

3. The medical history may include the information received pursuant to 10 CNCA § 60.5A or any other medical information or records regarding the child obtained by the department or agency during the custody of the child.

### Library References

Indians <KEY>138.

Westlaw Topic No. 209.

### § 60.18. Certificates

A. For each adoption or annulment of adoption, the Clerk of the Court shall prepare, within thirty (30) days after the decree becomes final, a certificate of such decree on a form furnished by the State Registrar of Vital Statistics, and before the 15th day of each calendar month the Clerk shall forward to the State Registrar the certificates prepared by him during the preceding calendar month, if adoptions in said court have been effected.



B. Deleted.

### Library References

Indians <KEY>138.

Westlaw Topic No. 209.

### § 60.19. Appeals

An appeal may be taken from any final order, judgment or decree rendered hereunder to the Supreme Court by any person aggrieved thereby, in the manner provided for appeals to said court in civil matters.

### Library References

Indians <KEY>138.

Westlaw Topic No. 209.

### § 60.20. Foreign decrees

When the relationship of parent and child has been created by a decree of adoption of a court of any other state or nation, the rights and obligations of the parties as to matters within the jurisdiction of this Nation shall be determined by 10 CNCA § 60.16.

### Library References

Indians <KEY>138.

Westlaw Topic No. 209.

### § 60.21. Adoption of adults

An adult person may be adopted by any other adult person, with the consent of the person to be adopted or his guardian, if the Court shall approve, and with the consent of the spouse, if any, of an adoptive parent, filed in writing with the Court. The provisions of 10 CNCA §§ 60.1 to 60.15, both inclusive, shall not apply to the adoption of a competent adult person. A petition therefor shall be filed with the District Court in the county where the adoptive parents reside. After a hearing on the petition and after such investigation as the Court deems advisable, if the Court finds that it is in the best interests of the people involved, a decree of adoption may be entered which shall have the legal consequences stated in 10 CNCA § 60.16.

### History

**Source.** LA 8-91, eff. May 13, 1991.

### Library References

Indians <KEY>138.

Westlaw Topic No. 209.

## CHAPTER 3

### PATERNITY

#### Oklahoma Statutes

Uniform parentage act, see 10 O.S. § 7700-101 et seq.

#### **§ 100. Presumption that man is the natural father**

A. Except as otherwise provided by 10 CNCA § 100.1, a man is presumed to be the natural father of a child for all intents and purposes if:

1. He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within ten (10) months after the termination of the marriage by death, annulment, declaration of invalidity, divorce or dissolution, or after a decree of separation is entered by a court. A child born before wedlock becomes legitimate by the subsequent marriage of his parents even if the marriage is, was or could be declared invalid. Any child born within the ten-month period specified in this subsection which is born during a subsequent marriage to another person shall be presumed to be the legitimate child of that subsequent marriage;

2. Before the child's birth, he and the child's natural mother have cohabitated and the child is born within ten (10) months after the termination of cohabitation. As used in this paragraph, the term cohabitation means the dwelling together continuously and habitually of a man and a woman who are in a private conjugal relationship not solemnized as a marriage according to law;

3. While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child for a period of at least two (2) years;

4. The United States Immigration and Naturalization Service made or accepted a determination that he was the father of the child at the time of the child's entry into the United States and he had the opportunity at the time of the child's entry into the United States to admit or deny the paternal relationship; or

5. Statistical probability of paternity is established at ninety-five percent (95%) or more by scientifically reliable genetic tests, including but not limited to blood tests.

B. The presumption of paternity created pursuant to this section may be disputed pursuant to 10 CNCA § 101.

#### History

**Source.** LA 11-05, eff. March 21, 2005.

#### Library References

Children Out-of-Wedlock <KEY>3.

Indians <KEY>133.

Westlaw Topic Nos. 76H, 209.

C.J.S. Children Out-of-Wedlock §§ 10 to 14.

C.J.S. Indians § 150.

### **§ 100.1. Additional presumption of paternity**

A child shall be presumed to be the offspring of the putative father if:

1. The father, in writing, signed in the presence of a competent witness acknowledges himself to be the father of the child;
2. The father and mother intermarried subsequent to the child's birth, and the father, after such marriage, acknowledged the child as his own or adopted him into his family;
3. The father publicly acknowledged such child as his own, receiving it as such, with the consent of his wife, if he is married, into his family and otherwise treating it as if it were a child born in wedlock; or
4. The father was judicially determined to be such in a paternity proceeding before a court of competent jurisdiction.

### **History**

**Source.** LA 11-05, eff. March 21, 2005.

### **Library References**

Children Out-of-Wedlock <KEY>3.

Indians <KEY>133.

Westlaw Topic Nos. 76H, 209.

C.J.S. Children Out-of-Wedlock §§ 10 to 14.

C.J.S. Indians § 150.

### **§ 101. Persons entitled to dispute presumption; proof of illegitimacy; time limit**

A. The presumption of paternity created pursuant to 10 CNCA § 100 may be disputed only by the husband or wife, the putative father or their descendants. Paternity may be established pursuant to 10 CNCA § 104.

B. If a child is born during the course of the marriage and is reared by the husband and wife as a member of their family without disputing the child's legitimacy for a period of at least two (2) years, the presumption cannot be disputed by anyone.

### History

**Source.** LA 11-05, eff. March 21, 2005.

### Library References

Children Out-of-Wedlock <KEY>3.

Indians <KEY>133.

Westlaw Topic Nos. 76H, 209.

C.J.S. Children Out-of-Wedlock §§ 10 to 14.

C.J.S. Indians § 150.

### **§ 102. Repealed by LA 08-11, eff. May 19, 2011**

### History

The repealed section, derived from LA 11-05, related to parents' responsibility to support and educate a child.

### **§ 103. Death of custodial parent; custody of child**

The question of custody of a minor child upon the death of the custodial parent shall always be based upon what is in the best interests of the minor child.

### History

**Source.** LA 11-05, eff. March 21, 2005.

### Library References

Child Custody <KEY>23.

Indians <KEY>136.

Westlaw Topic Nos. 76D, 209.

C.J.S. Divorce § 1041.

C.J.S. Indians §§ 154 to 176.

C.J.S. Parent and Child §§ 56 to 57.

### **§ 104. Natural mother of child-Establishment of paternity**

A. Except as otherwise provided by law, a woman who gives birth to a child is the natural mother of the child.

B. Paternity may be established by:

1. Completion of the affidavit acknowledging paternity, provided by the Division of Child Support Services, by the father and mother. A statement acknowledging paternity shall have the same legal effect as an order of paternity entered in a court or administrative proceeding.

a. The statement may be rescinded by the mother or acknowledging father within the earlier of:

i. sixty (60) days after the statement is signed by making a motion to the District Court requesting an order rescinding the affidavit on the same grounds as subsection (B)(1)(a)(2) of this section; or

ii. the date of an administrative or judicial proceeding relating to the child, including but not limited to a proceeding to establish a support order, in which the signatory is a party.

After the sixty- (60) day period referred to in division (1) of this subparagraph, a signed voluntary acknowledgment of paternity may be challenged in Court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger. Legal responsibilities, including but not limited to child support obligations, of any signatory arising from the acknowledgment shall not be suspended during the challenge, except for good cause shown.

This subparagraph shall not be interpreted to authorize the rescission of an acknowledgement of paternity if such rescission would be prohibited under applicable federal law.

b. i. If the mother was married at the time of conception or birth, and her husband is not the natural father of the child, the husband may sign a husband's denial of paternity form, which must be filed along with the affidavit acknowledging paternity.

ii. The husband's denial of paternity form shall be prescribed by the Division of Child Support Services and made available at the same locations as the affidavit acknowledging paternity;

2. Scientifically reliable genetic tests, including but not limited to blood tests;

3. District or Administrative Court order; or

4. As otherwise provided by law.

C. 1. If the person signing the acknowledgment of paternity is determined in an administrative or judicial proceeding not to be the father of the child, on the basis of fraud, duress or material mistake of fact pursuant to subsection (B) of this section, the Division of Child Support Services or the Court shall dismiss any pending court or administrative collection proceedings against the father and the father will be released from any Court-ordered or Division-ordered payments for the support and maintenance of the child.

2. The State Registrar of Vital Statistics shall remove the name of the person listed as the father from the birth certificate upon notice from the Division that such person has been judicially or administratively determined not to be the father. Once paternity is established, the State Registrar of Vital Statistics shall correct its records and amend the birth certificate to reflect the father's name.

D. Proceedings to establish paternity must be brought in the District Court. Proceedings may be brought by the mother, father, guardian, or custodian of the child, the Division, the prosecutor, a public or private agency or authority chargeable with the support of the child, or by the child. The Court, after determining paternity in a civil action, may, at the discretion of the Court, enter an order providing for the support and maintenance of the child. The social security numbers of both parents and the child shall be included on the summary of support order form provided for in 43 CNCA § 515 which shall be submitted to the Central Case Registry as provided for in 43 CNCA § 502. The District Court may further make provision for custody and visitation based upon the best interests of the child.

E. An action to establish paternity shall be available to a child if commenced prior to the child attaining the age of eighteen (18) years or within one (1) year after the child reaches the age of eighteen (18).

### **History**

**Source.** LA 11-05, eff. March 21, 2005.

**Amended.** LA 08-11, eff. May 19, 2011.

### **Library References**

Children Out-of-Wedlock <KEY>1, 20.1.

Indians <KEY>133.

Westlaw Topic Nos. 76H, 209.

C.J.S. Children Out-of-Wedlock §§ 1 to 8, 36.

C.J.S. Indians § 150.

### **§ 105. Petition-Verification-Jurisdiction**

If a woman is delivered of a child, or is pregnant with a child, and the paternity of said child is not determined, a petition may be filed, in writing duly verified by any person, to the District Court stating that fact and charging the proper person with being the father thereof if that person is a citizen of Cherokee Nation or in the case of a non-citizen Indian or a non-Indian, if the case arose within the jurisdictional boundaries of Cherokee Nation and the child in question is an enrolled citizen of Cherokee Nation or is eligible for enrollment as a citizen of Cherokee Nation. The death of the mother shall not abate an action which is brought under this section, and it will not prevent the bringing of an action for the support of the child.

### **History**

**Source.** LA 11-05, eff. March 21, 2005.

**Amended.** LA 08-11, eff. May 19, 2011.

### **Library References**

Children Out-of-Wedlock <KEY>30.

Indians <KEY>133.

Westlaw Topic Nos. 76H, 209.

C.J.S. Children Out-of-Wedlock §§ 47, 71, 94, 96 to 97.

C.J.S. Indians § 150.

### **§ 105.1. Notice to Registrar**

In all actions to determine the paternity of a child, or of a person younger than age nineteen (19) in accordance with 10 CNCA § 104(E), that would affect the citizenship rolls of Cherokee Nation, notice must be served on the Cherokee Nation Registrar at least thirty (30) days prior to the date of the hearing on the petition. Proof of that notice must be filed with the District Court prior to any hearing on the petition for determination of paternity. However, this section shall not apply to paternity actions brought by Cherokee Nation.

#### **History**

**Source.** LA 30-06, eff. December 30, 2006.

### **§ 106. Trial of issues of paternity, support, custody and visitation-Burden of proof and procedure**

The issues of paternity, support, custody and visitation shall be tried before a Judge of the District Court and the petitioning party shall bear the burden of proof. The Court shall not make a determination of paternity unless the preponderance of the evidence supports said determination.

#### **History**

**Source.** LA 11-05, eff. March 21, 2005.

#### **Library References**

Children Out-of-Wedlock <KEY>31, 39.

Indians <KEY>133.

Westlaw Topic Nos. 76H, 209.

C.J.S. Children Out-of-Wedlock §§ 47, 51, 72 to 75, 98.

C.J.S. Indians § 150.

### **§ 107. Court order determining paternity**

When the paternity petition is filed, the Court shall order the defendant to appear and show cause why the Court

should not determine him to be the father. If the defendant fails to appear, the Court shall upon the findings of the Judge enter an order determining paternity. If the defendant appears and does not admit paternity, then the Court shall enter at that time an order directing genetic testing to determine paternity. No finding of paternity shall be made by the Court unless service has been made upon the named defendant(s) in accordance with the laws of Cherokee Nation.

### **History**

**Source.** LA 11-05, eff. March 21, 2005.

### **§ 108. Court may enlarge, diminish or vacate order or judgment**

If the accused be found guilty, he shall be charged with the maintenance of the child in such sum or sums, and in such manner as the Court shall direct, and with the costs of the suit and execution may issue, immediately, and afterwards from time to time for the collection of any sum or sums ordered to be paid, and in addition thereto the Court shall require the defendant to secure the performance of the order of the Court, in such manner as the Court shall direct, and the Court shall have power to punish, as for contempt, any disobedience by the defendant of an order of the Court issued under this section.

### **History**

**Source.** LA 11-05, eff. March 21, 2005.

### **Library References**

Children Out-of-Wedlock <KEY>64.

Indians <KEY>133.

Westlaw Topic Nos. 76H, 209.

C.J.S. Children Out-of-Wedlock §§ 121 to 122.

C.J.S. Indians § 150.

### **§ 109. Appeals**

Appeals may be taken in cases brought under the provisions of this chapter, in the same manner and with like effect as in other actions in the District Court.

### **History**

**Source.** LA 11-05, eff. March 21, 2005.

### **Library References**

Children Out-of-Wedlock <KEY>73.



Indians <KEY>133.

Westlaw Topic Nos. 76H, 209.

C.J.S. Children Out-of-Wedlock §§ 134 to 138.

C.J.S. Indians § 150.

### **§ 110. Father's liability to support and educate child**

A. An individual who has been legally determined to be the father of a child pursuant to 10 CNCA § 104, or an individual who has been judicially determined to be the father of a child is liable for the support and education of the child to the same extent as the father of a child born in wedlock.

B. 1. An action to enforce the obligation of support, maintenance, and education may be brought by the mother or custodian or guardian of the child, by the public authority chargeable with the support of the child, or by the child.

2. An action to determine paternity and to enforce this obligation may be brought any time before the eighteenth (18th) birthday of the child.

3. If paternity has been legally determined pursuant to 10 CNCA § 104, or judicially determined, Court-ordered child support is not subject to any statute of limitations and an action to enforce the obligation may be brought at any time and the support in question is owed until paid.

4. The father's obligation to support is terminated if the child is adopted.

5. The Court may order the payments made to the mother or custodian or guardian of the child, or to some other person, corporation or agency to administer under the supervision of the Court.

C. An individual who has been legally determined to be the father of a child pursuant to 10 CNCA § 104, or an individual who has been judicially or administratively determined to be the father of a child shall be ordered to pay all or a portion of the reasonable expenses of providing for the child provided that liability for support provided before the determination of paternity shall be imposed for five (5) years preceding the filing of the action, absent good cause to deviate. The amount to be paid by the father shall be determined by applying the child support guidelines for establishing current support and applying the amount of the reasonable expenses against the percentage derived from the guidelines. No interest shall be applied to this amount retroactively.

D. The amount of child support and other support including amounts provided for in 10 CNCA § 110(C) shall be ordered and reviewed in accordance with the child support guidelines provided in 43 CNCA § 514.

E. 1. When a civil or administrative action is filed to determine paternity of a minor child, an interested party may request the Court to enter a temporary order for support of the child pending a final determination of paternity. The application for temporary support shall set forth facts supporting the application and shall be verified by the party or entity seeking the order. The application and notice of hearing shall be served as in other civil cases.

2. After service of the application and opportunity for hearing, the Court shall enter a temporary order for

support if the Court finds there is clear and convincing evidence of paternity, including, but not limited to:

- a. a genetic test which establishes a rebuttable or conclusive presumption of paternity pursuant to 10 CNCA § 121;
- b. a notarized written statement acknowledging paternity of the child executed by the putative father;
- c. a presumption of paternity pursuant to 10 CNCA § 100; or
- d. other evidence which establishes a high probability of paternity.

3. Temporary orders for support shall be established in accordance with the child support guidelines pursuant to 43 CNCA § 514. A temporary support order terminates when a final judgment is entered which establishes support or when the action is dismissed. A temporary support order shall not be retroactively modified, but it may be modified prospectively before final judgment upon motion of an interested party and a showing of facts supporting a modification.

### **History**

**Source.** LA 11-05, eff. March 21, 2005.

**Amended.** LA 30-06, eff. December 30, 2006.

**Amended.** LA 20-07, eff. April 23, 2007.

**Amended.** LA 08-11, eff. May 19, 2011.

### **Library References**

Child Support <KEY>24.

Indians <KEY>137.

Westlaw Topic Nos. 76E, 209.

C.J.S. Divorce § 1079.

C.J.S. Indians § 152.

C.J.S. Parent and Child §§ 168, 170 to 172, 177, 199.

**§ 111. Repealed by LA 20-07, eff. April 23, 2007**

### **History**

The repealed section, derived from LA 11-05, related to a father's liability for expenses of the mother.

**§ 112. Persons eligible to bring paternity actions**

A. The mother, putative father, guardian or custodian of the child, the Division of Child Support Services, a public or private agency or authority chargeable with the support of the child, or the child may bring an action in a civil proceeding in District Court or by an administrative action through the Division of Child Support Services, to determine paternity and the amount of child support due and owing for the maintenance of the child.

B. Venue of an action to determine the paternity of a child pursuant to this section shall be, at the option of the plaintiff, in either the District Court in Tahlequah or the closest site of a Cherokee Nation child support enforcement court docket.

C. A Court may exercise personal jurisdiction over a person, whether or not a resident of Cherokee Nation, who is the subject of a paternity action. When a person who is subject to the jurisdiction of the Court is outside Cherokee Nation, the person may be served outside of Cherokee Nation by any method that is authorized by the statutes of this Nation.

D. The petition shall be verified as true by the affidavit of the plaintiff. A summons may be issued thereon and shall be served or publication made as in other civil cases.

E. The practice, pleading, and proceedings in such action shall conform to the rules prescribed by the Judicial Branch of Cherokee Nation.

F. If the defendant fails to answer the petition of the plaintiff or appear for show cause hearing, then the Court shall proceed to determine issues of paternity, support, custody and visitation if service on the defendant was made pursuant to the Cherokee Nation Code.

G. Attorneys for the Division of Child Support Services may appear or initiate an action brought under this section on behalf of:

1. A recipient of Temporary Assistance for Needy Families; or
2. A person not receiving Temporary Assistance for Needy Families, including but not limited to the putative father, upon the request of such person and proper application pursuant to rules and regulations adopted by the Division.

H. In a proceeding brought under subsection (G) of this section by the Division of Child Support Services, the Court may, and unless it is not in the best interests of the child, shall, limit the issues in that proceeding to issues of paternity and support, unless issues of custody and visitation are specifically and affirmatively pled by the father. All contested issues of custody and visitation shall be addressed by the District Court.

### **History**

**Source.** LA 11-05, eff. March 21, 2005.

**Amended.** LA 08-11, eff. May 19, 2011.

### **Library References**

Children Out-of-Wedlock <KEY>34.

Indians <KEY>133.

Westlaw Topic Nos. 76H, 209.

C.J.S. Children Out-of-Wedlock §§ 50, 88 to 96.

C.J.S. Indians § 150.

### **§ 113. Joinder of sexual partners as defendants-Genetic testing-Determination of paternity**

A. All persons who have had sexual intercourse with a woman during the possible time of conception of a child for whom paternity is not determined may be joined as defendants in an action to determine the paternity of the child.

B. When more than one defendant is named or joined in a paternity action, the Court shall order all defendants to appear. The Court shall order genetic testing of all defendants who are duly served, including defendants who fail to answer or appear. The Court may order the mother, the child, or other individuals necessary to make a determination of paternity to submit to genetic testing.

C. 1. When genetic testing indicates a probability of paternity greater than ninety-eight percent (98%) for a specific defendant pursuant to 10 CNCA § 121, the Court shall enter an order establishing that defendant as the father.

2. If a duly served defendant fails to answer, or to appear for hearing or genetic testing after being ordered to appear, and all other duly served defendants have been excluded as possible fathers by genetic testing, the Court shall enter an order establishing the defendant who failed to answer or appear as the father.

3. If one or more defendants fail to appear for genetic testing after being ordered to appear for testing, the Court may proceed to determine paternity and related issues based upon competent testimony and genetic test results, if any.

D. The Court has the authority to enforce a subpoena or order to appear or to submit to genetic testing, or any other order entered pursuant to this section.

E. After paternity is determined by the Court, the Court shall dismiss the paternity action against the other defendants.

F. No judgment shall be entered against the defendant who has not been properly served.

### **History**

**Source.** LA 11-05, eff. March 21, 2005.

### **Library References**

Children Out-of-Wedlock <KEY>35.

Indians <KEY>133.

Westlaw Topic Nos. 76H, 209.

C.J.S. Children Out-of-Wedlock §§ 47, 50, 95.

C.J.S. Indians § 150.

### **§ 113.1. Effect of failure to appear or answer-Presumptions**

Any administrative or court order of any jurisdiction determining the paternity of a child which is entered due to the failure to appear or answer by the alleged father and in which no presumption of paternity exists in accordance with 10 CNCA § 100 or 100.1, and which is not supported by genetic testing meeting the requirements of 10 CNCA § 121, shall not be used as the sole basis for eligibility for citizenship in Cherokee Nation.

#### **History**

**Source.** LA 30-06, eff. December 30, 2006.

#### **Library References**

Indians <KEY>133, 222.

Westlaw Topic No. 209.

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 150, 180.

### **§ 114. Costs and attorney fees**

In an action to determine paternity brought pursuant to 10 CNCA § 100 et seq., the Court may award and tax fees and costs, and apportion them between the parties as justice dictates.

#### **History**

**Source.** LA 11-05, eff. March 21, 2005.

#### **Library References**

Children Out-of-Wedlock <KEY>75.

Indians <KEY>133.

Westlaw Topic Nos. 76H, 209.

C.J.S. Children Out-of-Wedlock §§ 53, 76, 139 to 142.

C.J.S. Indians § 150.

### **§ 115. Changing child's name to paternal surname**

A. At any time after a determination of paternity, the mother, father, custodian or guardian of the child may file a motion requesting the Court to order that the surname of the child be changed to the surname of its father. The Court shall thereafter set a hearing on said motion. Notice of the filing of the motion and the date of the hearing shall be served by process on all parties.

B. If, after said hearing, the Judge finds that it is in the best interest of the child to bear the paternal surname, the Court shall enter an order to that effect which shall include findings of fact as to each issue raised by the parties.

C. The practice, pleading, and proceedings as set forth in this section shall conform to the applicable rules prescribed by the Judicial Branch of Cherokee Nation.

#### **History**

**Source.** LA 11-05, eff. March 21, 2005.

#### **Library References**

Children Out-of-Wedlock <KEY>64.

Indians <KEY>133.

Westlaw Topic Nos. 76H, 209.

C.J.S. Children Out-of-Wedlock §§ 121 to 122.

C.J.S. Indians § 150.

### **§ 116. Authority of District Court**

In all cases of paternity and for arrearage of child support, the District Court shall make inquiry to determine if the noncustodial parent has been denied reasonable visitation. If reasonable visitation has been denied by the custodial parent to the noncustodial parent, the District Court shall include visitation provisions in the support order.

#### **History**

**Source.** LA 11-05, eff. March 21, 2005.

### **§ 117. Preparation of birth certificate-Acknowledgement of paternity**

A. Unless an adoption decree has been presented, and consent to adoption has been given as otherwise provided by law, upon the birth of a child to an unmarried woman, the person required by the State of Oklahoma, under 63 O.S. § 1-311, to prepare and file an Oklahoma birth certificate shall:

1. Provide written materials and an oral, audio, or video presentation to the child's mother and/or natural father including an affidavit acknowledging paternity on a form prescribed by the Division of Child Support Enforcement. The completed affidavit shall be filed with the District Court. The affidavit shall contain:

- a. a statement by the mother consenting to the assertion of paternity and stating the name of the father,
- b. a statement by the father that he is the natural father of the child,
- c. the social security numbers of both parents, and
- d. other information as the Secretary of Health and Human Services may require;

2. Provide written information, furnished by the Division of Child Support Enforcement, along with an oral, audio, or video presentation to the mother:

- a. explaining that the completed, notarized affidavit shall be filed with the District Court,
- b. regarding the benefits of having her child's paternity established and of the availability of paternity establishment services, including a request for support enforcement services, and
- c. explaining the implications of signing, including parental rights and responsibilities; and

3. Provide the original affidavit acknowledging paternity to the Office of the State Registrar of Vital Statistics. Copies of the original affidavit acknowledging paternity shall be provided to the Division of Child Support Enforcement and to the mother and acknowledged father of the child.

B. The Division of Child Support Enforcement shall make the affidavits acknowledging paternity and the husband's denial of paternity forms available at each office of the Division.

C. A person signing an affidavit of paternity prior to attaining the age of 18 years shall be allowed to challenge said affidavit in Cherokee Nation District Court. A petition challenging the paternity affidavit must be filed by the person who acknowledged paternity prior to his nineteenth birthday. A challenge must be supported by DNA testing and the standard for proving paternity shall be the same as that found in 10 CNCA § 121.

### **History**

**Source.** LA 11-05, eff. March 21, 2005.

**Amended.** LA 30-06, eff. December 30, 2006.

### **Oklahoma Statutes**

Birth certificates, filing, contents, see 63 O.S. § 1-311.

### **Library References**

Health <KEY>397.

Westlaw Topic No. 198H.

C.J.S. Health and Environment §§ 24, 74.

### **§ 118. Authority for test**

In a civil action in which paternity is a relevant fact and at issue, the Court shall order the mother, child and putative father to submit to genetic testing. If any party refuses to submit to such tests, the Court may resolve the question of paternity against such party or enforce its order if the rights of others and the interests of justice so require unless such individual is found to have good cause for refusing to cooperate.

#### **History**

**Source.** LA 11-05, eff. March 21, 2005.

#### **Library References**

Children Out-of-Wedlock <KEY>45.

Indians <KEY>133.

Westlaw Topic Nos. 76H, 209.

C.J.S. Children Out-of-Wedlock §§ 76 to 79.

C.J.S. Indians § 150.

### **§ 119. Selection of experts**

The tests shall be made by experts qualified as examiners of genetic markers in the human body. Except as otherwise provided in this act, the experts may be called by the Court or by a party as witnesses to testify as to their findings and shall be subject to cross-examination by the parties. Any party may request that additional experts qualified as examiners of genetic markers in the human body perform independent tests subject to order of Court, the results of which may be offered in evidence. The number and qualifications of the experts shall be determined by the Court. A party requesting additional testing shall be responsible for the costs of the additional testing.

#### **History**

**Source.** LA 11-05, eff. March 21, 2005.

### **§ 120. Compensation of expert witnesses**

A. The compensation of each expert witness appointed by the Court or called by a party and costs of tests required shall be fixed at reasonable amounts by the Court. Said compensation and costs shall be paid as the Court shall order. The Court may order that said compensation and costs be paid by the parties in such proportions and at such times as it shall prescribe. All additional testing must be paid for in advance by the



party requesting the additional test. The Court may order that, after payment by the parties, said compensation and costs may be taxed as costs in the action.

B. The Court shall not assess costs against the Office of Child Support Enforcement.

### **History**

**Source.** LA 11-05, eff. March 21, 2005.

### **§ 121. Effect of test results**

A. Evidence which shows a statistical probability of paternity is admissible and shall be weighed in addition to other evidence of the paternity of the child. Evidence which shows a statistical probability of paternity may include but is not limited to medical, scientific, or genetic evidence relating to the paternity of the child based on tests performed by said experts.

B. If the Court finds that the evidence based upon the medical, scientific, and genetic tests, shows that the defendant is not the parent of the child, said evidence shall be conclusive proof of nonpaternity and the Court shall dismiss the action.

C. Evidence of statistical probability of paternity established at ninety-five percent (95%) or more creates a presumption of paternity. Said presumption is rebuttable by clear and convincing evidence admitted on behalf of the defendant.

D. Evidence of statistical probability of paternity established at ninety-eight percent (98%) or more creates a conclusive presumption of paternity.

E. The party receiving the copy of the genetic test results from the Court-appointed expert shall send all parties a copy of the genetic test results by certificate of mailing to the last-known address of the parties.

F. Any objection to genetic testing results must be made in writing within fifteen (15) days from the date of mailing of the genetic test results, and any hearing on the issue of paternity may not be held any sooner than fifteen (15) days after filing of objection to genetic test. If no objection is filed within the specified time, the genetic testing results will be admitted as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy.

### **History**

**Source.** LA 11-05, eff. March 21, 2005.

### **Library References**

Children Out-of-Wedlock <KEY>45.

Indians <KEY>133.

Westlaw Topic Nos. 76H, 209.

C.J.S. Children Out-of-Wedlock §§ 76 to 79.

C.J.S. Indians § 150.

### **§ 122. Effect on presumption of legitimacy**

Except as otherwise provided by law, presumption of legitimacy of a child born during wedlock is overcome if the Court finds that the conclusions of all the experts, as disclosed by the evidence based upon the tests, show that the husband is not the father of the child.

#### **History**

**Source.** LA 11-05, eff. March 21, 2005.

#### **Library References**

Children Out-of-Wedlock <KEY>3.

Indians <KEY>133.

Westlaw Topic Nos. 76H, 209.

C.J.S. Children Out-of-Wedlock §§ 10 to 14.

C.J.S. Indians § 150.

### **§ 123. Applicability to criminal actions**

The genetic testing provisions shall also apply to criminal cases, subject to the following limitations and provisions:

1. An order for the tests shall be made on the application of a defendant or the Nation;
2. The compensation of the experts appointed by the Court shall be paid from the Court fund;
3. The Court may direct a verdict of acquittal upon the conclusions of all the experts under the provisions of 10 CNCA § 121, but otherwise the case shall be submitted for determination upon all the evidence.

#### **History**

**Source.** LA 11-05, eff. March 21, 2005.

## **CHAPTER 51**

### **DELINQUENT, DEPENDENT AND NEGLECTED CHILDREN**

#### **ARTICLE I. DEPENDENT AND DELINQUENT CHILDREN**

## Oklahoma Statutes

Dependent and delinquent children, see 10 O.S. § 7001-1.1 et seq.

### § 1101. Definitions

When used in this title, unless the context otherwise requires:

1. **"Adjudicatory hearing"** means a hearing to determine whether the allegations of a petition alleging the child to be neglected, deprived, in need of supervision, delinquent, or in need of treatment pursuant to the provisions of 10 CNCA § 1103 are supported by the evidence and whether a child should be adjudged to be a ward of the Court.

2. **"Child"** means any person under eighteen (18) years of age, except for any person sixteen (16) or seventeen (17) years of age and a member of an Indian tribe or eligible for membership in an Indian tribe who is charged with any crime specified in 10 CNCA § 1104.2(A), or who has been certified as an adult pursuant to 10 CNCA § 1112; provided that any person under eighteen (18) years of age who is not convicted after being charged with a crime pursuant to 10 CNCA § 1104.2, or who is not convicted after certification as an adult pursuant to 10 CNCA § 1112, shall continue to be subject to the jurisdiction of the juvenile court.

3. **"Child in need of supervision"** means a child who:

a. has repeatedly disobeyed reasonable and lawful commands or directives of his parent, legal guardian, or other custodian; or

b. is willfully and voluntarily absent from his home without the consent of his parent, legal guardian, or other custodian for a substantial length of time or without intent to return; or

c. is willfully and voluntarily absent from school for fifteen (15) or more days or parts of days within a semester or four (4) or more days or parts of days within a four-week period without a valid excuse as defined by the local school boards, if said child is subject to compulsory school attendance.

4. **"Child in need of treatment"** means a child who has a demonstrable mental illness and as a result of that mental illness:

a. can be expected within the near future to intentionally or unintentionally seriously physically injure himself or another person and has engaged in one or more recent overt acts or made significant recent threats which substantially support that expectation; or

b. is unable to attend to those of his basic needs that must be attended to in order for him to avoid serious harm in the near future and has demonstrated such inability by failing to attend to those basic needs in the recent past. A determination regarding the ability of the child to attend to his basic needs shall be based upon the age of the child and reasonable and appropriate expectation of the abilities of a child of such age to attend to said needs.

The term **"child in need of treatment"** shall not mean a child afflicted with epilepsy, developmental disability, organic brain syndrome, physical handicaps, brief periods of intoxication caused by such substances as alcohol or drugs or who is truant or sexually active unless the child also meets the criteria for a child in need of treatment pursuant to paragraphs 1 or 2 of this subsection.

5. **"Community-based"** means a facility, program or service, or open group home or other suitable place located near the home or family of the child, and programs of community supervision and service which maintain community participation in their planning, operation, and evaluation. These programs may include but are not limited to medical, educational, vocational, social, and psychological guidance, training, counseling, alcoholism treatment, drug treatment, and other rehabilitative services.

6. **"Community residential center"** means a residential facility for no more than twenty (20) children which offers a range of services including personal and social services, and emphasizes normal group living, school attendance, securing employment, and general participation in the community.

7. **"DHS"** means the Oklahoma Department of Human Services.

8. **"Day treatment"** means a program which provides intensive services to children who reside in their own home, the home of a relative, or a foster home. Day treatment programs include educational services and may be operated as a part of a residential facility.

9. **"Delinquent child"** means a child who:

a. has violated any federal, state, or tribal law or municipal ordinance, except a traffic statute or traffic ordinance, or any lawful order of the court made pursuant to the provisions of 10 CNCA § 1101 et seq.; or

b. has habitually violated traffic laws or traffic ordinances.

10. **"Deprived child"** means a child:

a. who is for any reason destitute, homeless, or abandoned; or

b. who does not have the proper parental care or guardianship or whose home is an unfit place for the child by reason of neglect, cruelty, or depravity on the part of his parents, legal guardian, or other person in whose care the child may be; or

c. who is a child in need of special care and treatment because of his physical or mental condition including a child born in a condition of dependence on a controlled dangerous substance, and his parents, legal guardian, or other custodian is unable or willfully fails to provide said special care and treatment; or

d. who is a handicapped child deprived of the 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 said child if such nutrition or medical treatment is generally provided to similarly situated nonhandicapped or handicapped children, provided that no medical treatment is necessary if, in the reasonable medical judgment of the attending physician, such treatment would be futile in saving the life of the child; or

e. who is, due to improper parental care and guardianship, absent from school for fifteen (15) or more days or parts of days within a semester or four (4) or more days or parts of days within a four- (4) week period without a valid excuse as defined by the local school boards if said child is subject to compulsory school attendance; or

f. whose parent or legal custodian for good cause desires to be relieved of his custody; or

g. who is a subsequent child born to a parent whose parental rights to any other child has been terminated by the Court; provided, that the applicant shall show that the condition which led to the making of the finding which resulted in the termination of such parent's parental rights to the other child has not been corrected.

No child who, in good faith, is being provided with treatment and care by spiritual means alone in accordance with the tenets and practice of a recognized church, religious denomination, traditional healing or medicine or other religious organization by a recognized practitioner thereof shall be considered, for that reason alone, to be a deprived child pursuant to any provision of this article. The phrase dependent and neglected shall be deemed to mean deprived.

11. **"Dispositional hearing"** means a hearing to determine the order of disposition which should be made with respect to a child adjudged to be a ward of the Court.

12. **"Emergency youth shelter"** means a temporary residential care facility which provides a range of services including counseling, crisis intervention, referrals, educational services, the maximum stay of which is thirty (30) days.

13. **"Facility"** means a place, an institution, a building or part thereof, a set of buildings, or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles and may be owned or operated by a public or private agency or contracted by the Nation.

14. **"Group home"** means a residential facility housing no more than twelve children with a program which emphasizes family-style living in a homelike environment. Said group home may also offer a program within the community to meet the specialized treatment needs of its residents.

15. **"Handicapped child"** means any child who has a physical or mental impairment which substantially limits one or more of the major life activities of the child or who is regarded as having such an impairment by a competent medical professional.

16. **"Independent"** means that the person or persons performing a mental health examination and submitting a report to the Court pursuant to the provisions of this title has no financial interests in or other connections to or relationships with a facility in which the child will be placed for inpatient mental health services that would constitute a conflict of interest, and has signed an affidavit to that effect.

17. **"Institution"** means a residential facility offering care and treatment for more than twenty (20) residents. Said institution may:

- a. have a program which includes community participation and community-based services; or
- b. be a secure facility with a program exclusively designed for a particular category of resident.

18. **"Less restrictive alternative to inpatient mental health care and treatment"** means and shall include but not be limited to: outpatient counseling services, including services provided in the home of the child and which may be referred to as **"home-based services"**; day treatment or day hospitalization services; respite care; foster care; group home care that provides for the delivery of services specifically designed to meet the treatment needs of children in need of treatment; or some combination thereof.

19. **"Mental health examination"** and **"mental health evaluation"** means an examination or evaluation of a

child by a qualified mental health professional for the purpose of making a determination or preparing reports or recommendations as to whether, in the opinion of the qualified mental health professional:

- a. the child is a child in need of treatment and the least restrictive treatment necessary and appropriate for the child; or
- b. the child is not a child in need of treatment, and the mental health services, if any, necessary and appropriate for the child.

20. **"Mental health facility"** means:

- a. a facility or program operated by Cherokee Nation, the Indian Health Service or the Oklahoma Department of Mental Health and Substance Abuse Services or a facility or program operated by a private agency which offers outpatient or residential care and treatment services to children in need of treatment including but not limited to public or private hospitals, institutions, or agencies, comprehensive mental health centers, clinics, satellites, day treatment facilities, halfway homes, and group homes; or
- b. a child guidance center operated by the State Department of Health; or
- c. a facility or program operated by the Oklahoma Department of Human Services and designated by the Department to be a mental health treatment center for children in the custody of the Department.

21. **"Preliminary inquiry"** or **"intake"** means a mandatory, preadjudicatory interview of the child and, if available, his parents, legal guardian, or other custodian, which is performed by a duly authorized individual to determine whether a child comes within the purview of this chapter, whether other nonadjudicatory alternatives are available and appropriate, and if the filing of a petition is necessary.

22. **"Qualified mental health professional"** means an individual having specific training and current experience in the mental health testing, examination, evaluation and diagnosis of children and adolescents and who:

- a. holds at least a master's degree in a mental health field; and
- b. has been awarded a current, valid Oklahoma license in a mental health field or permission to practice by a licensure board in a mental health field. For the purpose of this paragraph, **"mental health field"** means medicine, psychology, counseling and guidance, applied behavioral studies, human relations or social work.

23. **"Prescreening mental health evaluation"** means a face-to-face examination of a child by a qualified mental health professional to determine whether the child should be admitted to a hospital or inpatient mental health facility on an emergency psychiatric basis as provided by 10 CNCA § 5.

24. **"Rehabilitative facility"** means a facility maintained by the state exclusively for the care, education, training, treatment, and rehabilitation of children in need of supervision.

25. **"Secure facility"** means a facility which is designed and operated to ensure that all entrances and exits from the facility are subject to the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeter of the facility, or a facility which relies on locked rooms and buildings, fences, or physical restraint in order to control behavior of its residents.

26. **"Treatment center"** means a facility for the care, education, training, treatment, and rehabilitation of children who are in the custody of Cherokee Nation and who have been found by the Court to be in need of treatment.

### **History**

**Amended.** LA 26-07, eff. June 15, 2007.

### **Cross References**

Child endangerment, knowingly permitting physical or sexual abuse, good faith reliance on spiritual healing, penalties, see 21 CNCA § 852.1.

Children, definitions, see 10 CNCA § 25.

Enforcement, see 10 CNCA § 1405.

Omission to provide for a child, penalties, see 21 CNCA § 852.

### **§ 1102. Jurisdiction of District Court-Transfer or consolidation of proceedings**

A. Upon the filing of a petition, or upon the assumption of custody pursuant to the provisions of 10 CNCA § 1107, the District Court shall have jurisdiction of any Indian child who is or is alleged to be delinquent, in need of supervision, in need of treatment, or deprived, who is found within Indian country within Cherokee Nation; and of the parent, guardian or legal custodian of said child, regardless of where the parent, guardian or legal custodian is found. When jurisdiction shall have been obtained over a child in need of supervision, a child in need of treatment, or a deprived child, such may be retained until the child becomes eighteen (18) years of age and when jurisdiction shall have been obtained over a delinquent child, jurisdiction may be retained until the child becomes nineteen (19) years of age. For the convenience of the parties and in the interest of justice, a proceeding under this chapter may be transferred to the district court in any other jurisdiction.

B. The District Court in which a petition is filed or the district court in which custody has been assumed pursuant to the provisions of 10 CNCA § 1107 may retain jurisdiction of a delinquent child in such proceeding notwithstanding the fact that the child is subject to the jurisdiction of another court. Any adjudication and disposition made by the Court in which said petition is filed shall control over prior orders in regard to the child.

C. The District Court in which a petition is filed which alleges that a child is in need of supervision, in need of treatment, or is deprived can issue any temporary order or grant any interlocutory relief authorized by this chapter notwithstanding the fact that another court has jurisdiction of the child or has jurisdiction to determine the custody or support of the child.

D. If the District Court in which a petition is filed pursuant to either subsection (B) or subsection (C) of this section sustains the petition, the District Court shall have the jurisdiction to make a final determination on the juvenile petition or to transfer the proceedings to a court having prior jurisdiction over the child.

### **Library References**

Indians <KEY>135, 640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 150 to 179.

### **§ 1102.1. Transfer of issues regarding child to juvenile docket for preliminary inquiry and determination**

Where the evidence in an action for a divorce, for alimony without a divorce, for an annulment, for custody of a child or for the appointment of a guardian of the person of a child, or in subsequent proceedings in such actions, indicates that a child is deprived or in need of supervision, the Court, after proper notice, shall transfer the issues in regard to the child to the juvenile docket of the Court for preliminary inquiry and determination.

### **Library References**

Indians <KEY>640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 1103. Preliminary inquiry-Verified petition-Contents-Filing by Prosecuting Attorney**

A. The Court may provide by rule who shall make a preliminary inquiry to determine whether the interests of the public or of the child who is within the purview of this chapter require that further court action be taken. If it is determined that no further action be taken, said person or the Court may make such informal adjustment as is practicable without a petition.

B. A petition in a juvenile proceeding may be filed by the Prosecuting Attorney or the person who is authorized to make a preliminary inquiry to determine if further action is necessary. The proceeding shall be entitled:

"In the matter of \_\_\_\_\_, an alleged (delinquent) (deprived) child or (a child alleged to be in need of supervision) or (a child alleged to be in need of treatment)".

The petition shall be verified and may be upon information and belief. It shall set forth (1) with particularity facts which bring the child within the purview of 10 CNCA § 1101; (2) the name, age and residence of the child; (3) the names and residences of his parents; (4) the name and residence of his legal guardian, if there be one; (5) the name and residence of the person or persons having custody or control of the child; (6) the name and residence of the nearest known relative, if no parent or guardian can be found; (7) the relief requested; and (8) the specific law or ordinance under which the child is charged, and an endorsement of witnesses intended to be called by the petitioner, where the child is sought to be adjudged a delinquent child under 10 CNCA § 1101. If a termination of parental rights is desired, it must be stated in the petition and summons, and if an order for the payment of funds for the care and maintenance of the child is desired, it must be stated in the petition and summons. If any of the facts herein required are not known by the petitioner, the petition shall so state, along with the reasons why said facts are not known to petitioner.

C. A petition alleging a child to be a child in need of treatment shall be filed by a prosecuting attorney and may



be filed by a prosecuting attorney only after receipt and review of a report of a mental health examination of the child by an independent qualified mental health professional.

D. Nothing in this section shall prevent the filing of a petition alleging a child to be a child in need of treatment and delinquent, in need of supervision or deprived.

E. A copy of the petition shall be attached to and delivered with the summons.

### **Library References**

Indians <KEY>640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 1103.1. Amendment of petition**

A. No pleading subsequent to the petition is required, and the filing of any motion or pleading shall not delay the holding of the adjudicatory hearing.

B. A petition may be amended by order of the Court at any time before an order of adjudication has been made, provided that the Court shall grant the parties such additional time to prepare as may be required to insure a full and fair hearing. A petition shall be deemed to have been amended to conform to the proof where the proof does not change the substance of the act, omission or circumstance alleged. However, the Court may not amend the adjudicatory category prayed for in the petition.

### **§ 1104. Summons-Contents-Service-Taking child into custody-Arrest warrant**

A. After a petition shall have been filed, unless the parties hereinafter named shall voluntarily appear, a summons shall be issued which shall recite briefly the nature of the proceeding with the phrase "as described more fully in the attached petition" and requiring the person or persons who have the custody or control of the child to appear personally and bring the child before the Court at a time and place stated. The summons shall state the relief requested, and shall set forth the right of the child, parents and other interested parties to have an attorney present at the hearing on the petition.

B. The summons shall be served on the person who has actual custody of the child, and if the child has reached the age of twelve (12) years a copy shall be served on the child. If the person who has actual custody of the child shall be other than a parent or guardian of the child, a copy of the summons shall be served on the parent or guardian, or both, as hereinafter provided. A copy of the summons shall be served on each parent. If no parent or guardian can be found, a summons shall be served on such other person or persons as the Court shall designate. Provided that, upon a hearing the Court may find that no notice is required to a parent under the following circumstances:

1. The parent does not have custody of the child and has never established or has not maintained a substantial relationship with the child nor manifested a significant interest in the child for a period of not less than one (1) year preceding the filing of the petition; or

2. The parent does not have custody of the child and has willfully failed to contribute to the support of the child as provided in a decree of divorce or in some other court order during the year preceding the filing of the petition, or in the absence of such order, consistent with the parent's means and earning capacity.

Summons may be issued requiring the appearance of any other person whose presence is necessary.

C. If it subsequently appears that a person who should have been served was not served and has not entered an appearance, the Court shall immediately order the issuance of a summons which shall be served on said person.

D. If after a petition has been filed, it appears that the child is in such condition or surroundings that his welfare requires that his custody be immediately assumed by the Court, the Judge may immediately issue a detention order or warrant authorizing the taking of said child into custody.

E. In a delinquency proceeding, whenever a warrant for the arrest of a child shall issue, it shall state the offense the child is being charged with having committed; in a child in need of supervision proceeding, whenever a warrant for detention of a child shall issue, it shall state the reason for detention. Warrants for the arrest or detention of a child shall comport with all other requirements of issuance of arrest warrants for adult criminal offenders.

### **Library References**

Indians <KEY>640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 1104.1. Filing petition when child taken into custody-Time-Order to remove child from home**

A. Where a child has been taken into custody under any provision of 10 CNCA § 1101 et seq., before a petition has been filed, a petition shall be filed and a summons issued within five (5) judicial days from the date of such assumption of custody, or custody of the child shall be relinquished to his parent, guardian or other legal custodian, unless otherwise provided for herein.

B. Where a child has been taken into custody and upon allegations of cruelty on the part of the parents, guardian or other person having custodial care of the child, the five- (5) day limitation herein shall not cause the child to be relinquished to such parent, guardian or other legal custodian. In all such cases, the Court shall determine whether the petition was filed within a reasonable time, except that a petition shall be filed within thirty (30) days of the child being taken into custody.

C. No order of the Court providing for the removal of an alleged or adjudicated deprived child from his home shall be entered unless the Court finds that the continuation of the child in his home is contrary to the welfare of the child. Said order shall include either:

1. a determination as to whether or not reasonable efforts have been made to prevent the need for the removal of the child from his home and, as appropriate, reasonable efforts have been made to provide for the return of the child to his home; or

2. a determination as to whether or not an absence of efforts to prevent the removal of the child from his home is reasonable under the circumstances, if such removal of the child from his home is due to an alleged emergency and is for the purpose of providing for the safety of the child.

### Library References

Indians <KEY>640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 1104.2. Persons sixteen or seventeen years of age to be considered as adult for committing certain offenses-Warrants-Certification as child**

A. Any person sixteen (16) or seventeen (17) years of age who is charged with murder, kidnapping for purposes of extortion, robbery with a dangerous weapon, rape in the first degree, use of firearm or other offensive weapon while committing a felony, arson in the first degree, burglary with explosives, shooting with intent to kill, manslaughter in the first degree, nonconsensual sodomy, or manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense a controlled dangerous substance, shall be considered as an adult. Upon the arrest and detention, such sixteen-or seventeen-year-old accused shall have all the statutory and constitutional rights and protections of an adult accused of a crime, but shall be detained in a jail cell or ward entirely separate from prisoners who are eighteen (18) years of age or over.

B. Upon the filing of an information against such accused person, a warrant shall be issued which shall set forth the rights of the accused person, and the rights of the parents, guardian or next friend of the accused person to be present at hearings, to have an attorney present and to make application for certification of such accused person as a child to the juvenile division of the District Court. The warrant shall be personally served together with a certified copy of the information on the accused person and on the parents, guardian or next friend of the accused person.

C. The accused person shall file a motion for certification as a child before the start of the criminal trial. Upon the filing of such motion, the complete juvenile record of the accused shall be made available to the prosecuting attorney and the accused person.

The accused person may have a hearing on the motion for certification as a child or may at the conclusion of the Nation's case at the criminal trial, the accused person may offer evidence to support the motion for certification as a child.

The Court shall rule on the certification motion of the accused person before ruling on other dispositive motions at trial. When ruling on the certification motion of the accused person, the Court shall give consideration to the following guidelines, listed in order of importance:

1. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
2. Whether the offense was against persons or property, greater weight being given for retaining the accused person within the adult criminal system for offenses against persons, especially if personal injury resulted;

3. The record and past history of the accused person, including previous contacts with law enforcement agencies and juvenile or criminal courts, prior periods of probation and commitments to juvenile institutions; and
4. The prospects for adequate protection of the public if the accused person is processed through the juvenile system.

The Court, in its decision on the certification motion of the accused person, need not detail responses to each of the above considerations, but shall state that the Court has considered each of the guidelines in reaching its decision.

D. Upon the Court's ruling on the accused person's motion for certification as a child, if the accused person is certified as a child to the juvenile division of the District Court, then all adult court records relative to the accused person and this charge shall be expunged and any mention of the accused person shall be removed from public record.

E. An order certifying a person as a child or denying the request for certification as a child pursuant to subsection (D) of this section shall be a final order, appealable when entered.

### **Library References**

Indians <KEY>135, 640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 150 to 179.

### **§ 1105. Service of summons-Time of hearing-Mental health examination-Report**

A. Service of summons shall be made as provided for service in civil actions or service may be made by certified mail to such person's last-known address, requesting a return receipt from the addressee only. Where the address of the person to be summoned is not known, or if the mailed summons is returned, the Court may order that notice of the hearing be published once in a newspaper of general circulation in the county. The Court may not hold the hearing until at least forty-eight (48) hours after the service of the summons, except with the consent of the parent or guardian; provided, however, that the Court may not hold the hearing until at least five (5) days after the date of mailing the summons, if the parent is not served within the state, except with the consent of the parent, or if notice is published, until at least ten (10) days after the date of publication; provided, further, that if one or more persons must be served by publication, and if it appears that the Court must order the child held in a place of detention in order to meet the requirement of this section with respect to the time for holding a hearing when a party can be served only by publication, the Court may advance the date of the hearing, with reasonable notice to the other persons who have been served or are properly and legally notified, to any date that the Court determines to be reasonable and may proceed with the action; but an order determining that a child is delinquent or in need of supervision or is deprived shall not become final until thirty (30) days after the date of the publication of the notice. Nothing contained herein shall prevent a Court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect the child's health or welfare.

B. Whenever a petition alleging a child to be a child in need of treatment is filed and the Court has ordered an

inpatient mental health examination of the child, the hearing on the petition shall be set for not more than twenty (20) days after the inpatient admission of the child to a hospital or other mental health facility.

1. The report of a mental health examination of the child by an qualified mental health professional shall be attached to a petition alleging the child to be a child in need of treatment. If such report is not attached to the petition at the time it is filed, or if the Court finds the report to be inadequate to aid the Court in the adjudication or disposition of the case, the Court shall order a mental health examination of the child. A report of the examination shall be submitted to the Court prior to a hearing on the petition, and the Court may order such other reports as it deems necessary in order to aid the Court in the adjudication or disposition of the case.

2. Any report of a mental health examination of a child alleged to be a child in need of treatment that recommends that the child be found to be eligible for inpatient mental health treatment shall be certified and shall be signed by qualified mental health professionals, at least one of whom shall be independent as defined by 10 CNCA § 1101.

### **Cross References**

Claims allowable, approval, see 20 CNCA App. II, Rule 91.

### **Library References**

Indians <KEY>640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 1106. Failure to appear-Contempt-Warrants**

If any person summoned as herein provided shall, without reasonable cause, fail to appear, he may be proceeded against for contempt of Court. In case the summons cannot be served, or the parties served fail to obey the same, or in any case when it shall be made to appear to the judge that the service will be ineffectual or that the welfare of the child requires that he shall be brought forthwith into the custody of the Court, a warrant may be issued against the parent or guardian, or against the child himself.

### **Library References**

Indians <KEY>640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 1107. Taking child into custody prior to filing petition-Detention or release-Medical examination and treatment**

A. A child may be taken into custody prior to the filing of a petition:

1. By a peace officer, or employee of the Court without a court order if the child is found violating any law or ordinance, or if the child is willfully and voluntarily absent from the home of the child without the consent of the parent, guardian or legal custodian for a substantial length of time or without intent to return, or if the child's surroundings are such as to endanger the welfare of the child.

2. Pursuant to an order of the District Court issued on the application of the office of the prosecuting attorney. The application presented by the prosecuting attorney may be supported by a sworn affidavit which may be based upon information and belief. The application shall state facts sufficient to demonstrate to the Court that there is reasonable suspicion to believe the child is in need of protection due to abandonment, abuse or neglect, or is in surroundings that are such as to endanger the welfare of the child.

B. Whenever a child is taken into custody as a delinquent child or a child in need of supervision, the child shall be detained or be released to the custody of his parent, guardian, attorney or custodian, upon the written promise of such parent, guardian, attorney or custodian to bring the child to the Court at the time fixed. If detained, such child shall be taken immediately before a judge of the District Court. If no judge be available locally, the person having the child in custody shall immediately report his detention of the child to another judge, provided that the child shall not be detained in custody beyond the next judicial day or for good cause shown due to problems of arranging for and transporting the child to and from a designated juvenile detention center, beyond the next two (2) judicial days unless the Court shall so order after a detention hearing to determine if there exists probable cause to detain the child, as provided in 10 CNCA § 1107.1. If detained, a reasonable bond for release shall be set. Pending further disposition of the case, a child whose custody has been assumed by the Court may be released to the custody of a parent or other person appointed by the Court, or be detained pursuant to the provisions of 10 CNCA § 1107.1 in such place as shall be designated by the Court, subject to further order.

C. Whenever a child is taken into custody as a deprived child, he shall be taken to a shelter, hospital, foster home or other appropriate place as designated by the Court, or he shall be taken immediately before a Judge of the District Court for the purpose of obtaining an order for protective custody. When a child has been taken into custody as a deprived child without a court order, the peace officer or employee of the Court taking the child into custody shall immediately report the fact of the detention of the child to a Judge of the District Court. If no Judge is available locally, the detention shall be reported immediately to any Judge of the District Court. Within the next two (2) judicial days following the child being taken into custody, and thereafter at such intervals as may be determined by the Court, the Court shall conduct a hearing to determine whether the child should remain in protective custody or be released to the parent, guardian, legal custodian or another responsible person pending further proceedings pursuant to this chapter. The parent or legal guardian of the child shall be given immediate notice of the custody of the child whenever possible and prior adequate notice of the hearing. The Court may release an alleged deprived child from protective custody upon such conditions as the Court finds reasonably necessary for the protection of the child and the Court shall determine whether the allegations regarding the child are such that additional time for the filing of a petition pursuant to 10 CNCA § 1104.1(B) is warranted.

D. When any child is taken into custody pursuant to this title and it reasonably appears to the peace officer, employee of the Court or person acting pursuant to court order that the child is in need of medical treatment to preserve his health, any peace officer, any employee of the Court or person acting pursuant to court order shall have the authority to authorize medical examination and medical treatment, for any child found to be in need of medical treatment as diagnosed by a competent medical authority in the absence of a parent or guardian who is competent to authorize medical treatment. The officer or the employee of the Court or person acting pursuant to court order shall authorize said medical treatment only after exercising due diligence to locate the parent,

guardian or other person legally competent to authorize said medical treatment. The parent, guardian or custodian of the child shall be responsible for such medical expenses as ordered by the Court. No peace officer, any employee of the Court or person acting pursuant to court order authorizing such treatment in accordance with the provisions of this section for any child found in need of such medical treatment shall have any liability, civil or criminal, for giving such authorization.

### **Library References**

Indians <KEY>135, 640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 150 to 179.

### **§ 1107.1. Conditions of detention of child-Detention or confinement in adult facility**

A. When a child is taken into custody pursuant to the provisions of 10 CNCA § 1101 et seq., the child shall be detained only if it is necessary to assure the appearance of the child in Court or for the protection of the child or the public.

1. No pre-adjudicatory or predisposition detention or custody order shall remain in force and effect for more than thirty (30) days. The Court, for good and sufficient cause shown, may extend the effective period of such an order for an additional period not to exceed sixty (60) days.

2. No child alleged or adjudicated to be deprived, in need of supervision or in need of treatment shall be confined in any jail, adult lockup, or adult detention facility. No child shall be transported or detained in association with criminal, vicious, or dissolute persons.

3. Except as otherwise authorized by this section a child who has been taken into custody as a deprived child, a child in need of supervision, or a child in need of treatment, may not be placed in any detention facility pending court proceedings, but must be placed in shelter care or foster care, or released to the custody of his parents or some other responsible party. When a child is taken into custody as a child in need of supervision as a result of being a runaway, the Court may order the child placed in a juvenile detention facility pending court proceedings if it finds said detention to be essential for the safety of the child.

B. No child may be placed in secure detention unless:

1. the child is an escapee from a correctional facility or community correctional program or placement; or
2. the child is a fugitive from another jurisdiction with a warrant on a delinquency charge or confirmation of delinquency charges by the home jurisdiction; or
3. the child is seriously assaultive or destructive towards others or himself; or
4. the child is detained for the commission of a crime that would constitute a felony if committed by an adult; or
5. the child is currently charged with a crime that would constitute a misdemeanor if committed by an adult

and:

- a. is on probation or parole on a prior delinquent offense,
- b. is on pre-adjudicatory community supervision,
- c. is currently on release status on a prior delinquent offense, or
- d. has willfully failed or there is reason to believe that the child will willfully fail to appear for juvenile court proceedings.

C. 1. Except as otherwise provided in this section, no child may be placed in secure detention in a jail, adult lockup, or other adult detention facility unless:

- a. the child is detained for the commission of a crime that would constitute a felony if committed by an adult, and
- b. the child is awaiting an initial court appearance, and
- c. the child's initial court appearance is scheduled within twenty-four (24) hours after being taken into custody, excluding weekends and holidays, and
- d. there is no existing acceptable alternative placement for the child, and
- e. the jail, adult lockup or adult detention facility meets the requirements for licensure of juvenile detention facilities, as adopted by the Commission for Human Services, is appropriately licensed, and provides sight and sound separation for juveniles, which includes:
  - i. total separation between juveniles and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities;
  - ii. total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities; and
  - iii. separate juvenile and adult staff, specifically direct care staff such as recreation, education and counseling. Specialized services staff, such as cooks, bookkeepers, and medical professionals who are not normally in contact with detainees or whose infrequent contacts occur under conditions of separation of juvenile and adults can serve both.

2. Nothing in this section shall preclude a child who is detained for the commission of a crime that would constitute a felony if committed by an adult, or a child who is an escapee from a Cherokee Nation placement, juvenile training school or from a Department of Human Services group home from being held in any jail certified by Cherokee Nation or the State Department of Health, police station or similar law enforcement offices for up to six (6) hours for purposes of identification, processing or arranging for transfer to a secure detention or alternative to secure detention. Such holding shall be limited to the absolute minimum time necessary to complete these actions.

- a. The time limitations for holding a child in a jail for the purposes of identification, processing or arranging



transfer established by this section shall not include the actual travel time required for transporting a child from a jail to a juvenile detention facility or alternative to secure detention.

b. Whenever the time limitations established by this subsection are exceeded, this circumstance shall not constitute a defense in a subsequent delinquency or criminal proceeding.

3. Nothing in this section shall preclude detaining in a county jail or other adult detention facility an eighteen-(18) year old charged in a juvenile petition for whom certification to stand trial as an adult is prayed.

D. Nothing contained in this section shall in any way reduce or eliminate a county's liability as otherwise provided by law for injury or damages resulting from the placement of a child in a jail, adult lockup, or other adult detention facility.

E. Any juvenile detention facility shall be available for use by any eligible Indian child as that term is defined by the Oklahoma Indian Child Welfare Act, 10 O.S. § 40 et seq., providing that the use of the juvenile detention facility meets the requirements of this act. Cherokee Nation may contract with any juvenile detention facility for the providing of detention services.

F. Each member of the staff of a juvenile detention facility shall satisfactorily complete a training program provided or approved by Cherokee Nation.

### Oklahoma Statutes

Indian Child Welfare Act, see 10 O.S. § 40 et seq.

### Library References

Indians <KEY>135, 640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 150 to 179.

### **§ 1108. Temporary detention of children-Reimbursement of transportation costs-Detention facilities-Detention services and centers-Standard for certification of facilities used to detain juveniles**

A. Provision shall be made for the temporary detention of children in a juvenile detention facility or the Court may arrange for the care and custody of such children temporarily in private homes, subject to the supervision of the Court, or the Court may provide shelter or may enter into a contract with any institution or agency to receive, for temporary care and custody, children within the jurisdiction of the Court.

B. 1. **"Juvenile detention facility"** shall mean a secure facility, entirely separate from any prison, jail, adult lockup, or other adult facility, for the temporary care of children. All juvenile detention facilities shall be required to meet standards for certification by Cherokee Nation or the Oklahoma Commission for Human Services.

2. **"Alternatives to secure detention"** means those services and facilities which are included in the State Plan for the Establishment of Juvenile Detention Services adopted by the Commission for Human Services pursuant

to subsection (C) of this section or those designated by Cherokee Nation and which are used for the temporary detention of juveniles in lieu of secure detention in a juvenile detention facility.

3. In order to operate juvenile detention facilities Cherokee Nation may:

a. operate the juvenile detention facility subject to the supervision of the District Court; or

b. operate the juvenile detention facility by employing a manager who may employ personnel and incur other expenses as may be necessary for its operation and maintenance; or

c. contract with a public agency, private agency or single or multi-county trust authority for the operation of the juvenile detention facility. Cherokee Nation is authorized to directly contract with and pay such public or private agency for provision of detention services.

4. Management contracts for privately operated detention facilities shall be negotiated with the firm found most qualified by Cherokee Nation. However, no private management contract shall be entered into by the nation unless the private contractor demonstrates to the satisfaction of the board:

a. that the contractor has the qualifications, experience, and personnel necessary to implement the terms of the contract;

b. that the financial condition of the contractor is such that the term of the contract can be fulfilled;

c. that the ability of the contractor to obtain insurance or provide self-insurance to indemnify the Nation against possible lawsuits and to compensate the nation for any property damage or expenses incurred due to the private operation of the juvenile detention facility; and

d. that the contractor has the ability to comply with applicable court orders and rules and regulations of the Oklahoma Department of Human Services and/or Cherokee Nation.

### **Library References**

Indians <KEY>135, 640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 150 to 179.

### **§ 1109. Questioning of children-Counsel-Appointment of guardian ad litem-Court appointed special advocates-Immunity-Confidentiality**

A. No information gained by questioning a child nor any evidence subsequently obtained as a result of such information shall be admissible into evidence against the child unless the questioning about any alleged offense by any law enforcement officer or investigative agency, or employee of the Court, or the Department of Human Services or Cherokee Nation is done in the presence of the parents, guardian, attorney, or legal custodian of the child. No such questioning shall commence until the child and his parents, or guardian, or other legal custodian have been fully advised of the constitutional and legal rights of the child, including the right to be represented by counsel at every stage of the proceedings, and the right to have counsel appointed by the Court if the parties

are without sufficient financial means.

B. If the parents, guardian, or other legal custodian of the child requests an attorney and is found to be without sufficient financial means, counsel shall be appointed by the Court if a petition has been filed alleging that the child is a deprived child, a child in need of supervision, or a child in need of treatment, or if termination of parental rights is a possible remedy, provided that the Court may appoint counsel without such request, if it deems representation by counsel necessary to protect the interest of the parents, guardian or other legal custodian. If the child is not otherwise represented by counsel, whenever a delinquent child petition is filed pursuant to the provisions of 10 CNCA § 1103, and the parents, guardian, other legal custodian of the child are found to be without sufficient financial means the Court shall appoint a separate attorney for the child. In all other cases the prosecuting attorney shall protect the interest of the child. In the event the prosecuting attorney has a conflict or appearance of conflict the Court may appoint a separate attorney for the child.

C. Whenever a petition is filed alleging that a child is a deprived child the Court may appoint a guardian ad litem for the child at any time subsequent to the filing of the petition and shall appoint a guardian ad litem upon the request of the child, his attorney, or the prosecuting attorney.

1. The guardian ad litem shall not be a prosecuting attorney, an employee of the office of the prosecuting attorney, an employee of the Court, or an employee of any public agency having duties or responsibilities towards the child.

2. The guardian ad litem may be a Court-appointed special advocate.

D. For the purpose of this section and 21 CNCA § 846, a "Court-appointed special advocate" or "CASA" means a responsible adult, other than an attorney for the parties, who has volunteered to be available for appointment by the Court to serve as an officer of the Court and represent any child wherein a juvenile petition has been filed, based on the availability of volunteers, until discharged by the Court. It shall be the duty and responsibility of the Court-appointed special advocate to advocate for the best interests of the child and to assist the child in obtaining a permanent, safe, homelike placement.

The Court-appointed special advocate shall be given access to the Court file and access to all records and reports relevant to the case and to any records and reports of examination of the child's parent or other custodian, made pursuant to this section or 21 CNCA § 846.

A Court-appointed special advocate shall serve without compensation and shall have such other qualifications and duties and responsibilities as may be prescribed by rule by the Court. Any person participating in a judicial proceeding as a Court-appointed special advocate shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any civil liability that otherwise might be incurred or imposed. Any person serving in positions of management of a CASA organization, including members of the Board of Directors acting in good faith, shall be immune from any civil liability or any vicarious liability for the negligence of any CASA organization advocates, managers, or directors.

All records concerning child abuse shall be confidential and shall be open to inspection only to persons duly authorized by the State of Oklahoma, Cherokee Nation or United States in connection with the performance of their official duties. It shall be unlawful and a misdemeanor for the Commission, or any employee working under the Department of Human Services, or Cherokee Nation, any other public officer or employee, or any Court-appointed special advocate (CASA), to furnish or permit to be taken off of the records any information therein contained for commercial, political or any other unauthorized purpose.

E. The prosecuting attorney shall prepare and prosecute any case or proceeding within the purview of 10 CNCA § 1101.

### Library References

Indians <KEY>135, 640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 150 to 179.

### § 1110. Jury trial

A. A parent entitled to service of summons, Cherokee Nation or a child shall have the right to demand a trial by jury only in the following circumstances:

1. When the initial petition to determine if a child is deprived also contains a request for immediate termination of parental rights; or
2. When, following a hearing in which the child is adjudicated deprived, a petition for termination of parental rights is filed by Cherokee Nation.

B. A jury trial shall be granted only if demanded. Such jury shall consist of six (6) persons. The right to a jury trial may be waived. The right to a jury trial shall be deemed waived by the Court when a parent, guardian or custodian or other person entitled to service of summons fails to appear at any hearing set for termination of parental rights. Nothing in this act shall prohibit a termination of parental rights by default should a parent, or other person entitled to service of summons, who has been properly served a summons, fails to appear at a trial or hearing set on the termination of said person's parental rights.

### History

**Amended.** LA 26-07, eff. June 15, 2007.

### Library References

Indians <KEY>640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### § 1111. Conduct of hearings

All cases of children shall be heard separately from the trial of cases against adults. The adjudicative hearings shall be conducted according to the rules of evidence, and may be adjourned from time to time. The hearings shall be private unless specifically ordered by the judge to be conducted in public, but persons having a direct interest in the case shall be admitted. Stenographic notes or other transcript of the hearings shall be kept as in

other cases, but they shall not be open to inspection except by order of the Court. The child may remain silent as a matter of right during said hearing, and before he is interrogated, he shall be so advised. A decision determining a child to come within the purview of this chapter must be based on sworn testimony and the child must have the opportunity for cross-examination unless the facts are stipulated. Where a child is alleged to be delinquent and the facts are stipulated, the judge must ascertain from the child if he agrees with the stipulation and if he understands the consequences of stipulating the facts.

### Library References

Indians <KEY>640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 1112. Children charged with violating Nation statute or municipal ordinance-Juvenile proceedings-Felonies-Trial as adult-Matters considered-Bail**

A. Except as otherwise provided, a child who is charged with having violated any statute or ordinance other than those enumerated in 10 CNCA § 1104.2, shall not be tried in a criminal action but in a juvenile proceeding. If, during the pendency of a criminal or quasi-criminal charge against any person, it shall be ascertained that the person was a child at the time of committing the alleged offense, the District Court shall transfer the case, together with all the papers, documents and testimony connected therewith, to the juvenile division of the District Court. The division making such transfer shall order the child to be taken forthwith to the place of detention designated by the juvenile division, to that division itself, or release such child to the custody of some suitable person to be brought before the juvenile division. However, nothing in this act shall be construed to prevent the exercise of concurrent jurisdiction by another court in cases involving children wherein the child is charged with the violation of a Cherokee Nation, state or municipal traffic law or ordinance.

B. Except as otherwise provided by law, if a child is charged with delinquency as a result of an offense which would be a crime if committed by an adult, the Court on its own motion or at the request of the prosecuting attorney shall conduct a preliminary hearing to determine whether or not there is prosecutive merit to the complaint. If the Court finds that prosecutive merit exists, it shall continue the hearing for a sufficient period of time to conduct an investigation and further hearing to determine the prospects for reasonable rehabilitation of the child if he should be found to have committed the alleged act or omission. Consideration shall be given to:

1. The seriousness of the alleged offense to the community, and whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
2. Whether the offense was against persons or property, greater weight being given to offenses against persons especially if personal injury resulted;
3. The sophistication and maturity of the juvenile and his capability of distinguishing right from wrong as determined by consideration of his psychological evaluation, home, environmental situation, emotional attitude and pattern of living;
4. The record and previous history of the juvenile, including previous contacts with community agencies, law enforcement agencies, schools, juvenile courts and other jurisdictions, prior periods of probation or prior

commitments to juvenile institutions;

5. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile if he is found to have committed the alleged offense, by the use of procedures and facilities currently available to the juvenile court; and

6. Whether the offense occurred while the juvenile was escaping or in an escape status from an institution for delinquent children.

After such investigation and hearing, the Court may in its discretion proceed with the juvenile proceeding, or it shall state its reasons in writing and shall certify that such child shall be held accountable for his acts as if he were an adult and shall be held for proper criminal proceedings for the specific offense charged, by any other division of the Court which would have trial jurisdiction of such offense if committed by an adult. The juvenile proceeding shall not be dismissed until the criminal proceeding has commenced and if no criminal proceeding commences within thirty (30) days of the date of such certification, unless stayed pending appeal, the Court shall proceed with the juvenile proceeding and the certification shall lapse.

If not included in the original summons, notice of a hearing to consider whether a child should be certified for trial as an adult shall be given to all persons who are required to be served with a summons at the commencement of a juvenile proceeding, but publication in a newspaper when the address of a person is unknown is not required. The purpose of the hearing shall be clearly stated in the notice.

C. Prior to the entry of any order of adjudication, any child in custody shall have the same right to be released upon bail as would an adult under the same circumstances. Subsequent to the entry of an order that a child stand trial as an adult, said child shall have all the statutory and constitutional rights and protections of an adult accused of a crime but shall, while awaiting trial and for the duration of the trial, be detained in a jail cell or ward entirely separate from prisoners who are eighteen (18) years of age or over. Upon conviction, the juvenile may be incarcerated with the adult population. If, prior to the entry of any order of adjudication, the child becomes eighteen (18) years of age, the child may be detained in a jail or released on bail.

D. Any child who has been certified to stand trial as an adult pursuant to any certification procedure provided by law and is subsequently convicted of the alleged offense or against whom the imposition of judgment and sentencing has been deferred shall be tried as an adult in all subsequent criminal prosecutions, and shall not be subject to the jurisdiction of the juvenile court in any further proceedings.

E. An order either certifying a person as a child pursuant to subsection (b) of this section or denying such certification shall be a final order, appealable when entered.

### **Library References**

Indians <KEY>640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 1113. Allegations of petition not supported by evidence**

If the Court finds that the allegations of the petition are not supported by the evidence, the Court shall order the petition dismissed and the child discharged from any detention or restriction previously ordered. The child's parents, guardian or other legal custodian shall also be discharged from any restriction or other previous temporary order.

### **Library References**

Indians <KEY>640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 1114. Allegations of petition supported by evidence**

A. If the Court finds that the allegations of the petition are supported by the evidence, and that it is in the best interest of the child and the public that he be made a ward of the Court, the Court shall sustain the petition, and shall make an order of adjudication, setting forth whether the child is delinquent, or in need of supervision or deprived and shall adjudge the child as a ward of the Court.

B. If the Court finds the allegations on a petition alleging a child to be a child in need of treatment are supported by clear and convincing evidence, including but not limited to the evidence of a mental health examination of the child by an qualified mental health professional pursuant to the provisions of 10 CNCA § 1105, and that it is in the best interest of the child that he be made a ward of the Court, the Court shall sustain the petition and shall make an order of adjudication. If warranted by the facts in the case, an order of adjudication finding a child to be a child in need of treatment shall not serve to preclude a subsequent order of adjudication finding a child to be delinquent, in need of supervision or deprived or to vacate any such order of adjudication previously entered.

### **Library References**

Indians <KEY>640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 1115. Dispositional hearings-Additional reports or evidence**

A. After making an order of adjudication, the Court shall hold a dispositional hearing, at which all evidence helpful in determining the proper disposition best serving the interest of the child and the public, including oral and written reports, may be admitted and may be relied upon to the extent of its probative value, even though not competent for the purposes of the adjudicatory hearing.

B. Before making an order of disposition, the Court shall advise the prosecuting attorney, the parents, guardian, custodian or responsible relative, and their counsel, of the factual contents and the conclusion of reports prepared for the use of the Court and considered by it, and afford fair opportunity, if requested, to controvert them. An order of disposition shall include a specific finding and order of the Court relative to the liability and

accountability of the parents for the care and maintenance of the child as authorized by 10 CNCA § 1121, except where custody is placed with both parents.

C. On its own motion or that of the Prosecuting Attorney, or of the parent, guardian, custodian, responsible relative or counsel, the Court may adjourn the hearing for a reasonable period to receive reports or other evidence and, in such event, shall make an appropriate order for detention of the child, or his release from detention subject to supervision by the Court, during the period of the continuance.

D. In scheduling investigations and hearings, the Court shall give priority to proceedings in which a child is in detention, or has otherwise been removed from his home, before an order of disposition has been made.

### Library References

Indians <KEY>640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

#### **§ 1115.1. Placement plan filing-Preparation-Approval-Contents-Substance abuse treatment program for parents-Child born dependent on controlled dangerous substance**

A. A placement plan shall be filed and prepared by the legal custodian of a child with the Court within the thirty (30) days after any deprived child has been removed from the custody of its lawful parent or parents.

B. Except as otherwise specified by the Court, the placement plan shall contain but not be limited to the following information:

1. A history of the child and family;
2. A statement of the conditions that the intervention is designed to alleviate and a statement of the methods to be used to correct those conditions or to achieve permanent placement of the child or, when the child is sixteen (16) years of age or older, and as appropriate for the child, the services to be provided for the purpose of assisting the child to make the transition from foster care to independent living;
3. A description of the appropriate special programs available and to be used by the parent, legal guardian, legal custodian, or stepparent or other adult person living in the home as well as the child which are in the best interests of the child or will prevent further harm to the child;
4. A statement as to the unavailability or inappropriateness of local placement, or other good cause for any placement more than forty (40) miles from the child's home;
5. A description of acts and conduct that would be expected of the parent or parents, legal guardian, legal custodian, or stepparent or other adult person living in the home before the child should be returned home; and
6. The name and business address of the attorney representing the child, if any.

C. In addition to the information required pursuant to subsection (B) of this section, when a child born in a



condition of dependence on a controlled dangerous substance has been removed from the home, Cherokee Nation, subject to Court approval:

1. may require, as part of the placement plan, that the mother of such child complete a treatment program approved by Cherokee Nation for alcohol and drug abuse prevention, training, treatment and rehabilitation prior to the return of the child to the home;
  2. may require, as part of the placement plan, that the father of the child, legal guardian, legal custodian, stepparent or other adult person living in the home who is a drug-dependent person, as such term is defined by 43A O.S. § 3-403, as amended, and whose conduct has contributed to the dependency of such child or mother on the controlled dangerous substance, or to the conditions which caused the child to be adjudicated deprived, complete a treatment program approved by Cherokee Nation for alcohol and drug abuse prevention, training, treatment and rehabilitation prior to the return of the child to the home; and
  3. may require testing for substance abuse of the mother, father, legal guardian, legal custodian, stepparent or other adult person living in the home, on a monthly basis for a twelve-month period following completion of the substance abuse program and after return of the child to the home. A positive test of any such person shall be presented to the Court and the prosecuting attorney.
- D. Testing ordered by the Court pursuant to subsection (C) of this section shall be admissible only for the purposes of juvenile and custody proceedings.

### **Library References**

Indians <KEY>640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 1115.2. Information to accompany child placed outside his home**

The Court shall ensure that the following information accompanies any deprived child placed outside his home:

1. Demographic information;
2. Type of custody and previous placement;
3. Pertinent family information including, but not limited to, the names of family members who, by court order, may not visit the child;
4. Known or available medical history including, but not limited to:
  - a. allergies,
  - b. immunizations,
  - c. childhood diseases,

d. physical handicaps,

e. psycho-social information, and

f. the name of the child's last doctor, if known.

5. Copies of policies and procedures of Cherokee Nation which pertain to placement operations of Cherokee Nation, and which may be necessary to properly inform the institution, foster parent or other custodian of the duties, rights and responsibilities of the custodian.

### **Oklahoma Statutes**

Oklahoma Alcohol and Drug Abuse Services Act, definitions, see 43A O.S. § 3-403.

### **Library References**

Indians <KEY>640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 1116. Disposition orders**

A. The following kinds of orders of disposition may be made in respect to wards of the Court:

1. The Court may place the child on probation or under supervision in his own home, or in the custody of a suitable person elsewhere, upon such conditions as the Court shall determine. The Court may require the parent or other person to give security by bond, with surety or sureties approved by the Court, for compliance with such order.

If it is consistent with the welfare of the child, the child shall be placed with his parent or legal guardian, but if it appears to the Court that the conduct of such parent, guardian, legal guardian, stepparent or other adult person living in the home has contributed to such delinquency, or need of supervision or treatment, or deprivation, the Court may issue a written order specifying conduct to be followed by such parent, guardian, legal custodian, stepparent or other adult person living in the home with respect to such child. The conduct specified shall be such as would reasonably prevent the child from becoming delinquent, in need of supervision or treatment, or deprived, as defined by 10 CNCA § 1101. Such order shall remain in effect for a period of not more than one (1) year to be specified by the Court, and the order may be extended or renewed by the Court.

a. If it is consistent with the welfare of the child, in cases where the child has been adjudicated to be deprived or in need of supervision due to repeated absence from school, the Court may order counseling and treatment for the child and the parents of the child which may be provided by the local school district, the county, Cherokee Nation, the Department of Human Services or a private individual or entity. Prior to final disposition, the Court shall require that it be shown by the appropriate school district that a child found to be truant has been evaluated for learning disabilities, mental retardation, and hearing and visual impairments and other impediments which could constitute an educational handicap. The results of such tests shall be made available

to the Court for use by the Court in determining the disposition of the case.

b. In issuing orders to a parent, guardian, legal guardian, stepparent or other adult person living in the home of a child adjudicated to be a delinquent child or in making other disposition of said delinquent child, the Court may consider the testimony of said parent, guardian, legal guardian, stepparent or other adult person concerning the behavior of the juvenile and his ability to exercise parental control over the behavior of the juvenile.

c. In any dispositional order involving a child age sixteen (16) or older, the Court shall make a determination, where appropriate, of the services needed to assist the child to make the transition from foster care to independent living.

No child who has been adjudicated in need of supervision or deprived upon the basis of truancy or noncompliance with the mandatory school attendance law alone may be placed in a public or private institutional facility or be removed from the custody of the lawful parent, guardian or custodian of the child. A deprived adjudication based upon repeated absence from school shall not constitute a ground for termination of parental rights.

2. The Court may commit the child to the custody of a private institution or agency, including any institution established and operated by Cherokee Nation or some other governmental agency, authorized to care for children or to place them in family homes. In committing a child to a private institution or agency, the Court shall select one that is licensed by Cherokee Nation or the Oklahoma Department of Human Services or any other state department supervising or licensing private institutions and agencies; or, if such institution or agency is in another state, by the analogous department of that state. Whenever the Court shall commit a child to any institution or agency, it shall transmit with the order of commitment a summary of its information concerning the child, and such institution or agency shall give to the Court such information concerning the child as the Court may at any time require.

3. The Court may order the child to receive counseling or other community-based services as necessary.

4. The Court may commit the child to the custody of Cherokee Nation; provided, any order adjudicating a child to be delinquent and committing the child to Cherokee Nation shall be for an indeterminate period of time.

5. The Court may place a child adjudicated to be in need of treatment with his parents or legal guardian or, if it is consistent with the treatment needs and the best interests of the child, commit the child to the custody of Cherokee Nation. In addition:

a. the Court shall order the child to receive the least restrictive mental health care and treatment appropriate for the treatment needs of the child through a public or private mental health facility until such time as such care and treatment is no longer necessary, as determined by a qualified mental health professional;

b. the Court may commit the child or authorize inpatient treatment for the child in a hospital or other facility accredited as an inpatient or residential psychiatric facility by the Joint Commission on Accreditation until such time as patient care and treatment is no longer necessary or appropriate. If the Court finds by clear and convincing evidence, including but not limited to the evidence of an independent qualified mental health professional, that a child in need of treatment:

i. has a demonstrable mental illness and as a result of that mental illness can be expected within the near future to intentionally or unintentionally seriously and physically injure himself or another person and has engaged in

one or more recent overt acts or made significant recent threats which substantially support that expectation, or

ii. has a demonstrable mental illness and as a result of that mental illness is unable to attend to those of his basic physical or psychiatric needs that must be attended to in order for him to avoid serious harm in the near future and has demonstrated such inability by failing to attend to those basic physical or psychiatric needs in the recent past;

c. no order of the Court committing the child or authorizing inpatient care and treatment of the child shall be entered unless the Court makes a determination:

i. that reasonable efforts have been made to provide for the mental health treatment needs of the child through the provision of less restrictive alternatives to inpatient treatment and that such alternatives have failed to meet the treatment needs of the child, or

ii. after a thorough consideration of less restrictive alternatives to inpatient treatment, that the condition of the child is such that less restrictive alternatives are unlikely to meet the mental health treatment needs of the child;

d. pursuant to the provisions of subparagraphs b and c of this paragraph, the Court may:

i. commit a child whose custody remains with his parent or legal guardian to a public or private mental health facility appropriate for the inpatient care and treatment of children and which is willing to admit the child for treatment, provided that the Court shall not commit such child to a government-operated mental health facility for inpatient care and treatment,

ii. when the child is committed to the custody of Cherokee Nation, authorize inpatient care and treatment for the child;

e. the Court may also order the child to receive outpatient care and treatment, or other appropriate services, as necessary, upon his discharge from inpatient care and treatment; and

f. for the purposes of this paragraph "less restrictive alternative to inpatient treatment" includes but is not limited to: Outpatient counseling services, including services provided in the home of the child and which may be referred to as "home-based services"; and day treatment or day hospitalization services; respite care; or foster care or group home care through a program established and specifically designed to meet the treatment needs of children in need of treatment; or some combination thereof.

6. If the child has been placed outside the home, and it appears to the Court that the parent, guardian, legal custodian, stepparent, or other adult person living in the home has contributed to the delinquency, need of supervision or treatment, or deprivation of the child, the Court may order that the parent, guardian, legal custodian, stepparent, or other adult living in the home be made subject to any treatment or placement plan prescribed by the Department or other person or agency receiving custody of the child.

7. The Court may order any child adjudicated a delinquent child for acts involving criminally injurious conduct as defined in 21 CNCA § 142.3, to pay a victim compensation assessment in an amount not to exceed that amount specified in 21 CNCA § 142.18. The Court shall forward a copy of the adjudication order to the Prosecuting Attorney for purposes of 21 CNCA § 142.11. Such adjudication order shall be kept confidential by the Court and Prosecuting Attorney.

8. The Court may order any child adjudicated a delinquent child to engage in a term of community service without compensation. Cherokee Nation or any political subdivision shall not be liable if a loss or claim results from any acts or omission of a child ordered to engage in a term of community service pursuant to the provisions of this paragraph.

9. The Court may dismiss the petition or otherwise terminate its jurisdiction at any time for good cause shown.

10. In any dispositional order removing a child from the home of the child, the Court shall make a determination that reasonable efforts have been made to provide for the return of the child to the child's own home, or that efforts to reunite the family are not feasible, and reasonable efforts are being made to secure an alternate permanent placement for the child.

B. A dispositional order removing a child from the custody of the parents of the child shall be reviewed at a hearing by the Court at least once every six (6) months until such time as the child is returned to the custody of his parents. No later than eighteen (18) months after placing a child in foster care and every twelve (12) months thereafter, the Court making the original order of adjudication shall conduct a dispositional hearing to consider whether the child should be returned to his parents or other family member; the child should be continued in foster care for a specified period; the rights of the parents of the child should be terminated and the child placed for adoption or legal guardianship; or whether the child, because of exceptional circumstances, should remain in foster care on a long-term basis as a permanent plan or with a goal of independent living.

C. The Court shall not terminate the rights of a parent who has not been notified that the parental rights might be terminated. If the Court terminates the rights of a parent and commits the child to an individual or agency, the court may invest in such individual or agency authority to consent to the adoption of the child. Provided, that where the Court commits the child to Cherokee Nation, it shall vest Cherokee Nation with authority to place the child and, upon notice to the Court that an adoption petition has been filed concerning said child, invest Cherokee Nation with authority to consent to the adoption of the child, and the jurisdiction of the committing Court shall terminate.

D. No child who has been adjudicated in need of supervision or deprived may be placed in a correctional or training school.

E. No child charged in a Cherokee Nation Court with a violation of Cherokee Nation laws or ordinances, or convicted therefor, may be incarcerated in jail for any said violation unless the charge for which the arrest was made would constitute a felony if the child were an adult; provided, that nothing contained in the above section prohibits the detention of a juvenile for traffic-related offenses prior to the filing of a petition in the District Court alleging delinquency as a result of said acts.

F. If it is consistent with the welfare of the child, the Court may require community service or restitution or both community service and restitution for acts of delinquency. The immunities provided by 57 O.S. §§ 227 and 228, as amended, shall apply to community services directed pursuant to this section.

G. The Court may require any child found to be a juvenile delinquent or child in need of supervision, the parents of any child found to be a juvenile delinquent, a child in need of supervision, a deprived child or a child in need of treatment, or both the child and the parents, to reimburse the Court fund, in whole or in part, for any disbursements made from the Court fund in conjunction with the case, including, but not limited to, Court-appointed attorney's fees, expert witness fees, law enforcement fees, witness fees, transcripts and postage. When any parent is financially able but has willfully failed to pay court costs or to reimburse the court fund as

ordered by the court or has willfully failed to pay court costs and to reimburse the Court fund as ordered by the Court, the parent may be held in contempt of court and, upon conviction, shall be punished pursuant to 21 CNCA § 566. After a judicial determination that the child, the parent of the child, or both such child or parent, are able to pay the costs and to reimburse the court fund or pay the costs and to reimburse the court fund in the case in installments, the Court may order the costs and such reimbursement of the court fund to be paid in installments and shall set the amount and due date of each installment. A parent may be found to be financially able to pay court costs or to reimburse the court fund or to pay court costs and to reimburse the Court fund in installments even though the Court has previously found the parent indigent.

### **Oklahoma Statutes**

Application, exemption from Workers' Compensation Act, liability for injuries, see 57 O.S. § 227.

Tort immunity, waiver, insurance, see 57 O.S. § 228.

### **Library References**

Indians <KEY>640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 1116.1. Review of order removing child from custody of lawful parents**

A. Any disposition order removing a deprived child from the custody of its lawful parent or parents shall be reviewed by the Court at least once every six (6) months until such time as the child is returned to the custody of said parent or parents and the conditions which caused the child to be adjudicated deprived have been corrected or the parental rights of said parent or parents are terminated and a final adoption decreed. The provisions of this section shall also apply to a child who has been removed from the home of the lawful parent or parents of the child after the child has been returned to that home until such time as the Court orders the case closed.

B. 1. The legal custodian of a child who has been removed from the custody of its lawful parent or parents shall cause to be prepared for each review hearing required herein a written report concerning each child who is the subject of such review.

2. Said report shall include but not be limited to a summary of the physical, mental, and emotional condition of the child, the conditions existing in the home or institution where the child has been placed, and the child's adjustment thereto, a report on the child's progress in school and visitation exercised by the lawful parents of such child.

3. If Cherokee Nation is the legal custodian of the child, the report also shall include any efforts on the part of the parent or parents to correct the conditions which caused the child to be adjudicated deprived. The report shall specifically recommend, giving reasons therefor, whether or not the parental rights of the parent or parents of the child should be terminated and the child placed for adoption, whether or not the child should remain in the home or if placed outside the home of the child's lawful parents, whether or not the child should remain outside the home or be returned to the home from which the child was removed. If it is determined that the

child should be placed for adoption, foster parents may be considered eligible to adopt the child.

C. At each such review hearing, the Court shall specifically inquire as to the nature and extent of services being provided the child and parent or parents of the child and shall direct additional services be provided if necessary to protect the child from further physical, mental, or emotional harm.

In any review order, the Court shall further make a determination:

1. as to whether or not reasonable efforts have been made to provide for the return of the child to the child's own home. If reasonable efforts have failed or are not feasible, the Court shall make a finding that the efforts to reunite the family have failed, or are not feasible, and reasonable efforts are being made to secure an alternate permanent placement for the child; and

2. where appropriate, when the child is age sixteen (16) or older, that services are being provided that will assist the child in making the transition from foster care to independent living.

D. The attorney representing a child whose case is being reviewed may submit a report to the Court for presentation at the review hearing to assist the Court in reviewing the placement or status of the child. The legal custodian shall not deny to a child the right of access to counsel and shall facilitate such access.

E. Cherokee Nation may not move any child from one foster home or institution to another, if the child has already been moved once since the last court hearing, without first obtaining the approval of the Court following a hearing into the reasons and necessity for moving the child. However, Cherokee Nation may move any child due to an emergency, in which case a hearing shall be conducted, if requested in writing, within ten (10) days following the moving of the child concerning the reasons and necessity for moving the child. Cherokee Nation shall notify the attorney of the child, if any, whenever the placement of the child is changed and shall inform said attorney regarding the location of the child.

F. The case of every deprived child removed by court order from the custody of its lawful parent or parents shall be reviewed as provided for in this section.

G. Cherokee Nation shall place siblings together in the same placement unless conditions prohibit such placement. In the event siblings cannot be placed together Cherokee Nation shall at hearing show cause as to why siblings cannot be placed together.

### **Cross References**

Cherokee Nation to care for deprived children, see 10 CNCA § 1136.

Child adjudicated in need of supervision, placement, rehabilitative facilities, residential care and treatment, see 10 CNCA § 1137.

Child in need of treatment-Care and placement, evaluation, inpatient care and treatment, see 10 CNCA § 1135.1.

Delinquent children, intent of Tribal Council, powers and duties of Cherokee Nation or the Department, see 10 CNCA § 1138.

## Library References

Indians <KEY>640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 1117. Persons or agencies receiving custody-Rights and duties**

A.1. Whenever the Court transfers custody of a child as provided in 10 CNCA § 1116, the person, institution, agency, or Department receiving custody shall have the right to, and shall be responsible for, the care and control of the child, and shall have the duty and authority to provide food, clothing, shelter, ordinary medical care, education, discipline for the child, and, in an emergency, to authorize surgery or other extraordinary care. Except for an emergency psychiatric admission pursuant to 10 CNCA § 1107(F), said person, institution, agency or department may:

a. provide or arrange for the provision of an inpatient mental health examination of such child only pursuant to a court order as provided by 10 CNCA § 1120,

b. provide or arrange for the provision of inpatient mental health care and treatment of such child only after the filing of a petition alleging the child to be a child in need of treatment and a finding by the Court that the child is eligible for inpatient mental health care and treatment.

Nothing in this subsection shall be interpreted to prohibit or preclude the provision of outpatient mental health services, including an outpatient mental health examination, counseling, educational, rehabilitative or other similar services to said child, as necessary and appropriate, in the absence of a specific court order for such services.

2. The medical care, surgery and extraordinary care shall be charged to the appropriate agency where the child qualifies for the care under law, rule, regulation or administrative order or decision.

3. Nothing in this subsection shall be interpreted to:

a. relieve a parent of the obligation to provide for the support of the child as otherwise provided by law; or

b. limit the authority of the Court to order a parent to make support payments or to make payments or reimbursements for medical care or treatment, including mental health care or treatment, to the person, institution, agency or Department having custody of the child; or

c. abrogate the right of the child to any benefits provided through public funds for which the child is otherwise eligible.

4. No person, agency or institution shall be liable in a civil suit for damages for authorizing or not authorizing surgery or extraordinary care in an emergency, as determined by competent medical authority.

B. The person, institution, agency, or Department having legal custody of a child pursuant to an order of the Court shall receive notice of court proceedings regarding the child as provided in 10 CNCA §§ 1105 and 1115



and shall be allowed to intervene upon application as a party to all court proceedings pertaining to the care and custody of the child including, but not limited to: adjudication, disposition, review of disposition, and termination of parental rights.

### **Library References**

Indians <KEY>135, 640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 150 to 179.

### **§ 1118. Modification of decrees or orders**

Any decree or order made under the provisions of this title may be modified by the Court at any time; provided, however, that an order terminating parental rights or an order certifying the juvenile as an adult may not be modified.

### **Library References**

Indians <KEY>640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 1119. Religious faith of parents or child**

In placing a child in the custody of an individual or of a private agency or institution, the Court shall, if at all possible, select a person or an agency or institution governed by persons of the same religious faith as that of the parents of the child, or in case of a difference in the religious faith of the parents, then of the religious faith of the child, or, if the religious faith of the child is not ascertainable, then of the faith of either of the parents. However, it shall be left to the discretion of the judge to place children where their total needs will best be served.

### **Library References**

Indians <KEY>135, 640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 150 to 179.

### **§ 1120. Examination of child by physician or mental health professional-Order for care-Expense-Emergency-Investigation**

A. After a petition under the provisions of this title has been filed, the Court may order the child to be examined and evaluated by a physician or qualified mental health professional to aid the Court in making the proper

disposition concerning the child.

B. The report of an examination and evaluation of the child by a qualified mental health professional may be attached to a petition alleging a child to be a child in need of treatment at the time it is filed. If such report is not attached to the petition or if the Court finds the report to be inadequate to aid in the adjudication and disposition of the case, after a petition is filed alleging a child to be a child in need of treatment, the Court shall order the child to be examined and evaluated by a qualified mental health professional to aid the Court in making the proper adjudication and disposition of the child. The mental health professional shall submit a report of the examination and evaluation to the Court prior to the adjudicatory hearing and shall submit such other reports as the Court may order to aid the Court in the disposition of the case.

1. Whenever possible, the Court shall order the examination and evaluation to be conducted on an outpatient basis in or near the community in which the child resides at the time of such order. When an inpatient evaluation is required, the Court shall order the examination and evaluation to be conducted in the mental health facility nearest to the place where the child resides at the time of such order and which is approved by Cherokee Nation or the Commissioner of Mental Health and Substance Abuse Services as an appropriate facility for the inpatient examination and evaluation of a child alleged to be a child in need of treatment.

2. Whenever it appears that a child who is in the custody of Cherokee Nation as a deprived or delinquent child or a child in need of supervision may also be a child in need of treatment, Cherokee Nation shall arrange for the examination and evaluation of the child by a qualified mental health professional in order to determine if a petition alleging the child to be a child in need of treatment is warranted. The examination and evaluation shall, whenever possible, be conducted on an outpatient basis in or near the community in which the child is residing; if an inpatient examination and evaluation is required, it shall be conducted in the mental health facility appropriate for such inpatient evaluation and examination nearest to the community in which the child is residing.

3. Whenever, pursuant to the filing of a petition alleging a child to be a child in need of treatment, the Court receives a report of the inpatient examination and evaluation of the child by a qualified mental health professional, the Court shall immediately set a date for a hearing on the petition. Said hearing shall be within ten (10) judicial days following the receipt of the report by the Court.

C. Whenever a child concerning whom a petition has been filed appears to be in need of nursing, medical or surgical care, the Court may order the parent or other person responsible for the care and support of the child to provide such care in a hospital or otherwise. If the parent or other person fails to provide such care, the Court may, after due notice, enter an order therefor, and the expense thereof, when approved by the Court, shall be a charge upon the Nation, but the Court may adjudge that the person having the duty under the law to support the child pay part or all of the expenses of such care. In an emergency the Court may, when health or condition of the child may require it, cause the child to be placed in a public hospital or institution for treatment or special care, or in a private hospital or institution which will receive the child for like purpose, and consent to emergency treatment or surgery.

D. After adjudication and at the request of a judge in any juvenile proceeding, Cherokee Nation shall investigate the home conditions and environment of the child and the financial ability, occupation and earning capacity of the parent, legal guardian or custodian of the child. Upon request by the Court of a state, Cherokee Nation may conduct a similar investigation.

### **Library References**

Indians <KEY>135, 640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 150 to 179.

### **§ 1121. Care and maintenance of child-Orders for enforcement**

A. In any hearing concerning the status of a child, the Court shall have authority to adjudge the parent or parents who have been served with notice of the hearing liable and accountable for the care and maintenance of any child or children, and to order the payment of funds for the care and maintenance of the child, including but not limited to all or some part of medical care and mental health services, as authorized by law. The Court shall have all powers incident to such orders necessary for their enforcement, including the power and authority to require bond or other security for the payment of such order; and may resort to execution and the power of punishment for contempt for noncompliance with such order.

B. The Court shall have the right to increase, decrease, or otherwise modify its orders for care and maintenance, as the conditions or needs of the child or children may require and the ability of the person or persons held to pay may afford. The Court may order support payments to be made direct to the person, organization or institution having the care and custody of the child or children, or directly to the Clerk of the Court.

C. All such funds ordered and paid to the Clerk shall be accounted for; provided, that when payments are made in advance for any child, and custody of the Court is terminated before the end of the period, then the Clerk may refund, by proper voucher, the unused or unaccrued portion of such payment; or the refund may be authorized and paid on claim properly verified and approved by the Judge.

### **Library References**

Indians <KEY>640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 1122. Penalties**

A willful violation of any provision of an order of the Court issued under the provisions of this act shall constitute indirect contempt of Court and shall be punishable as such. Punishment for any such act of contempt shall not exceed a fine of Three Hundred Dollars (\$300.00), or imprisonment in the penal institution of Cherokee Nation or its contracted facility for not more than thirty (30) days, or both such fine and imprisonment.

### **Library References**

Indians <KEY>640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 1123. Appeals**

A. Any interested party aggrieved by any order or decree may appeal to the Supreme Court in the same manner as other appeals are taken to the Supreme Court of this Nation. An order either certifying a juvenile to stand trial as an adult or denying such certification shall be a final order, appealable when entered.

B. The record on appeal of an order of adjudication or of an order certifying or denying certification of a juvenile to stand trial as an adult shall be completed and the appeal perfected within sixty (60) days after the date of the order.

C. The pendency of an appeal thus taken shall not suspend the order of the District Court regarding a child, nor shall it discharge the child from the custody of that Court or of the person, institution or agency to whose care such child has been committed, unless the Supreme Court shall so order. The pendency of an appeal from an order of adjudication shall not prevent the District Court from holding a dispositional hearing unless the appellate court shall so order. The pendency of an appeal from an order certifying a juvenile to stand trial as an adult shall not prevent the commencement of criminal proceedings against the juvenile unless stayed by the judge who issued the order of certification or by the appellate court. If the Supreme Court does not dismiss the proceedings and discharge the child, it shall affirm or modify the order of the District Court and remand the child to the jurisdiction of that Court for supervision and care; and thereafter the child shall be and remain under the jurisdiction of the District Court in the same manner as if such Court had made such order without an appeal having been taken.

#### **Library References**

Indians <KEY>640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

#### **§ 1123.1. Appellate titling of case by initials of child**

In the published opinions of the appellate courts of this Nation in juvenile proceedings including, but not limited to, adoption and paternity proceedings and proceedings under the juvenile code, the initial of the child's surname shall be used rather than his name.

#### **Library References**

Indians <KEY>640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

#### **§ 1123.2. Time for filing petition-Completion of record-Briefing schedule**

A. All appeals of cases involving deprived or allegedly deprived children shall be initiated by filing a petition in error in the Supreme Court within thirty (30) days of the order appealed from. The record on appeal shall be completed within sixty (60) days from the date of the order.

B. The briefing schedule is established as follows:

1. Appellant's brief in chief shall be filed twenty (20) days after the trial court clerk notifies all parties that the record is complete and such notice has been filed in the office of the Clerk of the Supreme Court;
2. Appellee's answer brief shall be filed fifteen (15) days after the appellant's brief in chief is filed;
3. Appellant's reply brief may be filed within ten (10) days after the appellee's answer brief is filed; and
4. Adjudication of the appeals described herein shall be expedited by the Supreme Court.

### **Library References**

Indians <KEY>640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 1124. Mileage and witness fees**

In proceedings under 10 CNCA § 1101 et seq., the Court may allow mileage as in civil actions to witnesses and reimbursement for expert witnesses but such shall not be tendered in advance of the hearing.

### **Library References**

Indians <KEY>640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 1125. Records**

The Court shall make and keep records of all cases brought before it. Such records shall be open to public inspection only by order of the Court to persons having a legitimate interest therein, except that all records of proceedings in adoption cases and all papers and books relating thereto shall remain confidential as provided by law. The Court shall devise and cause to be printed such forms for social and legal records and such other papers as may be required. Nothing in this section shall be construed to prohibit inspection by any person who is entitled to inspect such records pursuant to any provision of this title.

### **Library References**

Indians <KEY>640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

## **§ 1126. Reserved**

### **§ 1127. Use of records or evidence in other causes or proceedings prohibited-Fingerprinting-Civil disability-Criminal status**

A. A record of any child under this act, or any evidence given in such cause, shall not in any civil, criminal or other cause or proceeding in any Court be lawful or proper evidence against the child for any purpose whatever, except in subsequent cases against the same child under this act. The records of law enforcement officers concerning juveniles shall be maintained separate from records of arrests, and shall not be open to public inspection, or their contents disclosed, except by order of the Court.

B. If latent fingerprints are found during the investigation of an offense, a law enforcement officer may fingerprint a child for the purpose of comparing his fingerprints with the latent fingerprints, and the fingerprints may be sent to a law enforcement agency for comparison purposes only. If the comparison is negative or if the Court finds that the child did not commit the alleged offense, the child's fingerprint card and all copies of his fingerprints shall be destroyed immediately after the juvenile proceeding is completed unless the child is reported to a law enforcement agency as a missing child or a custodial parent, legal guardian or legal custodian of the child requests issuance of the fingerprint card to the parent, legal guardian, or legal custodian. If the child is reported to a law enforcement agency as a missing child, and only until the child is located, his fingerprints may be retained pursuant to the provisions of this section. If the Court finds that the child committed the alleged offense, or if the commission of the offense is admitted or not contested by the juvenile and his parents pursuant to an informal adjustment, deflection or diversion of the referral, his fingerprints may be retained either in a central state depository or in a local district court file which local depository may be a duly constituted law enforcement agency or agencies designated by the presiding judge of the juvenile docket.

C. No adjudication by the Court upon the status of a child in a juvenile proceeding shall operate to impose any of the civil disabilities ordinarily resulting from conviction of a crime, nor shall a child be deemed a criminal by reason of such adjudication, nor shall any arrest or detention under this chapter or any adjudication in a juvenile proceeding be deemed a detention or an arrest or conviction for purposes of employment, civil rights, or any statute, regulation, license, questionnaire, application, or any other public or private purposes; provided, however, that nothing herein shall prevent an adjudication in a juvenile proceeding:

1. from being considered in connection with the sentencing of said child should he be convicted in a criminal action after he has become an adult; or
2. from being used to show the bias, if any, of the child should he be a witness in any civil or criminal action either while a child or after he has become an adult.

D. Subsections (A) and (B) of this section shall not apply to the use, confidentiality and disposition of the records and fingerprints of a person who is sixteen (16) or seventeen (17) years old and charged with one of the crimes enumerated in 10 CNCA § 1104.2.

### Library References

Indians <KEY>520(3), 610, 640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

#### **§ 1129. Liberal construction of act**

This title shall be liberally construed, to the end that its purpose may be carried out, to wit:

1. That the care and custody and discipline of the child shall approximate, as nearly as may be, that which should be given by its parents, and that, as far as practicable, any delinquent child shall not be treated as a criminal.

2. That the public policy of this Nation is to assure adequate and appropriate care and treatment for any child, to allow for the use of the least restrictive method of treatment consistent with the treatment needs of the child and, in the case of delinquents, the protection of the public, to provide orderly and reliable procedures for the placement of a child alleged to be a child in need of treatment and to protect the rights of any child placed out of his home pursuant to law.

### Library References

Indians <KEY>640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

#### **§ 1130. Termination of parental rights in certain situations**

A. The finding that a child is delinquent, in need of supervision or deprived shall not deprive the parents of the child of their parental rights, but a Court may terminate the rights of a parent to a child in the following situations:

1. Upon a written consent of a parent, including a parent who is a minor, acknowledged as provided in 10 CNCA § 60.5(4), who desires to terminate his parental rights; provided that the Court finds that such termination is in the best interests of the child; or

2. A finding that a parent who is entitled to custody of the child has abandoned it; or

3. A finding that:

a. the child is deprived, as defined in this chapter, and

b. such condition is caused by or contributed to by acts or omissions of his parent, and

- c. termination of parental rights is in the best interests of the child, and
- d. the parent has failed to show that the condition which led to the making of said finding has not been corrected although the parent has been given three (3) months to correct the condition; provided, that the parent shall be given notice of any hearing to determine if the condition has been corrected. The Court may extend the time in which such parent may show the condition has been corrected, if, in the judgment of the Court, such extension of time would be in the best interest of the child. During the period that the parent has to correct the condition the Court may return the child to the custody of its parent or guardian, subject to any conditions which it may wish to impose or the Court may place the child with an individual or an agency; or
- 4. A finding that a parent who does not have custody of the child has willfully failed to contribute to the support of the child as provided in a decree of divorce or in some other court order during the preceding year or, in the absence of such order, consistent with the parent's means and earning capacity; or
- 5. A conviction in a criminal action pursuant to the provisions of 21 CNCA or §§ 843, 845 [repealed], 1021.3, 1111 and 1123 or 10 O.S. §§ 7102 and 7115, 21 O.S. §§ 1021.3, 1111 and 1123, as amended, or a finding in a deprived child action either that:
  - a. the parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse that is heinous or shocking to the Court or that the child or sibling of such child has suffered severe harm or injury as a result of such physical or sexual abuse; or
  - b. the parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse subsequent to a previous finding that such parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse; or
- 6. A conviction in a criminal action that the parent has caused the death of a sibling of the child as a result of the physical or sexual abuse or chronic neglect of such sibling; or
- 7. A finding that all of the following exist:
  - a. the child is deprived, as defined in this chapter, and
  - b. custody of the child has been placed outside the home of a natural or adoptive parent, guardian or extended family member, and
  - c. the parent whose rights are sought to be terminated has been sentenced to a period of incarceration of not less than ten (10) years, and
  - d. the continuation of parental rights would result in harm to the child based on consideration of the following factors, among others: the duration of incarceration and its detrimental effect on the parent/child relationship; any previous incarcerations; any history of criminal behavior, including crimes against children; the age of the child; the evidence of abuse or neglect of the child or siblings of the child by the parent; and the current relationship between the parent and the child and the manner in which the parent has exercised parental rights and duties in the past, and
- e. termination of parental rights is in the best interests of the child.



Provided, that the incarceration of a parent shall not in and of itself be sufficient to deprive a parent of his parental rights; or

8. A finding that all of the following exist:

a. the child is deprived as defined in this chapter, and

b. custody of the child has been placed outside the home of a natural or adoptive parent, guardian or extended family member, and

c. the parent whose rights are sought to be terminated has a mental illness or mental deficiency, as defined by 43A O.S. § 6-201, Article II, paragraphs f and g, as amended, which renders the parent incapable of adequately and appropriately exercising parental rights, duties and responsibilities, and

d. the continuation of parental rights would result in harm or threatened harm to the child, and

e. the mental illness or mental deficiency of the parent is such that it will not respond to treatment, therapy or medication and, based upon competent medical opinion, the condition will not substantially improve, and

f. termination of parental rights is in the best interests of the child.

Provided, a finding that a parent has a mental illness or mental deficiency shall not in and of itself deprive the parent of his parental rights.

B. Unless otherwise provided for by law, any parent or legal custodian of a child who willfully omits or neglects, without lawful excuse, to perform any duty imposed upon such parent or legal custodian by law to furnish necessary food, clothing, shelter or medical attendance for such child, upon conviction, is guilty of a crime. As used in this section, the duty to furnish medical attention shall mean that the parent or legal custodian of a child must furnish medical treatment in such manner and on such occasions as an ordinarily prudent person, solicitous for the welfare of a child, would provide; such parent or legal custodian is not criminally liable for failure to furnish medical attendance for every minor or trivial complaint with which the child may be afflicted. Any person who leaves the state to avoid providing necessary food, clothing, shelter or medical attendance for such child, upon conviction, is guilty of a crime. Nothing in this section shall be construed to mean a child is endangered for the sole reason the parent or guardian, in good faith, selects and depends upon spiritual means alone through prayer or traditional methods of healing, in accordance with the tenets and practice of a recognized church or religion for the treatment or cure of disease or remedial care of such child; provided, that medical care shall be provided where permanent physical damage could result to such child; and that the laws, rules and regulations relating to communicable diseases and sanitary matters are not violated. Nothing contained herein shall prevent a Court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect his health or welfare. Psychiatric and psychological testing and counseling are exempt from the provisions of this act.

C. An order directing the termination of parental rights is a final appealable order.

D. A parent or guardian of a child may petition the Court to terminate the parental rights of a parent or the parents of a child for any of the grounds listed in paragraphs (1), (2) or (4) of subsection (A) of this section. A prior finding by a Court that a child is delinquent, deprived or in need of supervision shall not be required for

the filing of such petition by the parent or guardian.

### **Cross References**

Child endangerment, knowingly permitting physical or sexual abuse, good faith reliance on spiritual healing, penalties, see 21 CNCA § 852.1.

Consent of parents; exceptions, see 10 CNCA § 60.6.

Termination of parental rights, petition, notice, hearing, orders, see 10 CNCA § 29.1.

### **Oklahoma Statutes**

Appeal of order or decree, see 10A O.S. § 1-5-101.

Child abuse, child neglect, child sexual abuse, or child sexual exploitation, penalties, see 21 O.S. § 21-843.5.

Conduct of hearings, see 10A O.S. § 1-4-503.

Guardians, parents and custodians, consent to participation of minors in child pornography, see 21 O.S. § 21-1021.3.

Interstate compact on mental health, see 43A O.S. § 6-201.

Oklahoma Children's Code, definitions, see 10A O.S. § 1-1-105.

### **Library References**

Indians <KEY>134(1), 135, 640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 150 to 179.

### **§ 1131. Notice of hearing to terminate parental rights**

A. A parent shall be given actual notice of any hearing to terminate his parental rights. The notice shall indicate the relief requested, and the hearing shall not be held until at least ten (10) days after the receipt of such notice, except with the consent of the parent, if known. If the Court finds that the whereabouts of the parent cannot be ascertained, it may order that notice be given by publication and a copy mailed to the last-known address of the parent. The notice shall be published once in a newspaper of general circulation in the county in which the action to terminate parental rights is brought, and the hearing shall not be held for at least ten (10) days after the date of publication of the notice. Except as otherwise provided by subsection (B) of this section, if a parent has not received actual notice of the hearing at which he is deprived of his parental rights, the order depriving him of those rights shall not become final for a period of six (6) months after the hearing. Nothing in this section shall prevent a Court from immediately taking custody of a child and ordering whatever action may be necessary to protect his health or welfare.

B. For the purpose of terminating parental rights, a father or putative father of a child born out of wedlock who has not, prior to commencement of a proceeding to terminate parental rights to such child, exercised parental rights and duties or whose consent is not required pursuant to 10 CNCA § 60.6 shall not be deemed to have parental rights to such child. The father or putative father shall be entitled to notice and an opportunity to be heard pursuant to this section and 10 CNCA § 29.1, except that the Court may:

1. waive notice to a putative father whose identity is unknown to the mother of the child born out of wedlock and the mother of the child signs a sworn statement before the Court that the identity of the father or putative father of the child is unknown and the Court is satisfied, after inquiry into the matter, that his identity is unknown and with due diligence could not be determined; the willful and deliberate falsification of said sworn statement shall be perjury and shall, upon conviction, be punishable as otherwise provided by law. The waiver of notice by the Court pursuant to this paragraph shall not constitute grounds to challenge an adoption of the child; and

2. when the identity of the father or putative father of a child born out of wedlock is known but his whereabouts is unknown and the Court, after inquiry, is satisfied that after diligent search his whereabouts remains unknown, order that notice be given by publication as provided in subsection (A) of this section and a copy mailed to the last-known address, if known, of such father or putative father. When notice is given by publication the order terminating parental rights shall not become final for a period of fifteen (15) days from the date of the order.

#### **Cross References**

Claims allowable, approval, see 20 CNCA App. II, Rule 91.

#### **Library References**

Indians <KEY>134(4).

Westlaw Topic No. 209.

#### **§ 1132. Effect of termination of parental rights**

The termination of parental rights terminates the parent-child relationship, including the parent's right to the custody of the child and his right to visit the child, his right to control the child's training and education, the necessity for the parent to consent to the adoption of the child and the parent's right to the earnings of the child, and the parent's right to inherit from or through the child. Provided, that nothing herein shall in any way affect the right of the child to inherit from the parent.

#### **Library References**

Indians <KEY>134(4), 136.

Westlaw Topic No. 209.

C.J.S. Indians §§ 154 to 176.

#### **§ 1133. Custody with authority to consent to adoption after termination of parental rights**

A. After parental rights have been terminated, a Court may award custody of the child to any qualified person or agency with authority to consent to the adoption of the child, or the Court, in its discretion, may reserve the authority to consent to the adoption of the child; but a Court cannot consent to or authorize any person or agency to consent to the adoption of a child unless the rights of the parents have been terminated in accordance with the provisions of this act.

B. When an interlocutory or final decree of adoption has been rendered, a decree terminating parental rights cannot be challenged on any ground either by a direct or a collateral attack, more than three (3) months after its rendition. The minority of the natural parent shall not operate to prevent this time limit from running.

### **Library References**

Indians <KEY>136.

Westlaw Topic No. 209.

C.J.S. Indians §§ 154 to 176.

### **§ 1134. Action to adopt not to be combined with action to terminate parental rights**

A. Except as otherwise provided for in subsection (B) of this section, an action to adopt a child may not be combined with an action to terminate parental rights and when the rights of a parent have been terminated, neither an interlocutory nor a final decree of adoption may be rendered until the decree terminating parental rights has become final.

B. This section shall not apply to:

1. a proceeding to adopt a child without the consent of a parent when the Court has determined that consent is not legally required; or
2. a proceeding to adopt a child born out of wedlock when the mother of the child is granting consent to the adoption and is a party to the action; or
3. proceedings pursuant to the provisions of 10 CNCA § 60.6.

### **Library References**

Indians <KEY>138.

Westlaw Topic No. 209.

### **§ 1135. Placement determination**

A. It is the intent of the Tribal Council of Cherokee Nation that the placement of each child adjudicated to be a ward of the Court and placed in the custody of Cherokee Nation will assure such care and guidance of the child, preferably in his home, as will serve the spiritual, emotional, mental and physical welfare of the child and will preserve and strengthen the family ties of the child whenever possible, with recognition of the fundamental rights of parenthood and with recognition of the responsibility of the Nation to assist the family in providing

necessary education and training and to reduce the rate of juvenile delinquency and to provide a system for the rehabilitation and reintegration of juvenile delinquents and the protection of the welfare of the general public. In pursuit of these goals it is the intention of the Tribal Council to provide for removing the child from the custody of parents only when the welfare of the child or the safety and protection of the public cannot be adequately safeguarded without removal; and when the child has to be removed from his family, to secure for the child custody, care and discipline consistent with the best interests and the treatment needs of the child.

B. Cherokee Nation shall review and assess each child committed to it to determine the type of placement consistent with the treatment needs of the child in the nearest geographic proximity to the home of the child and, in the case of delinquent children, the protection of the public. Such review and assessment shall include an investigation of the personal and family history of the child, and his environment, and any physical or mental examinations considered necessary.

C. In making such review, Cherokee Nation or the Department may use any facilities, public or private, which offer aid to it in the determination of the correct placement of the child.

### **Library References**

Indians <KEY>136.

Westlaw Topic No. 209.

C.J.S. Indians §§ 154 to 176.

### **§ 1135.1. Child in need of treatment-Care and placement-Evaluation-Inpatient care and treatment**

A. Cherokee Nation may provide for the care of a child adjudicated to be a child in need of treatment who is in the custody of Cherokee Nation:

1. in the home of the child, the home of a relative of the child, a foster home, a group home or in any other community-based child care facility under the jurisdiction or licensure of Cherokee Nation or the Department of Human Services appropriate for the care of the child and shall provide for the outpatient care and treatment of the child; or

2. Cherokee Nation may place a child in need of treatment and found by a Court to be eligible to receive inpatient care and treatment as provided in 10 CNCA § 1116 in a government-operated treatment center or other public or private mental health facility. Cherokee Nation may place such child in a Cherokee Nation-approved inpatient treatment facility or with the Department of Mental Health and Substance Abuse Services upon the consent of the Commissioner of Mental Health and Substance Abuse Services or his designee. The Department shall establish a system for the regular review by a qualified mental health professional, at intervals of not more than sixty (60) days, of the case of each child in need of treatment in the custody of Cherokee Nation and receiving inpatient care and treatment to determine whether or not continued inpatient treatment is required and appropriate for the child. When such child no longer requires inpatient care and treatment in a mental health treatment facility, Cherokee Nation shall place the child as provided in paragraph 1 of this subsection.

B. In providing for the outpatient care and the treatment of children in its custody who have been adjudicated in need of treatment, Cherokee Nation shall utilize to the maximum extent possible and appropriate the services available through:

1. the guidance centers operated by Cherokee Nation, the federal government, or State Department of Health; and
2. the Department of Mental Health and Substance Abuse Services or Cherokee Nation; and
3. community-based private nonprofit agencies and organizations.

C. Nothing in this section shall be interpreted to require Cherokee Nation to place a child found by a Court to be eligible for inpatient mental health treatment in a mental health facility when Cherokee Nation determines that such placement is inappropriate or unnecessary for the treatment needs of the child.

### **Library References**

Indians <KEY>134, 136.

Westlaw Topic No. 209.

C.J.S. Indians §§ 150, 154 to 176.

### **§ 1136. Cherokee Nation to care for deprived children**

It shall be the responsibility of Cherokee Nation to provide care for deprived children who are committed to the care of Cherokee Nation for custody or guardianship. Cherokee Nation may provide for the care of such children in the home of the child, the home of a relative of the child, in a foster home, group home, transitional living program, independent living program or in any other community-based facility established for the care of deprived children. A deprived child found to be a child in need of treatment and eligible for residential care and treatment, as provided in 10 CNCA § 1116, by the Court, may be placed in a Department of Human Services treatment center or other mental health facility.

### **Library References**

Indians <KEY>134.

Westlaw Topic No. 209.

C.J.S. Indians § 150.

### **§ 1137. Child adjudicated in need of supervision-Placement-Rehabilitative facilities-Residential care and treatment**

A. Whenever a child who has been adjudicated by the Court as a child in need of supervision has been committed to Cherokee Nation, Cherokee Nation may place the child in the home of the child, the home of a relative of the child, foster home, group home, transitional living program, independent living program, community-based setting, rehabilitative facility or child care facility, or in a state school for the mentally retarded if eligible for admission thereto.

B. Cherokee Nation may establish, maintain, or contract one or more rehabilitative facilities to be used

exclusively for the custody of children in need of supervision.

C. A child in need of supervision who has been found to be a child in need of treatment and to be eligible for residential care and treatment, as provided in 10 CNCA § 1116, by the Court, may be placed in a mental health facility contracted or deemed appropriate by the District Court.

### **Library References**

Indians <KEY>134, 136.

Westlaw Topic No. 209.

C.J.S. Indians §§ 150, 154 to 176.

### **§ 1138. Delinquent children-Intent of Tribal Council-Powers and duties of Cherokee Nation**

A. It is the intent of the Tribal Council of this Nation to provide for the creation of all reasonable means and methods that can be established by the Nation for the prevention of delinquency and for the care and rehabilitation of delinquent children. It is further the intent of the Tribal Council that this Nation, through Cherokee Nation, establish, maintain and continuously refine and develop a balanced and comprehensive program for children who are potentially delinquent or are delinquent.

B. Whenever a child who has been adjudicated by the Court as a delinquent child has been committed to Cherokee Nation, Cherokee Nation may:

1. Place the child in a training school or other institution or facility maintained by a government for delinquent children if the child has:

a. exhibited seriously violent, aggressive or assaultive behavior; or

b. committed a crime which if committed by an adult under the laws of a state would be a felony involving violent, aggressive and assaultive behavior; or

c. habitually committed serious delinquent acts; or

d. committed multiple serious delinquent acts; to the extent that it is necessary for the protection of the public; or

2. Place the child in a facility maintained by Cherokee Nation or the State of Oklahoma for children, or in a foster home, group home, transitional living program or community residential center; or

3. Allow the child his liberty, under supervision, in an independent living program; or

4. Allow the child his liberty, under supervision, either immediately or after a period in one of the facilities referred to in paragraphs 1 and 2 of this subsection; or

5. Place the child in a school for mentally retarded, if the child is eligible for admission thereto; or

6. Place the child in any licensed private facility deemed by Cherokee Nation to be in the best interest of the child; or

7. Place the child in a government-operated treatment center or other mental health facility if the delinquent child has been found to be in need of treatment and to be eligible for residential care and treatment, as provided in 10 CNCA § 1116, by the Court.

### **Library References**

Indians <KEY>135, 640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 150 to 179.

### **§ 1139. Discharge of children adjudicated delinquent-Retaining custody**

A. All children adjudicated delinquent and committed to Cherokee Nation shall be discharged at such time as Cherokee Nation determines there is a reasonable probability that it is no longer necessary, either for the rehabilitation and treatment of the child, or for the protection of the public, that Cherokee Nation retain legal custody. Following a hearing, the Court may also order that a child adjudged delinquent and committed to Cherokee Nation shall be discharged by Cherokee Nation provided the child is on parole status and the Court deems the discharge in the best interest of the child and public.

B. All children adjudged delinquent and committed to Cherokee Nation and not discharged under subsection (A) of this section shall be discharged when the child becomes eighteen (18) years of age, unless Cherokee Nation is authorized by the Court to retain custody of the child until nineteen (19) years of age. Upon motion of Cherokee Nation the Court, after notice to the delinquent child and to the parents and attorney of said child, may authorize Cherokee Nation to retain custody of the child until he reaches nineteen (19) years of age. If the Court sustains the motion of Cherokee Nation, the delinquent child during the extended period shall be considered as a child for purposes of receiving services from Cherokee Nation. If a criminal offense is committed by the individual during the extended period, said offense shall be considered as having been committed by an adult. Except to the extent necessary to effectuate the purposes of this section, an individual after age eighteen (18) is considered an adult for purposes of other applicable law.

C. Cherokee Nation shall not place a child under ten (10) years of age in an institution maintained for delinquent children.

### **Library References**

Indians <KEY>135, 640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 150 to 179.

### **§ 1140. Children becoming unmanageable and uncontrollable**



If a child who has been adjudicated as a delinquent, a child in need of supervision, or deprived, and who has been committed to Cherokee Nation becomes unmanageable and uncontrollable while in the legal custody of Cherokee Nation, Cherokee Nation may return the child to the Court having original jurisdiction for further disposition or may provide information to the Prosecuting Attorney and request the filing of a petition alleging the child to be delinquent or in need of treatment, if such petition is warranted by the facts in the case.

### **Library References**

Indians <KEY>134, 135, 640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 150 to 179.

### **§ 1141. Intake, probation and parole services**

Cherokee Nation shall provide intake, probation and parole services for juveniles pursuant to the provisions of 10 CNCA § 602 and may enter into agreements to supplement probationary services to juveniles with the state, county or federal government. Cherokee Nation may participate in federal programs for juvenile probation officers, and may apply for, receive, use and administer federal funds for such purpose.

### **§ 1142. Cooperative agreements for education and training of children**

Cherokee Nation may enter into cooperative agreements with any other federal, state, county, or local entity for the purpose of enhancing services, supplementing existing services and/or collaborating this services on behalf of Cherokee children and families. Moreover, Cherokee Nation may apply for, receive and administer federal, state funds as a result of any cooperative effort.

### **§ 1143. Commitment of children to institution-Delivery**

When a child is committed to the custody of Cherokee Nation under the provisions of this act, the Court shall order the child to be delivered by law enforcement offices to an institution, or other place, designated by the Court.

### **Library References**

Indians <KEY>640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 1144. Causing, aiding, abetting or encouraging minor to become delinquent, in need of supervision, or dependent and neglected-Penalty**

Any person who knowingly and willfully:

1. causes, aids, abets or encourages a minor to be, to remain or to become delinquent, in need of supervision or

dependent and neglected; or

2. omits the performance of any duty, which act or omission causes or tends to cause, aid, abet, or encourage any minor to be delinquent, in need of supervision or dependent and neglected, within the purview of 10 CNCA § 1101(2), (3) or (4),

upon conviction, shall be guilty of a crime and, as applicable, shall be punished pursuant to the provisions of 21 CNCA § 856, 858.1 or 858.2.

### **§ 1145. Cherokee Nation to serve as legal guardian**

Whenever parental rights of a child have been terminated and the child is committed to Cherokee Nation, Cherokee Nation shall serve as the legal guardian of the estate of the child, until another guardian is legally appointed, for the purpose of preserving the child's property rights, securing for the child any benefits to which he may be entitled under social security programs, insurance, claims against third parties, and otherwise, and receiving and administering such funds or property for the care and education of the child.

### **Library References**

Indians <KEY>134.

Westlaw Topic No. 209.

C.J.S. Indians § 150.

### **§ 1146. Escape or run away from institutional placement**

Upon discovery that a child has escaped or run away from an institutional placement, Cherokee Nation may notify any law enforcement officer or agency in this state who shall use any reasonable method to notify law enforcement agencies and personnel. Upon receiving notification that a child has escaped or run away from an institutional placement, all law enforcement agencies and personnel shall be authorized to apprehend and detain said child. Escaping or running away by an adjudicated delinquent child from institutional placement shall be considered by the Court of juvenile jurisdiction as a delinquent act.

### **§ 1147. Admissibility of prerecorded statements of child age twelve or under who is victim of abuse**

A. This section shall apply only to a proceeding affecting the parent-child, guardian-child or family relationship in which a child twelve (12) years of age or younger is alleged to have been abused, and shall apply only to the statement of that child or other child witness.

B. The recording of an oral statement of the child made before the proceedings begin is admissible into evidence if:

1. The Court determines that the time, content and circumstances of the statement provide sufficient indicia of reliability; no corroboration of the child's statement is necessary for admission;
2. No attorney for any party is present when the statement is made;

3. The recording is both visual and aural and is recorded on film or videotape or by other electronic means;
4. The recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;
5. The statement is not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the child's statement and not made solely as a result of a leading or suggestive question;
6. Every voice on the recording is identified;
7. The person conducting the interview of the child in the recording is present at the proceeding and is available to testify or be cross-examined by any party; and
8. Each party to the proceeding is afforded an opportunity to view the recording before it is offered into evidence, and a copy of a written transcript transcribed by a licensed or certified court reporter is provided to the parties.

### **Library References**

Indians <KEY>520.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 1148. Taking testimony of child age twelve or under in room other than courtroom-Recording**

A. This section shall apply only to a proceeding affecting the parent-child, guardian-child or family relationship in which a child twelve (12) years of age or younger is alleged to have been abused, and shall apply only to the testimony of that child or other child witness.

B. The Court may, on the motion of a party to the proceeding, order that the testimony of the child be taken in a room other than the courtroom and be televised by closed-circuit equipment in the courtroom to be viewed by the Court, the finder of fact and the parties to the proceeding. Only an attorney for each party, an attorney ad litem for the child or other person whose presence would contribute to the welfare and well-being of the child and persons necessary to operate the equipment may be present in the room with the child during his testimony. Only the attorneys for the parties may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony, but does not permit the child to see or hear them.

C. The Court may, on the motion of a party to the proceeding, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the Court, the finder of fact and the parties to the proceeding. Only those persons permitted to be present at the taking of testimony under subsection (B) of this section may be present during the taking of the child's testimony. Only the attorneys for the parties may question the child, and the persons operating the equipment shall be confined from the child's sight and hearing. The Court shall ensure that:

1. The recording is both visual and aural and is recorded on film or videotape or by other electronic means;
  2. The recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;
  3. Every voice on the recording is identified; and
  4. Each party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom, and a copy of a written transcript transcribed by a licensed or certified court reporter is provided to the parties.
- D. If the testimony of a child is taken as provided by subsections (B) or (C) of this section, the child shall not be compelled to testify in Court during the proceeding.

### **Library References**

Indians <KEY>520.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 1149. Aggravated assault and battery upon employee of facility for delinquent children**

- A. Every person who, without justifiable or excusable cause, knowingly commits any aggravated assault and battery upon the person of an employee of a facility maintained primarily for delinquent children, while the employee is in the performance of his duties, shall upon conviction thereof be guilty of a crime.
- B. This act shall not supersede any other act or acts, but shall be cumulative thereto.

### **History**

**Source.** LA 8-91, eff. May 13, 1991.

## **ARTICLE III. AREA CHILDREN'S DETENTION CENTERS**

### **§ 1301. Establishment of area detention centers**

Cherokee Nation may establish and maintain area children's detention centers where children committed thereto by District Judges or placed therein by peace officers may be kept, temporarily, subject to orders of the District Courts. Any such center may be maintained at a institution under the jurisdiction of Cherokee Nation; or may, by contractual arrangement, be maintained at a facility established for the detention of juveniles.

### **Library References**

Infants <KEY>3122.

Westlaw Topic No. 211.

### **§ 1403.1. Rules, regulations, policies and procedures regarding children in Cherokee Nation custody**

A. Cherokee Nation shall promulgate written rules and regulations, outline policies and procedures governing the operation of those institutions and other facilities operated by Cherokee Nation wherein juveniles may be housed. Said policies and procedures shall include, but not be limited to, standards of cleanliness, temperature and lighting, availability of medical and dental care, provision of food, furnishings, clothing and toilet articles, supervision, appropriate and permissible use of restriction and confinement, procedures for enforcing rules of conduct consistent with due process of law and visitation privileges.

B. The policies prescribed shall, at a minimum, ensure that:

1. A child shall not be punished by physical force, deprivation of nutritious meals, deprivation of family visits or solitary confinement;

2. A child shall have the opportunity to participate in physical exercise each day;

3. A child shall be allowed daily access to showers and his own clothing or individualized clothing which is clean;

4. A child shall have constant access to writing materials and may send mail without limitation, censorship or prior reading, and may receive mail without prior reading, except that mail may be opened in the presence of the child, without being read, to inspect for contraband;

5. A child shall have reasonable opportunity to communicate and to visit with his family on a regular basis, and to communicate with persons in the community;

6. A child shall have immediate access to medical care as needed, and shall receive necessary psychological and psychiatric services;

7. A child in the custody or care of Cherokee Nation shall be provided access to education including teaching, educational materials and books, provided, that such policies shall provide emphasis upon basic literacy skills, including but not limited to curricula requirements stressing reading, writing, mathematics, science, vocational-technical education, and other courses of instruction designed to assure that such children will be capable of being assimilated into society as productive adults capable of self-support and full participation;

8. A child shall have reasonable access to an attorney upon request;

9. A child shall be afforded a grievance procedure, including an appeal procedure; and

10. A child's mental health needs and mental well-being will be met, protected and served through provision of guidance, counseling and treatment programs, staffed by competent, professionally qualified persons, serving under the supervision of licensed psychologists, psychiatrists or licensed clinical social workers.

### **Library References**

Infants <KEY>3133.

Westlaw Topic No. 211.

C.J.S. Infants §§ 43, 71 to 95, 307, 370, 373, 375, 377 to 378.

### **§ 1403.2. Use of physical force-Mechanical restraints**

A. Use of physical force in institutions and other facilities operated by Cherokee Nation wherein children are housed shall be permitted only under the following circumstances:

1. For self-protection;
2. To separate juveniles who are fighting;
3. To restrain juveniles in danger of inflicting harm to themselves or others; or
4. To restrain juveniles who have escaped or who are in the process of escaping.

B. When use of physical force is authorized, the least force necessary under the circumstances shall be employed.

C. Staff members of residential and nonresidential programs who are assigned to work with juveniles shall receive written guidelines on the use of physical force, and that, in accordance with staff disciplinary procedures, loss of employment may result if unauthorized use of physical force is proven.

D. Use of mechanical restraints in institutions and other facilities operated by Cherokee Nation wherein children are housed shall be minimal and shall be prohibited except as specifically provided for in the regulations of Cherokee Nation.

### **Library References**

Infants <KEY>3133, 3147.

Westlaw Topic No. 211.

C.J.S. Infants §§ 43, 71 to 95, 307, 370, 373, 375, 377 to 378.

### **§ 1404.1. Juvenile Offender Victim Restitution Work Program**

There is hereby created a program of juvenile crime victim restitution to be administered by Cherokee Nation. The program shall be known as the "Juvenile Offender Victim Restitution Work Program".

1. Cherokee Nation shall promulgate rules and regulations necessary for the implementation of the provisions of this act.
2. The programs developed under the provisions of this act shall provide restitution to a victim by requiring the child to work or provide a service for the victim, or to make monetary restitution to the victim from money earned from such a program. The supervised work or service program shall not deprive the child of schooling which is appropriate to his age, need, and specific rehabilitative goals. Provided, such program shall not

prohibit the child from fulfilling his restitution obligation through jobs he has found, by performing volunteer services for the community, or by doing work for the victim.

3. Agreements for participation in the programs under this act may include restitution not in excess of actual damages caused by the child which shall be paid from the net earnings of the child received through participation in a constructive program of service or education acceptable to the child, the victim, Cherokee Nation, the prosecuting attorney and/or the District Court. During the course of such service, the child shall be paid no less than the federal minimum wage. In considering such agreement, Cherokee Nation, the Prosecuting Attorney and/or the District Court shall take into account the child's age, physical and mental capacity. The service shall be designed to relate to the child a sense of responsibility for the injuries caused to the person or property of another. If a petition has not been filed, the prosecuting attorney shall approve the nature of the work, the number of hours to be spent performing the assigned tasks and shall further specify that as part of a plan of treatment and rehabilitation, that fifty percent (50%) or more of the child's net earnings be used for restitution in order to provide positive reinforcement for the work performed. If a petition has been filed, the District Court may approve the nature of the work, the number of hours to be spent performing the assigned tasks and may further specify that as part of a plan of treatment and rehabilitation, that fifty percent (50%) or more of the child's net earnings be used for restitution.

4. Cherokee Nation may subsidize the employment of a child for the purposes of participation in a work program as provided by this section.

5. Any person, entity or political subdivision who is an employer of children or recipient of services either of which are under an agreement with the Juvenile Offender Victim Restitution Work Program shall not be liable for ordinary negligence for:

a. Damage to the property of the child or injury to the child except as to the liability established by the Workers' Compensation Act, 85 CNCA § 1 et seq., if the child is covered thereunder; or

b. Damage to any property or injury to any person;

which results from the services of the child pursuant to this act.

### **Oklahoma Statutes**

Workers' compensation, see 85A O.S. § 1 et seq.

#### **§ 1405. Enforcement**

The prosecuting attorney and any other law enforcement official having jurisdiction, shall have the authority to bring civil actions against any person, officer or department, board, commission or other entity, to enforce the provisions of 10 CNCA § 1101 et seq. or to enforce any of the laws of this Nation protecting or applying in any way to children removed from the custody of the lawful parent or parents of the child by a disposition order of the Court.

#### **§ 1406. Institutional abuse**

A. The malicious or wanton neglect, or sexual, physical or emotional abuse perpetrated by any person upon a child in the care or custody, or under the supervision of Cherokee Nation including employees of any agency,

on duty or not, shall be guilty of a crime.

B. Every co-worker, supervisor, supervisee or other individual witnessing the abuse or neglect or having reason to suspect abuse or neglect, has a duty to notify the Cherokee Nation Marshal, Cherokee Nation Department of Children's Services or its successor, and the Oklahoma Child Abuse Hotline. This report shall be made directly without notice to the person suspected of abuse, including the supervisor of an employee. It shall be a crime to fail to report abuse described in this section.

### History

**Source.** LA 8-91, eff. May 13, 1991.

### § 1407. Child protection

This act may be cited as the "Cherokee Nation Child Protection and Family Violence Prevention Act."

#### 1. Findings and purpose.

a. Findings. The Council of Cherokee Nation, after careful review of the problem of child abuse on Indian country, finds that:

i. Incidents of abuse of children in Indian country are grossly under-reported,

ii. There is no resource that is more vital to the continued existence and integrity of Cherokee Nation than its children and Cherokee Nation has a direct interest, as trustee, in protecting Indian children who are citizens of, or are eligible for citizenship in Cherokee Nation.

b. Purposes. The purposes of this act are to:

i. Require that reports of abused Indian children are made to the appropriate authorities in an effort to prevent further abuse,

ii. Authorize such other actions as are necessary to ensure effective child protection in Indian country,

iii. Provide for the treatment and prevention of incidents of family violence,

iv. Provide minimum standards of character and suitability for employment or volunteerism for individuals whose duties and responsibilities allow them regular contact with or control over Indian children,

v. Authorize other actions necessary to ensure effective child protection on Indian country.

#### 2. Definitions. For the purposes of this act, the term:

a. **"Abuse"** means harm or threatened harm to a child's health, safety or welfare by a person responsible for the child's health, safety or welfare, including sexual abuse and sexual exploitation;

b. **"Bureau"** means the Bureau of Indian Affairs of the Department of the Interior;



c. **"Child"** means any person under the age of eighteen (18) years, except any person convicted of a crime where statute requires that persons charged with such crimes must be considered adults or any person who has been certified as an adult and convicted of a felony;

d. **"Child advocacy center"** means an entity that is a full member in good standing with Cherokee Nation or the State of Oklahoma's standard for accreditation;

e. **"Child protective services worker"** means a person employed by the Department with sufficient experience or training as determined by the Department in child abuse prevention and identification;

f. **"Confirmed report-court intervention"** means a report which is determined by a child protective services worker, after an investigation and based upon some credible evidence, to constitute child abuse or neglect which is of such a nature that the Department finds that the child's health, safety or welfare is threatened, and court intervention is being recommended;

g. **"Confirmed report-services recommended"** means a report which is determined by a child protective services worker, after an investigation and based upon some credible evidence, to constitute child abuse or neglect which is of such a nature that the Department recommends prevention and intervention-related services for the parents or persons responsible for the care of the child or children, but for which initial court intervention is not required;

h. **"Department"** means the Cherokee Nation Department of Children, Youth, and Family Services' Indian Child Welfare Program;

i. **"Family violence"** means any act, or threatened act, of violence, including any forceful detention of an individual, which:

i. results, or threatens to result, in physical or mental injury, and

ii. is committed by an individual against another individual:

(a) to whom such person is or was, related by blood or marriage or otherwise legally related, or

(b) with whom such person is, or was, residing.

j. **"Harm or threatened harm to a child's health or safety"** includes, but is not limited to:

i. nonaccidental physical or mental injury,

ii. sexual abuse,

iii. sexual exploitation,

iv. neglect,

v. failure or omission to provide protection from harm or threatened harm, or

vi. abandonment.

k. **"Indian"** means any individual who is a member of an Indian tribe or is eligible for membership in an Indian tribe.

l. **"Indian child"** has the meaning given to such term by Section 4(4) of the Indian Child Welfare Act of 1978 (25 U.S.C. § 1903(4)).

m. **"Indian country"** has the meaning given to such term by 18 U.S.C. § 1151.

n. **"Investigation"** means an approach utilized by the Department to respond to reports of alleged child abuse or neglect which, according to priority guidelines established by the Department, constitute a serious and immediate threat to the child's health or safety. An investigation includes, but is not limited to, the following elements:

- i. an evaluation of the child's safety or welfare,
- ii. a determination whether or not child abuse or neglect occurred, and
- iii. a determination regarding the family's need for prevention and intervention-related services;

o. **"Local child protective services agency"** means that agency of the federal government, of a state, or of an Indian tribe that has the primary responsibility for child protection on any Indian reservation or within any community in Indian country.

p. **"Local law enforcement agency"** means that federal, tribal, or state law enforcement agency that has the primary responsibility for the investigation of an instance of alleged child abuse within the portion of Indian country involved.

q. **"Neglect"** means failure or omission to provide:

- i. adequate food, clothing, shelter, medical care, and supervision,
- ii. special care made necessary by the physical or mental condition of the child, or
- iii. abandonment.

r. **"Person responsible for a child's health, safety or welfare"** includes a parent; a legal guardian; a custodian; a foster parent; a person eighteen (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, volunteer, or employee of a child care facility;

s. **"Prevention and intervention-related services"** means community-based programs that serve children and families on a voluntary and time-limited basis to help reduce the likelihood or incidence of child abuse and neglect.

t. **"Related assistance"**:

i. includes counseling and self-help services to abusers, victims, and dependents in family violence situations (which shall include counseling of all family members to the extent feasible) and referrals for appropriate healthcare services (including alcohol and drug abuse treatment), and

ii. may include food, clothing, child care, transportation, and emergency services for victims of family violence and their dependents.

u. **"Secretary"** means the Secretary of the Interior.

v. **"Service"** means the Indian Health Service of the Department of Health and Human Services.

w. **"Services not needed determination"** means a report in which a child protective services worker, after an investigation, determines that there is no identified risk of abuse or neglect;

x. **"Services recommended determination"** means a report in which a child protective services worker, after an investigation, determines the allegations to be unfounded or for which there is insufficient evidence to fully determine whether child abuse or neglect has occurred, but one in which the Department determines that the child and the child's family could benefit from receiving prevention and intervention-related services;

y. **"Sexual abuse"** includes, but is not limited to, rape, incest and lewd or indecent acts or proposals made to a child, as defined by law, by a person responsible for the child's health, safety or welfare;

z. **"Sexual exploitation"** includes, but is not limited to, allowing, permitting, or encouraging a child to engage in prostitution, as defined by law, by a person responsible for the child's health, safety or welfare or allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming, or depicting of a child in those acts as defined by the state law, by a person responsible for the child's health, safety or welfare;

aa. **"Shelter"** means the provision of temporary refuge and related assistance in compliance with applicable federal and Tribal laws and regulations governing the provision, on a regular basis, of shelter, safe homes, meals, and related assistance to victims of family violence or their dependents.

3. Reporting procedures; report to local law enforcement agency.

a. Any person who is:

i. a physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or health care provider,

ii. a teacher, school counselor, instructional aide, teacher's aide, teacher's assistant, or bus driver employed by any tribal, federal, public or private school,

iii. an administrative officer, supervisor of child welfare and attendance, or truancy officer of any tribal, federal, public or private school,

iv. a child day care worker, HeadStart teacher, public assistance worker, worker in a group home or residential or day care facility, or social worker,

v. a psychiatrist, psychologist, or psychological assistant,

vi. a licensed or unlicensed marriage, family, or child counselor,

vii. a person employed in the mental health profession, or

viii. a law enforcement officer, probation officer, worker in a juvenile rehabilitation or detention facility, or person employed in a public agency who is responsible for enforcing statutes and judicial orders;

b. who knows, or has reasonable suspicion, that:

i. a child was abused in Indian country, or

ii. actions are being taken, or are going to be taken, that would reasonably be expected to result in abuse of a child in Indian country; and

c. fails to immediately report such abuse or actions described in paragraph b of this subdivision to the local child protective services agency or local law enforcement agency, shall be fined not more than Five Thousand Dollars (\$5,000.00) or imprisoned for not more than six (6) months, or both.

d. Any person who supervises, or has authority over, a person described in this subdivision, who inhibits or prevents that person from making the report described in this subdivision, shall be fined not more than Five Thousand Dollars (\$5,000.00) or imprisoned for not more than six (6) months, or both.

e. For purposes of this section, the term:

i. **"Abuse"** includes:

(a) any case in which a child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, and such condition is not justifiably explained or may not be the product of an accidental occurrence, and

(b) any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution;

ii. **"Child"** means any person under the age of eighteen (18) years, except any person convicted of a crime where statute requires that persons charged with such crimes must be considered adults or any person who has been certified as an adult and convicted of a felony;

iii. **"Local child protective services agency"** means that agency of the federal government, of a state, or of an Indian tribe that has the primary responsibility for child protection on any Indian reservation or within any community in Indian country; and

iv. **"Local law enforcement agency"** means that federal, tribal, or state law enforcement agency that has the primary responsibility for the investigation of an instance of alleged child abuse within the portion of Indian country involved.

f. Any person making a report described in this subdivision which is based upon their reasonable belief and

which is made in good faith shall be immune from civil or criminal liability for making that report.

g. Notification of child abuse reports:

i. When a local law enforcement agency or local child protective services agency receives an initial report from any person of:

(a) the abuse of a child in Indian country, or

(b) actions which would reasonably be expected to result in abuse of a child in Indian country,

the receiving agency shall immediately notify appropriate officials of the other agency of such report and shall also submit, when prepared, a copy of the written report required under paragraph (h) of this subdivision to such agency.

ii. Where a report of abuse involves an Indian child or where the alleged abuse is an Indian and where a preliminary inquiry indicates a criminal violation has occurred, the local law enforcement agency, if other than the Federal Bureau of Investigation, shall immediately report such occurrence to the Federal Bureau of Investigation.

h. Written report of child abuse:

i. Within thirty-six (36) hours after receiving an initial report as described in this subdivision, the receiving agency shall prepare a written report which shall include, at a minimum, if available:

(a) the name, address, age, and sex of the child that is the subject matter of the report,

(b) the grade and the school in which the child is currently enrolled,

(c) the name and address of the child's parents or other person responsible for the child's care,

(d) the name and address of the alleged offender,

(e) the name and address of the person who made the report to the agency,

(f) a brief narrative as to the nature and extent of the child's injuries, including any previously known or suspected abuse of the child or the child's siblings and the suspected date of the abuse, and

(g) any other information the agency or the person who made the report to the agency believes to be important to the investigation and disposition of the alleged abuse.

ii. (a) Any local law enforcement agency or local child protective services agency that receives a report alleging abuse described in this subdivision shall immediately initiate an investigation of such allegation and shall take immediate, appropriate steps to secure the safety and well-being of the child or children involved.

(b) Upon completion of the investigation of any report of alleged abuse that is made to a local law enforcement agency or local child protective services agency, such agency shall prepare a final written report on such allegation.

j. Confidentiality of informant: The identity of any person making a report described in this subdivision shall not be disclosed, without the consent of the individual, to any person other than a court of competent jurisdiction or an employee of an Indian tribe, a state or the federal government who needs to know the information in the performance of such employee's duties.

4. Confidentiality. Agencies of any Indian tribe, of any state, or of the federal government that investigate and treat incidents of abuse of children may provide information and records to those agencies of any Indian tribe, any state, or the federal government that need to know the information in performance of their duties. For purposes of this section, Indian tribal governments shall be treated the same as other federal government entities.

5. Waiver of parental consent.

a. Examination and interviews. Photographs, x-rays, medical examinations, psychological examinations, and interviews of an Indian child alleged to have been subject to abuse in Indian country shall be allowed without parental consent, if local child protective services or local law enforcement officials have reason to believe the child has been subject to abuse.

b. Interviews by law enforcement and child protective services officials. In any case in which officials of the local law enforcement agency or local child protective services agency have reason to believe that an Indian child has been subject to abuse in Indian country, the officials of those agencies shall be allowed to interview the child without first obtaining the consent of the parent, guardian, or legal custodian.

c. Protection of child. Examinations and interviews of a child who may have been the subject of abuse shall be conducted under such circumstances and with such safeguards as are designed to minimize additional trauma to the child.

d. Court order. Upon a finding of reasonable suspicion that an Indian child has been the subject of abuse in Indian country, a judge of the District Court may issue an order enforcing any provision of this action.

6. Character investigation.

a. The Cherokee Nation Human Resources Department shall conduct an investigation of the character of each individual who is employed by, or is being considered for employment by, is subject to the supervision of, or receives funding from Cherokee Nation, in a position that involves regular contact with, or control over, Indian children.

b. Cherokee Nation shall employ individuals in those positions having regular contact with or control over Indian children only if the individuals meet standards of character regarding care, custody, and safety of children established by the Human Resources Department subject to approval of the Principal Chief.

c. i. The Human Resources Department shall establish a list of positions at Cherokee Nation which involve regular contact with or control over Indian children.

ii. The positions listed by the Human Resources Department must include, at a minimum, any employee or volunteer of a children's residential facility, any position providing out-of-home care, education or services to children. The position list shall also include, but not be limited to:

(a) adults responsible for administration or direct supervision of staff who have regular contact with or control over Indian children,

(b) any staff person, volunteer, or official of the Nation who engages in regular contact with children as part of their duties with the Nation, and

(c) any staff person, volunteer, or official of the Nation who engages in activities with children where the activities include overnight stays with children.

iii. The following may be excluded from the character investigation requirement:

(a) A volunteer providing time-limited specialized services if this person is directly supervised by an individual who has cleared a character investigation, and the volunteer spends no more than sixteen (16) hours per week engaging in activities with children, and the volunteer does not spend any overnights with the children, and the volunteer is not left alone with children in care,

(b) A student enrolled or participating at an accredited educational institution if the student is directly supervised by an individual who has cleared a character investigation, the facility has an agreement with the educational institution concerning the placement of the student, and the volunteer does not spend any overnights with the children, and the student spends no more than sixteen (16) hours per week engaging in activities with children, and the student is not left alone with children in care,

(c) A volunteer who is a relative, legal guardian, or foster parent of a client being provided services by the Nation shall not be subject to the character investigation requirement when the volunteer is engaging in activities related to the services being provided to his/her child unless the volunteer is required to spend an overnight with the children in which case, he/she must be cleared through a character investigation,

(d) A contracted repair person retained by a facility where children are served, if not left alone with children in care, shall be exempt from the requirements of this subdivision,

(e) Any person similar to those described in this subdivision, as defined by Human Resources.

d. The Human Resources Department shall establish procedures for determining suitability for employment and efficiency of service as mandated by the Indian Child Protection and Family Violence Prevention Act and shall include in said procedures standards of character to ensure that individuals having regular contact with or control over Indian children have not been convicted of certain types of crimes or acted in a manner that placed others at risk or raised questions about their trustworthiness:

i. The Human Resources Department's determinations of suitability shall measure the fitness or eligibility of an applicant, volunteer, or employee for a particular position. Suitability for employment does not evaluate an applicant's education, skills, knowledge, experience, etc.; rather, it requires that the Human Resources Department investigate the background of each applicant, volunteer, and employee to:

(a) Determine the degree of risk the applicant, volunteer, or employee brings to the position, and

(b) Certify that the applicant's, volunteer's, or employee's past conduct would not interfere with his or her performance of duties, nor would it create an immediate or long-term risk for any Indian child.

ii. Efficiency of service procedures shall verify that the applicant or employee is able to perform the duties and responsibilities of the position, and his or her presence on the job will not inhibit other employees or the agency from performing their functions.

e. The Human Resources Department shall use character traits and past conduct to determine whether an applicant, volunteer, or employee can effectively perform the duties of a particular position without risk of harm to others. Minimum standards of character require that no applicant, volunteer, or employee will be placed in a position with regular contact with or control over Indian children if he or she has been found guilty of or entered a plea of nolo contendere or guilty to any offense under federal, state, or tribal law involving crimes of violence, sexual assault, sexual molestation, sexual exploitation, sexual contact or prostitution, crimes against persons, an offense involving a child victim, other sex crimes, or a drug-related felony. Minimum standards of character shall also require that no applicant, volunteer, or employee will be placed in a position with regular contact with or control over Indian children if the individual has resorted to physical punishment or mistreatment while working with children even if a criminal conviction has not been obtained.

f. An applicant, volunteer, or employee shall be disqualified from consideration or continuing employment or volunteer work where the employment or work requires regular contact with or control over children if it is found that he or she does not meet the minimum standards listed herein. Elected officials shall be disqualified from engaging in any activities and work, whether as part of their duties or as volunteers, where they would have regular contact with or control over children.

g. An applicant, volunteer, official, or employee may be disqualified from consideration or continuing employment or volunteer work where the employment or work requires regular contact or control over children if it is found that:

i. The individual's misconduct or negligence interfered with or affected a current or prior employer's performance of duties and responsibilities,

ii. The individual's criminal or dishonest conduct affected the individual's performance or the performance of others,

iii. The individual made an intentional false statement, deception or fraud on an examination or in obtaining employment,

iv. The individual has refused to furnish testimony or cooperate with an investigation,

v. The individual's alcohol or substance abuse is of a nature and duration that suggests the individual could not perform the duties of the position or would directly threaten the property or safety of others,

vi. The individual has illegally used narcotics, drugs, or other controlled substances without evidence of substantial rehabilitation,

vii. The individual knowingly and willfully engaged in an act or activities designed to disrupt government programs,

viii. While working with children, the individual has resorted to physical punishment or mistreatment,



ix. The individual fails to demonstrate good judgment as evidenced by prudent and responsible behavior that reasonably ensures the health and safety of children in care.

h. A determination that an individual who is currently employed by the Nation is disqualified for continuing employment pursuant to this section shall be cause for termination of such employee. An individual who is an official of the Nation or who is a volunteer and is determined to be disqualified shall be prohibited from engaging in any activities and work on behalf of the Nation or where children in the Nation's care are involved and where they would have regular contact with or control over children.

### **History**

**Source.** LA 8-91, eff. May 13, 1991.

**Amended.** LA 08-08, eff. May 19, 2008.

### **United States Code**

Bureau of Indian Affairs, see 25 U.S.C. § 1 et seq.

Indian child welfare, definitions, see 25 U.S.C. § 1903.

### **Library References**

Infants <KEY>1501 to 1519.

Westlaw Topic No. 211.

C.J.S. Infants §§ 5 to 6, 8 to 9, 43, 71 to 95, 110 to 114, 116 to 121.

### **§ 1611. Pleading or affidavit-Oath-Information required**

A. Every party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last five (5) years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath whether:

1. He has participated, as a party, witness, or in any other capacity, in any other litigation concerning the custody of the same child in this Court or any state, tribal or federal court;
2. He has information of any custody proceeding concerning the child pending in any court including tribal, state or federal.
3. He knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

B. If the declaration as to any of the above items is in the affirmative the declarant shall give additional information under oath as required by the Court. The Court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the Court's jurisdiction and the disposition of the

case.

C. Each party has a continuing duty to inform the Court of any custody proceeding concerning the child in this or any other state of which he obtained the information during this proceeding.

### **History**

**Source.** LA 8-91, eff. May 13, 1991.

### **Library References**

Indians <KEY>520.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.